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SENATE BILL NO. 604

Offered January 9, 2008

Prefiled January 9, 2008

A BILL to amend and reenact §§ 54.1-4000, 54.1-4001, and 54.1-4009 through 54.1-4014 of the Code of Virginia, relating to the regulation of pawnbrokers and secondhand dealers; penalty.

Patron—Stolle

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-4000, 54.1-4001, and 54.1-4009 through 54.1-4014 of the Code of Virginia are amended and reenacted as follows:

CHAPTER 40.

PAWNBROKERS AND SECONDHAND DEALERS.

§ 54.1-4000. Definitions; exclusions from Chapter.

A. As used in this chapter, unless the context requires a different meaning:

"Antiques" means objects made in, or typical of, an earlier period of time that have special value because of their age or are examples of art or handicrafts.

"Antiques dealer" means any person, corporation, or other business organization or entity engaged in the business of purchasing antiques for the purpose of resale to the public.

"Consignment shop" means a shop engaging in the business of accepting for sale, on consignment, secondhand goods that, having once been used or transferred from the manufacturer to the dealer, are then received into the possession of a third party. "Pawnbroker" means any person who lends or advances money or other things for profit on the pledge and possession of tangible personal property, or other valuable things, other than securities or written or printed evidences of indebtedness or title, or who deals in the purchasing of personal property or other valuable things on condition of selling the same back to the seller at a stipulated price. "Pawnbroker" shall also mean any person who deals in purchasing personal property or other things for resale to the public.

"Pawnshop" means the location at which a pawnbroker conducts business.

"Secondhand dealer" means any person who is engaged in the business of purchasing secondhand goods for resale.

"Secondhand goods" means personal property previously owned or used that is purchased as used property and made available for resale to the public. "Secondhand goods" shall not include office furniture, pianos, books, clothing, organs, coins, motor vehicles, or costume jewelry.

"Secondhand shop" means the place or premises at which a secondhand dealer is registered to conduct business as a secondhand dealer or at which he conducts business.

"Transaction" means any purchase, pawn loan on, or resale of secondhand goods by a pawnbroker or secondhand dealer.

B. The provisions of this chapter shall not apply to:

1. Any consignment of secondhand goods to a consignment shop or any resale of consigned secondhand goods by a consignment shop.

2. Any purchase or resale of antiques by an antique dealer.

3. Any secondhand goods transaction involving a nonprofit, religious, or charitable organization or any school-sponsored association or organization, unless the organization or association sells secondhand goods to a pawnbroker or secondhand dealer.

4. A law-enforcement officer acting in an official capacity.

5. A trustee in bankruptcy, executor, administrator, or receiver unless the trustee in bankruptcy, executor, administrator, or receiver sells secondhand goods to a pawnbroker or secondhand dealer.

6. Any public official acting under judicial process or authority unless such official sells secondhand goods to a pawnbroker or secondhand dealer.

7. A sale on the execution, or by virtue of any process issued by a court unless there is a sale of secondhand goods to a pawnbroker or secondhand dealer.

8. Any garage sale operator who holds garage sales less than 10 weekends per year.

9. Any person at antique, coin, or collectible shows or sales.

10. Any person who sells household personal property as an agent for the property owner or his representative pursuant to a written agreement at that person's residence.

11. The sale of secondhand goods by a pawnbroker or secondhand dealer to another pawnbroker or secondhand dealer when the selling pawnbroker or secondhand dealer has complied with the

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59 requirements of this chapter.

60 12. Any person accepting a secondhand good as a trade-in for other merchandise.

61 13. Any person who sells used merchandise.

62 14. Any resale of secondhand goods by an itinerant merchant regulated under Chapter 43
63 (§ 54.1-4300 et seq.) or any purchase of secondhand goods by such itinerant merchant provided that the
64 purchase does not take place at the itinerant merchant's normal place of business.

65 15. Any auction firm as defined in § 54.1-600.

