

Members Only



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Pawnbrokers

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Pawnshops, as an institution, are centuries older than the United States. Their origin is believed to be in fifth-century China, and the pawnbroker's symbol, three golden balls, has competing medieval attributions, ranging from the Medici Coat of Arms to coin purses Saint Nicholas gave to keep a father from selling his daughters into prostitution.¹

Today, the Federal Deposit Insurance Corporation (FDIC) reports that pawnshop loans serve as an alternative to bank credit (credit cards, personal loans, or bank credit lines), with 1.8% of all households and 6.6% of unbanked households using pawnshop loans in 2015. The FDIC further notes that some pawnshop customers use the loans as an alternative to savings accounts by buying items that can be pawned later if the need arises.² Other customers eschew that dispassionate approach and deliberately pawn sentimental items to increase their likelihood of paying back the loan.³

This *Members Only* brief discusses the Ohio Pawnbrokers Law (R.C. Chapter 4727.). It looks first to the basic features of pawn loans under the law, and then, beginning on page 5, examines the provisions of the law designed to keep stolen goods out of pawnshops.

Pawn loans – the basics

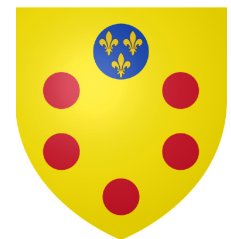
Pawn loans are typically short-term and based on a pawn left as collateral, rather than a customer's credit rating. Ohio law does not define *pawn*. But in the context of a pawnshop, a *pawn* is a piece of personal property left as security for a debt, and it can also refer to the act of depositing that property for security.⁴

Pawn loans are limited transactions. If a borrower (called a "pledgor") does not pay on a pawn loan for a set period of time, the collateral is forfeited, but the pawnbroker cannot sue for payment, and the loan is not reported to a consumer credit reporting agency.⁵ Unlike most loans, a pawn loan does not have a definite term.

Ohio law defines a "**pawnbroker**" as a person engaged in the business of lending money on deposit or pledges of personal property at a total charge, rate of interest, etc., of more than 8% per year (0.67% per month). The pledged personal property cannot be a security, printed evidence of indebtedness, title, deed, or bill of sale. The law requires anyone acting as a pawnbroker to obtain a license, and also sets strict limits and requirements on pawn loans, regulating interest, fees, notices of default, and recordkeeping.⁶



Traditional Pawnbroker's Sign⁷



The Medici Coat of Arms⁸

*The term pawn, as used here, is of no relation to the game of chess. A pawn in the pawnshop sense comes from the Middle English *paun*, itself from the Middle or Old French *pan*, which means pledge. A pawn on the chessboard comes from the Middle English *pawn*, which is from the Anglo French and Medieval Latin words for foot soldier—*peoun*, *paun*, *pedon*, and *pedo*.⁹*



In addition to making loans secured by personal property, a pawnbroker can purchase items outright.

Interest and fees

Pawnbrokers are permitted to charge up to 6% interest and up to \$6 for storage *per month, or fraction of a month*, on a single loan. At an annual rate, this would be a 72% interest rate and \$72 in storage fees; but note that pawn loans do not typically last this long. According to the National Pawnbrokers Association, "a typical pawn loan is less than \$150 for 30 days."¹⁰

Interest on pawn loans is calculated on the first day of the month (the day the loan is made and its subsequent monthly anniversaries) and applies *to the unpaid principal only*; it is not compounded (i.e., unpaid interest for a preceding month is not added to the principal before interest for a subsequent month is calculated). The law does not require that the storage fee also be calculated on the first day of the month, but in practice that is likely the case because pawnbrokers are prohibited from charging for storage at closer intervals.

The law's reference to fractions of months means that the full 6% interest on unpaid principal comes due, and the full \$6 for storage can come due, on the first day of the month. In other words, interest accrues in monthly lump sums, not gradually as the month progresses.¹¹

In addition to interest and storage fees, the Pawnbrokers Law allows the following fees:

- Up to \$4, plus the actual cost of shipping, if the pawnbroker is to send an item to the pledgor by express or parcel post.

