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Bill Analysis
Legislative Service Commission

H.B. 467

123rd General Assembly
(As Reported by H. Commerce & Labor)

Reps. Schuler, Allen, Vesper, Britton, Evans, Tiberi, DePiero

BILL SUMMARY

- Removes the requirement that a certain percentage of annual pawnbroker license fees collected by the state are to be paid to municipal corporations or counties.
- Specifies that the Superintendent of Financial Institutions in the Department of Commerce makes the final determination of whether an applicant demonstrates a thorough working knowledge of all pawnbroker laws and rules.
- Raises the minimum amount of liquid assets an applicant must have at the time of applying for an initial license as a pawnbroker from \$25,000 to \$100,000.
- Raises the minimum amount of liquid assets an applicant for an initial license as a pawnbroker must demonstrate the ability to maintain from \$10,000 to \$50,000.
- Requires a licensee to either maintain liquid assets in the amount of \$50,000 or obtain a surety bond in a penal sum of \$25,000.
- Establishes bonding requirements for pawnbrokers.
- Establishes mandatory continuing education requirements for each pawnbroker and persons designated as "salespersons."
- Establishes a specific procedure whereby a pawnbroker may obtain a temporary exhibition permit as a precious metals dealer.

- Conditions the ability of a pawnbroker to collect interest or storage charges on any given day in relation to if the pawnbroker is open for business that day.
- Extends from one year to 18 months, the maximum interval between the Superintendent of Financial Institution's regular investigations of a pawnbroker's business.
- Raises, by \$1, certain fees that a pawnbroker is allowed to charge in addition to interest.
- Authorizes a pledgor to pay a portion of any outstanding principal loan balance at any time.
- Allows electronic or computerized recordkeeping in accordance with the Superintendent's approval.
- Imposes certain recordkeeping requirements on pawnbrokers and requires that records be made in the English language.
- Specifies the type of information a pawnbroker must provide to either the chief of police of a municipal corporation or county sheriff who has jurisdiction over the location of the pawnbroker's business.
- Allows a pledgor to either redeem pledged property or pay all interest and storage charges due to retain the pledgor's interest in the pledged property.
- Specifies the nature of the record that must be kept and retained in the place of business by a pawnbroker with respect to a redemption.
- Allows only licensed pawnbrokers to advertise and prohibits advertisers from accepting pawnbroker advertisements from a person not licensed as a pawnbroker under Ohio law.
- Specifies certain procedures for the transfer of 10% or more ownership interest in a pawnbroker business.
- Specifies that upon the suspension or revocation of a license, certain persons may not be allowed to receive a license within a two-year time period from the date of suspension or revocation.

- Outlines the Superintendent's subpoena power related to enforcing the laws governing pawnbrokers.
- Requires confidentiality of information obtained in an investigation by the Superintendent.
- Allows the Superintendent to consider an application for a pawnbroker's license withdrawn and to retain the application fee if required information is not provided on an application within 90 days of the Superintendent's request for the information.

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CONTENT AND OPERATION

Application for a pawnbroker's license

Under current law, an application for a pawnbroker's license must 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 person or corporation. Under the bill, an application for a pawnbroker's license must contain the full name and address of the applicant and of every member, partner, stockholder, or owner of an applicant. (Sec. 4727.04.)

Under current law, no one is allowed to act as a pawnbroker, or advertise, transact, or solicit business as a pawnbroker, without first having obtained a license from the Division of Financial Institutions in the Department of Commerce. Under the bill, a license to operate as a pawnbroker is obtained specifically from the Superintendent of Financial Institutions. (Sec. 4727.02.)

Demonstrating experience and fitness to be licensed as a pawnbroker

The Superintendent may grant a pawnbroker's license to any person of good character who also has experience and fitness in the capacity involved to engage in the business of pawnbroking and who pays the necessary licensing and investigation fees. The bill prohibits the transfer or assignment of a license. (Secs. 4727.20(A) and 4727.03.)

Under current law, "experience and fitness in the capacity involved" is determined by the following:

(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. The bill adds a requirement that a satisfactory demonstration includes 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. The bill specifies that the Superintendent makes the final determination of whether the applicant's demonstration is adequate.