66 16. Any person offering his own personal property for sale via an Internet website or a person or
67 entity offering the personal property of others for sale or trade via an Internet website, when that
68 person or entity does not have, and is not required to have, a local occupational or business license for
69 this purpose.

70 17. Precious metals or gem dealers regulated under Chapter 41 (§ 54.1-4100 et seq.).

71 18. Motor vehicle dealers as defined in § 46.2-1500.

72 § 54.1-4001. License required; license authorized by court; building designated in license; penalty.

73 A. No person shall engage in the business of a pawnbroker or secondhand dealer without having a
74 valid license issued by the county, city or town in which the pawnbroker or secondhand dealer conducts
75 such business.

76 B. The circuit court of any county or city may authorize any county, city or town to issue to any
77 individual, who has not been convicted of a felony or a crime involving moral turpitude in the last ten
78 years, a license to engage in the business of a pawnbroker in that county, city or town. No such license
79 shall be issued by any county, city or town except with such authority. Prior to the issuance of the
80 license, the applicant shall furnish his date of birth, a sworn statement or affirmation disclosing any
81 criminal convictions or any pending criminal charges, whether within or without the Commonwealth,
82 and such other information to the licensing authority as may be required by the governing body. The
83 license shall designate the building in which the licensee shall carry on such business.

84 Any person applying for a license to engage in business as a secondhand dealer shall furnish his
85 date of birth, a sworn statement or affirmation disclosing any criminal convictions or any pending
86 criminal charges, whether within or without the Commonwealth, and such other information to the
87 licensing authority as may be required by the governing body. The county, city, or town may issue the
88 applicant a license to conduct business as a secondhand dealer in that county, city, or town as long as
89 the applicant has not been convicted of a felony or a crime involving moral turpitude in the previous 10
90 years. The license shall designate the building in which the licensee shall carry on such business.

91 C. No person shall engage in the business of a pawnbroker or secondhand dealer in any location
92 other than the one designated in his license, except with consent of the court or licensing authority
93 which authorized the license.

94 D. Any person who violates the provisions of this section shall be guilty of a Class 1 misdemeanor.
95 Each day's violation shall constitute a separate offense.

96 § 54.1-4009. Records to be kept; credentials of person pawning or selling goods; fee; penalty.

97 A. Every pawnbroker or secondhand dealer shall ~~keep~~ maintain for a period of at least one year at
98 his place of business an accurate and legible record of each loan or transaction in the course of his
99 business, including transactions in which secondhand goods, wares or merchandise are purchased for
100 resale. The account shall be recorded at the time of the loan or transaction and shall include:

101 1. A description, serial number, and a statement of ownership of the goods, article or thing pawned
102 or pledged or received on account of money loaned thereon, or purchased for resale;

103 2. The time, date and place of the transaction;

104 3. The amount of money loaned thereon at the time of pledging the same or paid as the purchase
105 price;

106 4. The rate of interest to be paid on such loan;

107 5. The fees charged by the pawnbroker or secondhand dealer, itemizing each fee charged;

108 6. The full name, residence address, telephone number, and driver's license number or other form of
109 identification of the person pawning or pledging or selling the goods, article or thing, together with a
110 particular description, including the height, weight, date of birth, race, gender, hair and eye color, and
111 any other identifying marks, of such person;

112 7. Verification of the identification by the exhibition of a government-issued identification card such
113 as a driver's license or military identification card. The record shall contain the type of identification
114 exhibited, the issuing agency, and the number thereon;

115 8. As to loans, the terms and conditions of the loan, including the period for which any such loan
116 may be made; and

117 9. All other facts and circumstances respecting such loan or purchase.

118 B. A pawnbroker or secondhand dealer ~~may~~ shall maintain at his place of business an ~~electronic~~ a
119 record of each transaction involving goods, article or things pawned or pledged or purchased. ~~If~~
120 ~~maintained electronically,~~ a The pawnbroker or secondhand dealer shall retain the ~~electronic~~ records for

121 at least one year after the date of the transaction and make such ~~electronic~~ records available to any duly
122 authorized law-enforcement officer upon request.