- Up to \$5 for the cost of notifying a pledgor by mail that the pawned items may be forfeited for nonpayment (see *Payment, redemption, and forfeiture*, below).

- For pawnbrokers that are also licensed firearms dealers, up to \$10 for providing services in connection with a required FBI background check. The pawnbroker may also charge any fee that the pawnbroker is required by law to pay to run a background check, though there currently is no such fee in Ohio.¹²

No other fees are permitted by the Pawnbrokers Law.

Interest and fees on multiple items

When a person pledges more than one item to secure a loan, those items are pledged for *a single loan* by default. More than one loan, and the attendant fees and storage charges that come with each loan, can only be issued to the same person in a single day if that person requests, in writing, that certain items be pledged separately. The person must also acknowledge, in writing, that they understand additional fees may be incurred as a result of the separate pledges.¹³

Transaction records

The Pawnbrokers Law requires that pawnbrokers use separate forms, approved by the Superintendent of Financial Institutions, for pawns and purchases. Forms must be numbered, and used to record

The primary fees charged on pawn loans are monthly interest and storage charges, 6% and \$6, respectively. They accrue in lump sums on the first of the month.



specific information for every purchase or pawn. The form must include specific details about the loan or purchase terms, the pledgor's or seller's identity, and the pledged or purchased property, including the manufacturer, any serial and model numbers, identifying features, and identifying letters or marks.¹⁴

A portion of each form must be detachable and serve as a statement, to be given to the pledgor or seller, that contains the pawnbroker's name and address, the loan amount or purchase price, the transaction's time and date, and a full and accurate description of the articles pledged or sold. For loans, the detachable statement must also include the interest rate and date when payable, a full disclosure of all charges for storage, and a printed copy of the Pawnbrokers Law's fee provisions.¹⁵

In lieu of the above record making and keeping provisions, the Law allows pawnbrokers to use other methods of making and keeping records. If a pawnbroker chooses to use such alternative means, written printouts or hard copies of the required data must be readily available, in a form approved in advance by the Superintendent of Financial Institutions.¹⁶

Payment, redemption, and forfeiture

A person with property deposited on a pawn loan can do three things: forfeit the pawn, extend the loan, or redeem the pawn.

A pawn can be forfeited after the pledgor fails to pay interest and fees to the pawnbroker for three months from the date of the loan *or the date*

on which the last interest payment is due. At that point, the pawnbroker must notify the borrower by U.S. mail, with proof of mailing, that if the borrower does not redeem the property or pay *all* interest due and fees within 30 days of mailing, the pledged property will be forfeited to the pawnbroker. If the borrower does not pay all interest due and fees within the 30 days, the pawn becomes the pawnbroker's property.

If the borrower pays all interest due and fees within the 30 days, the loan is extended and the three-month clock restarts. The loan can continue indefinitely as long as the pledgor continues to pay the interest and fees.

If the borrower pays the principal, interest, and fees, the pawnbroker must immediately return the pledged article and the pawn is redeemed.¹⁷

Pledgors need not wait until the end of the three-month period to redeem loans, and may do so at any time after the pledge is made. (Although, before March 28, 2017, at least 72 hours had to pass after the loan was made.) Pledgors may also be able to reduce interest charges over the life of a loan by paying down portions of the principal in advance. Pawnbrokers, however, have the option to not accept a portion, as opposed to the entirety, of any outstanding principal balance.

Regardless, any payments received must first be applied to interest and storage charges, before any remainder may be applied to the principal. Interest and storage charges may not be prepaid unless a loan is being redeemed, however, so those payments may only be applied to

Pawnbrokers must record specific information about each transaction. That includes identifying information about the person and item involved.