(3) A submission by the applicant for licensure and any stockholders, directors, or officers of the pawnshop, and employees of the applicant to a police record check. The bill adds owners and managers of a pawnshop to this list.

(4) Liquid assets in a minimum amount of \$25,000 (raised by bill to \$100,000) at the time of applying for initial licensure and demonstration of the ability to maintain liquid assets at a minimum amount of \$10,000 (raised by bill to \$50,000) for the duration of holding a valid pawnbroker's license. As an alternative to this fourth requirement, the bill allows the 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 \$25,000. The bond must be in favor of the Superintendent and a copy of the bond must be filed with the Superintendent. The bill specifies that the bond is for the exclusive benefit of any person injured by a licensee's violation of the pawnbroker laws.

The bill allows the Superintendent to consider an application withdrawn and to retain the full application fee if the applicant does both:

(1) Fails to supply all of the information required in the application regarding experience and fitness in the capacity involved;

(2) Fails to submit the information within 90 days after the Superintendent requests it in writing.

Continuing education requirements

Under the bill, effective with the two-year period that begins June 30, 2000, and every two-year period thereafter, each person licensed as a pawnbroker must complete by the end of that period at least 20 hours of continuing education instruction offered in a course or program approved by the Superintendent. In making the decision to approve a course or program, the Superintendent is required to consult with an industry representative selected by the Superintendent.

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

The bill allows the Superintendent to adopt rules regarding continuing education fees, locations, times, frequency, and waivers of requirements and also allows the Superintendent, in accordance with the Administrative Procedure Act, 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.)

Claims against a pawnbroker and the pawnbroker's surety bond

Notice

The bill requires the licensee to give notice to the Superintendent by certified mail of any action that is brought against the licensee and of any judgment that is entered against the licensee by a person injured by a violation of the laws governing pawnbrokers. 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 exists (see "**Demonstrating experience and fitness to be licensed as a pawnbroker**"), the surety, within ten days after it pays any claim or judgment, must give notice to the Superintendent by certified mail of the payments, with details sufficient to identify the person and the claim or judgment paid. (Sec. 4727.20(B).) The bill prohibits a licensee from canceling a surety bond except upon notice to the Superintendent by certified mail, return receipt requested. The bill further specifies that the cancellation is not effective prior to 30 days after the Superintendent receives notice. (Sec. 4727.20(E).) A licensee also is specifically prohibited from failing to comply with the requirements that the licensee maintain specific liquid assets or a surety bond according to the requirements imposed by the bill.

Maintenance

Under the bill, whenever the penal sum of the 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, or must furnish an endorsement executed by the surety reinstating the bond to the required penal sum of the bond. (Sec. 4727.20(C).)

Surety liability

The bill specifies that the aggregate liability of the surety for any and all breaches of the condition of the bond is not to exceed the penal sum of the bond. The bill also specifies that the liability of the surety on the bond to the Superintendent and to any person injured by a violation of laws governing pawnbrokers 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) and (D).)

Posting notice regarding stolen goods

Under current law, a person licensed as a pawnbroker must post a conspicuous notice that the licensee has no right to retain goods stolen from the true owner, and that the owner may recover goods or their value from the pawnbroker in an action at law, or, in the event the police take custody of the goods, by police release. The bill eliminates this provision. (Sec. 4727.04(B).)

Temporary exhibition permits

Under current law, the Superintendent may issue a temporary exhibition permit under the law governing precious metals dealers to a licensed pawnbroker.

The bill provides that a licensee who wishes to be issued a temporary permit as a precious metals dealer must request the permit by letter addressed to the Superintendent. The letter must contain the licensee's name, permanent business address, and license number. Upon receipt of the temporary exhibition permit, the permit holder must conspicuously display the permit at the place where the permit holder transacts business at any auction, convention, exhibition, fair, or show. The bill further requires every 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 or the Chief of police of the municipal corporation in which the event is to take place, or if the event will take place outside of a municipal corporation, then the sheriff of the county in which the event is to take place. The notice must be made by letter and include the 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 bill, 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 and not fail to observe them. The bill bars the licensee from collecting interest and storage charges on any loan for any regular business day that the 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. The licensee must notify the Superintendent of any change in the posted hours of operation. (Sec. 4727.04(C).)