The borrower may, but does not have to, make payments each month. The borrower has three months plus 30 days from the date of the loan or last payment to pay all interest and fees to extend the loan, or to also pay the principal to redeem the pawn. If the borrower does neither, the pawn is forfeited.

interest and storage charges already accrued. Additionally, pawnbrokers must provide a receipt for every payment of principal, interest, or storage charges.¹⁸

Example transactions

These concepts may be more easily understood through examples, all of which assume the pawnbroker charges the maximum fees allowed by law:

- A contractor pawns an air compressor for \$300 in the morning and uses the money to buy materials needed to finish a job that day. The contractor returns in the afternoon to redeem the air compressor and pays \$324 to do so. The first month's interest, \$18 at 6%, and storage fee, \$6, applied as soon as the loan was made. The contractor also could have waited until the last day of the month to redeem the air compressor and paid the same amount.
- The same contractor decides to wait 45 days to redeem the air compressor. It will now cost \$348 to redeem because another month has begun, and so another \$18 in interest and \$6 in storage fees will apply.
- The contractor again decides to wait 45 days to redeem the air compressor, but the pawnbroker accepted \$100 two weeks after the loan was made. The \$100 payment was first applied to the \$18 in interest and \$6 storage fees from the first month and the remainder was applied to principal, reducing it to \$224. Because the contractor did not redeem the air compressor until the second month had begun, interest and storage fees accrued for a second time, but the interest

was calculated on the outstanding principal only. Six percent of \$224 is \$13.44; with \$6 for storage, the amount needed to redeem is \$243.44, and the total amount paid over the life of the loan is \$343.44.

- If the contractor forgets about the air compressor, after three months elapse the pawnbroker will mail a notice explaining that unless the contractor redeems the air compressor or pays all interest due and fees within 30 days of the notice's mailing, the air compressor will be forfeited to the pawnbroker. The compressor will then cost \$401 to redeem (assuming February was not included in any of the months or fractions of a month). The notice was mailed at the end of three months, but another month also then began, so interest and storage fees were calculated a fourth time. Four months of interest at \$18 per month is \$72, four months of \$6 monthly storage fees is \$24, and the pawnbroker was permitted to add a \$5 fee for mailing the notice.

- If the contractor decides not, or is unable, to redeem the air compressor, it will become the pawnbroker's property on the expiration of the 30th day after the notice is mailed.

Stolen property

Ohio law addresses the possibility of stolen property being sold or pawned in pawn shops through a combination of provisions. Specifically, the law imposes a retention period on items the pawnbroker purchases and imposes recordkeeping, inspection, and reporting requirements that



allow local law enforcement and state regulators broad access to pawnbrokers' records and facilities. The law also provides for civil and criminal liability for pawnbrokers who buy, or loan money on, stolen property in certain circumstances.

Retention period for purchased items

When a pawnbroker purchases an item outright, the item must be retained for at least 15 days after the purchase, though the local police chief or sheriff can allow an earlier disposition.¹⁹ The retention period can be extended by the police chief or sheriff upon probable cause to believe that an item is stolen (see *Return of stolen property; civil liability*, below).

Recordkeeping, reporting, and inspections

Pawnbrokers must keep a copy of each transaction record in numerical order, and maintain them for at least two years after making the final entry regarding the purchase or pledge. Those transaction records must be available for inspection by the local police chief, sheriff, or the Superintendent of Financial Institutions at all times. Pawnbrokers must also make daily reports of all pledged or purchased property to the police chief or sheriff, who, in addition to the Superintendent, may demand that the property be presented for examination.²⁰

The Superintendent of Financial Institutions also has the authority to enforce the Pawnbrokers Law through the issuance of subpoenas compelling the production of

documents or the appearance of witnesses, and the examination of a pawnbroker's business. That examination authority extends to full access to records and facilities, and at least every 18 months, the Superintendent *must* investigate the business of every person licensed as a pawnbroker.²¹

Criminal prohibitions related to stolen property

The Pawnbrokers Law does not require a pawnbroker to verify that the person presenting an item for sale or pawn is that object's true owner. However, a pawnbroker is prohibited from recklessly receiving an item from a *known* or *suspected* thief or receiver of stolen property.