Standard investigations

Under current law, the Superintendent is required to investigate, at least once per year, the business of every person licensed as a pawnbroker, and every

person, copartnership, and corporation by whom or for which any loan or purchase is made, whether the person, copartnership, or corporation acts, or claims to act, as principal agent, or broker, or under or without the authority of the laws governing pawnbrokers. The bill changes the interval to once every 18 months. (Sec. 4727.05.)

Computing interest

Current law specifies that a pawnbroker is not allowed to charge, receive, or demand interest for any loan in excess of 5% per month or fraction of a month on unpaid principal. (Sec. 4727.06(A).)

Current law also allows a pawnbroker to collect the following fees in addition to interest:

(1) A storage fee 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 the 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 the pledged articles may be forfeited to the pawnbroker pursuant to law.

The bill raises by \$1 the maximum fee for each of these charges. (Sec. 4727.06(B).)

Current law also prohibits the deductions or advance payment of the interest and charges prior to the dates that the interest and charges are due, except upon redemption of the pledged articles. (Sec. 4727.06(A)(4).) The bill eliminates this prohibition. The bill allows a pledgor to pay a portion of the outstanding principal loan balance at any time. A pledgor may redeem a pawn loan at any time after 72 hours have passed since the pledge was made, however, a pledgor may not prepay interest or storage charges, except when the pledgor redeems the pledged property. (Sec. 4727.06(D).)

Pawn and purchase forms

Current law requires a licensed pawnbroker to keep and use separate pawn forms and purchase forms approved by the Superintendent. The forms must 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 on them or paid for them, the rate of interest and charges to be paid on the loan, the time within which the pawn is to be redeemed, with the name, age, place of residence, driver's or commercial driver's license number, social security number, or other personal identification, and a short physical description of the person of the pledgor or seller.

The bill restructures the requirement so that the pawnbroker must record all of the following information on the appropriate form for each pawn or purchase:

- (1) The date and time of the pledging or purchasing;
- (2) The amount of the loan or purchase;
- (3) The rate of interest and the charges to be paid on the 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 model number, any identifying features, and identifying letters or marks;
- (9) Any other disclosures required by federal law. (Sec. 4727.08(B).)

Recordkeeping

Current law requires that all forms be kept in numerical order or bound in books and available for inspection by the Superintendent, chief of police of the municipal corporation or township, a police officer deputized or authorized by the chief of police or the mayor of the municipal corporation in which the pawnbroker does business.

The bill requires that each form used in a pawn or purchase continue to be kept in numerical order but the licensee also has to account for all form numbers. The bill requires that the forms be available for inspection by the Superintendent or 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, then the sheriff of the county in which the place of business is located. (Sec. 4727.08(C) and (D).)

Current law requires a licensee to keep all pledges and purchased goods at the licensee's place of business unless a pledgor agrees otherwise at the time the pledge is made. The bill requires the pledgor's agreement to be in writing to be effective. (Sec. 4727.08(E).)

The bill also requires every person licensed as a pawnbroker to keep and use an intelligible set of books and records in the English language in order to comply with the law with respect to recording the details of each purchase or loan. All information 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. A licensee is permitted to use 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.

In addition, the bill 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. The bill requires 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. Also, all pawn and purchase forms, legal notices, and payment receipt forms must reflect the name under which the licensee is registered with the Superintendent and the complete address of the place of business. (Sec. 4727.08(F) to (J).)

Furnishing information

Current law requires 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.

The bill 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, then the sheriff of the county in which the place of business is located:

- (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 only is required to provide the type of information specified in (1) and (2) above to the chief of police or sheriff. The licensee must provide the property description and 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.)

Prohibited transactions

Current law prohibits pawnbrokers from receiving a pledge or purchasing any articles from any minor, any intoxicated person under the influence of drugs or a controlled substance, or from any person who is known or believed by the licensee to be a thief or receiver of stolen property. The bill adds that the 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, 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

Current law requires that, if a pledgor of pawned articles fails to redeem or pay interest on any articles pledged within two months, the licensee must notify the pledgor by mail, with proof of mailing, to the last place of address given by the pledgor, that unless the pledge is redeemed within one month from the date the notice is mailed, the property will be forfeited. If the pledgor fails to redeem the property within the period specified in the notice, the licensee takes ownership of the pledge or property. Under the bill, the pledgor may either redeem the property or pay all interest due and storage charges to retain ownership of the property. (Sec. 4727.11(A).)