In addition, a pawnbroker is prohibited from receiving an item from any person identified in writing to the pawnbroker by law enforcement as a known or suspected thief or receiver of stolen property. A violation of either of these provisions is a third degree misdemeanor for the first offense and a second degree misdemeanor on each subsequent offense. Moreover, a violation of the latter offense (relating to the written notification from law enforcement) is considered a *strict liability offense*, meaning a specific mental state, such as recklessly or knowingly, is not required for a person to be guilty of the offense.²²

A pawnbroker may also be found criminally liable for receiving stolen property if the pawnbroker buys, or loans money on, property the pawnbroker knows or has reasonable cause to believe was obtained through commission of a theft offense.²³ But

All items purchased by pawnbrokers must generally be retained for 15 days. Pawned items must generally be retained until they are redeemed or forfeited, a process that can take anywhere from a day to four months.

Pawnbrokers can face criminal liability for receiving items from anyone identified to them by law enforcement as a known or suspected thief or receiver of stolen property.



The law allows, but does not require, a pawnbroker to return allegedly stolen property to a person identified by law enforcement. If the property is not returned, the alleged true owner can sue to recover it.

An Ohio appeals court held that a pawnbroker's recourse to recover money paid for a stolen item is limited to the person who presented the item. That court required a pawnbroker to reimburse the amount the item's owner paid to recover it.

that appears to be rare. Only one such case that resulted in a conviction was located during the research for this brief, and it involved a pawnbroker who was running a large-scale fencing operation involving millions of dollars' worth of stolen goods.²⁴

Return of stolen property; civil liability

If the chief of police or sheriff with jurisdiction over a pawnshop has probable cause to believe that property described in a daily report of pledged and purchased goods was stolen, the chief or sheriff must notify the pawnbroker. The pawnbroker must then retain the property for 30 days, counted from the day the initial report is required, unless the chief or sheriff notifies the pawnbroker otherwise. If the police chief or sheriff does not place a hold on an item that was purchased, the 15-day retention period still applies. If the item was pawned, it must be held until redeemed or forfeited to the pawnbroker for nonpayment.

If the chief or sheriff receives a report that property has been stolen, determines that the pawnbroker holds that property through purchase or pawn, and informs the pawnbroker of the identity of the alleged true owner, the pawnbroker *may* restore the allegedly stolen property to that alleged true owner.

If the pawnbroker restores the property to the alleged true owner, the pawnbroker may charge the person who pledged or sold the property to the pawnbroker the amount the pawnbroker paid or loaned for it, plus interest and storage charges. The pawnbroker also may


charge any person who acted in consort with the pledgor or the seller to defraud the pawnbroker.²⁵

The Pawnbrokers Law does not contain any provisions allowing a pawnbroker to charge the true owner of the property for costs that the pawnbroker incurred in acquiring or holding the item. But, the law does not require that a pawnbroker return the item to the true owner, either. Therefore, if the pawnbroker refuses to return the item, the true owner's recourse is to either sue the pawnbroker to reacquire the item²⁶ or to reimburse the pawnbroker for the costs the pawnbroker incurred in acquiring the item.

If an alleged true owner decides to pay for the return of an item, that person may be able to sue the pawnbroker to recover the amount paid. One Ohio appeals court upheld a trial court's order requiring a pawnbroker to pay the true owner of stolen property the money the pawnbroker had charged for its return, plus costs, and 8% interest from the time of judgment.

The appeals court said that, based on a plain and unambiguous reading of the Pawnbrokers Law, a person whose item was stolen and pawned is entitled to recover the item without charges, and the pawnshop's right to recover funds is limited to the pledgor alone.²⁷

Additionally, in Hamilton County, at least, compliance with the Pawnbrokers Law does not vest the pawnbroker with a right of possession against the true owner. If the pawnbroker sells the property even prior to being informed by law

enforcement that it might be stolen property, the pawnbroker may be liable for damages for the tort of conversion even if the pawnbroker otherwise complies with the Pawnbrokers Law.²⁸ A Lake County court, however, reached the opposite conclusion in one case, holding that a pawnbroker acquired good title to firearms pawned by someone who had been given permission to borrow them because the pawnbroker had complied with the Pawnbrokers Law.²⁹ 

Endnotes

¹ Wendy A. Woloson, *In Hock—Pawning in America from Independence through the Great Depression*, 7 (2009).