The bill specifies that when an account is paid in full, the licensee must return the pledged article immediately to the pledgor. In the event the pledgor sells, transfers, or assigns the pledge, the licensee 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 licensee also must obtain the signature of the pledgor, or other person redeeming the pledge, on a separate record of the transaction that acknowledges the total dollar amount paid for redemption. All records must be kept in the licensee's place of business. (Sec. 4727.11(D).)

Advertising by a pawnbroker

The bill specifies that a licensed pawnbroker must state the license number issued by the Superintendent in all advertisements, offers, and solicitations. A person not licensed as a pawnbroker may not advertise as one. A person that produces telephone books or sells billboard or broadcast advertising, or periodical publishers and other advertising companies and media doing business in Ohio are not allowed to accept or contract for any pawnbroker listing, advertisement, offer, or solicitation in Ohio from a person not licensed as a pawnbroker under Ohio law. (Sec. 4727.16.)

Ownership of a pawnbroker business

The bill specifies that every sale, transfer, or hypothecation of any stock, security, membership, partnership, or other equitable, beneficial, or ownership interest in a person licensed as a 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 prior to the sale, transfer, or hypothecation of the interest in the licensee. The bill further specifies that every person acquiring or receiving an interest is subject to the licensing requirements as if the person were a new and separate license applicant. (Sec. 4727.17.)

License suspension or revocation

Under current law, whenever a pawnbroker's license is suspended or revoked, the Division of Financial Institutions (changed by bill to Superintendent) is not allowed to issue another license to the licensee or to the legal spouse of the licensee, or to any "copartnership or corporation" (changed by bill to "business entity") of which the licensee is 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 bill lengthens to two years the time until the person again may receive a license. (Sec. 4727.03(F).)

Under existing law, the Division of Financial Institutions may impose any available penalty or revoke or suspend, pursuant to the Administrative Procedure Act, a pawnbroker's license for a criminal conviction of the licensee. The bill revises this discretion to allow the Superintendent to suspend a license without a prior hearing in the public interest pending formal proceeding to revoke a license in the case of a criminal conviction for a crime other than theft, receiving stolen property, or money laundering. The Superintendent may assess a penalty against the licensee or act to revoke or suspend a license. (Sec. 4727.15.)

Investigation powers

Under current law, the Director of Commerce has subpoena powers to compel witnesses to testify and to compel the production of any book, paper, or document pertaining to an investigation under the pawnbroker licensing laws. If a person fails to comply with a subpoena, the Director may apply to the court of common pleas in the county where the investigation is taking place for an order to compel the person to comply with the subpoena and to be held in contempt of court if the person fails to comply. The bill removes these powers of the Director. (Sec. 4747.03(G).)

Under existing law, the Superintendent of Financial Institutions has general administrative powers to enforce the Pawnbrokers Law. Under the bill, the Superintendent of Financial Institutions 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 Pawnbroker 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 pawnbroker licensing laws.

To enforce the laws governing pawnbrokers, the bill 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 appearance and rendering of testimony. The bill 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, or any person the Superintendent reasonably suspects to be advertising, transacting, or soliciting business as a pawnbroker. The bill specifies that the Superintendent may request the attendance and assistance of the county sheriff, or the state highway patrol during the examination and investigation of the business. (Sec. 4727.13.)

Confidentiality and the investigation process

The bill makes any information arising from, obtained by, or contained in an investigation of a person licensed as a pawnbroker under the pawnbroker licensing laws performed by the Superintendent confidential information and not a public record. (Sec. 4727.18.)

Exemptions

Under current law, the Pawnbroker Law does not apply to persons licensed to provide small loans or licensed to provide second mortgage type loans, or to national banks, state banks, savings and loan associations, or credit unions.

The bill eliminates the exemption for person who make small loans or second mortgage loans and changes the terminology governing banks so that the Pawnbroker Law does not apply to federally insured depository institutions such as state or federally chartered banks. (Sec. 4727.14.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-05-99	p. 1233
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