² Federal Deposit Insurance Corporation, *2015 FDIC National Survey of Unbanked and Underbanked Households*, 34, 37, 42 (2016).

³ Carter & Skiba, *Pawnshops, Behavioral Economics, and Self-Regulation*, 32 Rev. Banking & Fin. Law 193, 217 (2012).

⁴ Black's Law Dictionary, 10th Edition.

⁵ National Pawnbrokers Association, *Pawn Industry Statistics*, https://assets.nationalpawnbrokers.org/2018/02/FAQ_2018.pdf.

⁶ R.C. 4727.01(A) and 4727.02.

⁷ Image credit: Showtime Auction Services, available at http://www.icollector.com/546-Pawn-Shop-Trade-Advertising-Sign-original-bracket_i8637514.

⁸ Image credit: Wikimedia Commons, available at https://commons.wikimedia.org/wiki/File:Coat_of_arms_of_Medici.svg.

⁹ Evan Morris & Kathy Wollard, *The Word Detective*, *Pawn*, <http://www.word-detective.com/2010/10/pawn/>; *Merriam-Webster's Collegiate Dictionary* 910 (11th Ed. 2003).

¹⁰ National Pawnbrokers Association, *National Pawnbrokers Association Releases Trend Survey*, available at <https://www.nationalpawnbrokers.org/2014/national-pawnbrokers-association-releases-trend-survey/>.

¹¹ R.C. 4727.06(A) and (B); Ohio Administrative Code (O.A.C.) 1301:8-5-07.

¹² R.C. 4727.06(B) and (C); Bureau of Alcohol, Tobacco, Firearms and Explosives, *Is there a charge for NICS checks?*, <https://www.atf.gov/firearms/qa/there-charge-nics-checks>; and Federal Bureau of Investigation, NICS Participation Map, <https://www.fbi.gov/file-repository/nics-participation-map.pdf>.

¹³ R.C. 4727.08(B); O.A.C. 1301:8-5-01(B).

¹⁴ R.C. 4727.07 and 4727.08(A) and (B).

¹⁵ R.C. 4727.07 and 4727.08(F).

¹⁶ R.C. 4727.08(J).

¹⁷ R.C. 4727.06(D), 4727.07, and 4727.11(A) and (D); O.A.C. 1301:8-5-01(C); and Sub. S.B. 235 of the 131st General Assembly.

¹⁸ R.C. 4727.06(D) and 4727.07.



- ¹⁹ R.C. 4727.12(A).
- ²⁰ R.C. 4727.08(D) and (H) and 4727.09.
- ²¹ R.C. 4727.05 and 4727.13(E) and (F).
- ²² R.C. 2901.21(B) and (C)(1), 4727.10, and 4727.99(A).
- ²³ R.C. 2913.51.
- ²⁴ *State v. Loch*, Franklin App. No. 02AP-1065, 2003-Ohio-4701 (10th Dist. September 4, 2003).
- ²⁵ R.C. 4727.11 and 4727.12.
- ²⁶ R.C. 4727.12.
- ²⁷ *Gessner v. Gregg's Pawn Shop*, 181 Ohio App.3d 217, 2009-Ohio-713, ¶ 19 (5th Dist.). (Note: The court referred to the pledgor, but the stolen items in the case were sold to the pawnshop, rather than pledged as security for a pawn loan. Additionally, the statute quoted by the court states that a pawnbroker who returns allegedly stolen property to the rightful owner may charge the person who *pledged or sold* the allegedly stolen property, or any person who acted in consort with the *pledgor or seller* to defraud the pawnbroker. As a result, it is likely the court meant to refer to "seller" rather than "pledgor," and the court's reasoning applies equally as well to sellers.)
- ²⁸ *Danopulos v. Am. Trading II, LLC*, Hamilton App., No. C-150585, 2016-Ohio-5014, ¶ 14 – 16 (1st Dist.).
- ²⁹ *Molk v. Gold Star Pawn Shop*, Lake App., No. 2010-L-089, 2011-Ohio-2454 (11th Dist.).

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