123 C. For each loan or transaction, a pawnbroker *or secondhand dealer* may charge a service fee for
124 making the daily electronic reports to the appropriate law-enforcement officers required by § 54.1-4010,
125 creating and maintaining the electronic records required under this section, and investigating the legal
126 title to property being pawned or pledged or purchased. Such fee shall not exceed five percent of the
127 amount loaned on such item or paid by the pawnbroker *or secondhand dealer* for such item ~~or \$3,~~
128 ~~whichever is less.~~ Any person, firm, or corporation violating any of the provisions of this section shall
129 be guilty of a Class 4 misdemeanor.

130 D. The Superintendent of State Police shall promulgate regulations specifying the nature of the
131 particular description for the purposes of subdivision A 6.

132 The Superintendent of State Police shall promulgate regulations specifying the nature of identifying
133 credentials of the person pawning, pledging or selling the goods. Such credentials shall be examined by
134 the pawnbroker *or secondhand dealer*, and an appropriate record retained thereof.

135 § 54.1-4010. Daily reports.

136 A. Every pawnbroker *or secondhand dealer* shall prepare a daily report of all goods, articles or
137 things pawned or pledged with him or sold to him that day and shall file such report by noon of the
138 following day with the chief of police or other law-enforcement officer of the county, city or town
139 where his business is conducted designated by the local attorney for the Commonwealth to receive it.
140 The report shall include the pledgor's or seller's name, residence, and driver's license number or other
141 form of identification, and a description of the goods, articles or other things pledged or sold. ~~and,~~
142 ~~unless maintained in electronic format, shall be in writing and clearly legible to any person inspecting it.~~
143 ~~A pawnbroker may compile and maintain the daily report in an electronic format and, if so maintained,~~
144 ~~shall file the required daily reports electronically with the appropriate law-enforcement officer through~~
145 ~~use of a disk. The report shall be transmitted to the appropriate law-enforcement officer via a form of~~
146 ~~electronic transmission, or any other electronic means of reporting approved by the law-enforcement~~
147 ~~officer, unless the chief law-enforcement officer in the locality designates an alternative means of~~
148 ~~submitting the reports required by this section. Any town with a population between 13,000 and 14,000~~
149 ~~may by ordinance require a pawnbroker to maintain and file a daily report electronically through the use~~
150 ~~of a disk, electronic transmission, or any other electronic means of reporting approved by the~~
151 ~~law-enforcement officer.~~

152 B. The Department of State Police shall adopt regulations for the uniform reporting of information
153 required by this section.

154 C. Any person, firm or corporation violating any of the provisions of this section shall be guilty of a
155 Class 4 misdemeanor.

156 § 54.1-4011. Officers may examine records or property; warrantless search and seizure authorized.

157 Every pawnbroker *or secondhand dealer* and every employee of the pawnbroker *and every employee*
158 *of the secondhand dealer* shall admit to the pawnbroker's *or secondhand dealer's* place of business
159 during regular business hours, any duly authorized law-enforcement officer of the jurisdiction where the
160 business is being conducted, or any law-enforcement official of the state or federal government. The
161 pawnbroker, *secondhand dealer* or employee shall permit the officer to (i) examine all records required
162 by this chapter and any article listed in a record which is believed by the officer to be missing or stolen
163 and (ii) search for and take into possession any article known to him to be missing, or known or
164 believed by him to have been stolen. However, the officer shall not take possession of any article
165 without providing to the pawnbroker *or secondhand dealer* a receipt.

166 § 54.1-4012. Property pawned or purchased not to be disfigured or changed.

167 A. No property received on deposit or pledged or purchased by any pawnbroker *or secondhand*
168 *dealer* shall be disfigured or its identity destroyed or affected in any manner (i) so long as it continues
169 in pawn or in the possession of the pawnbroker while in pawn or *in the possession of the pawnbroker*
170 *or secondhand dealer after the property has been purchased as long as the property has to be held as*
171 *specified in subsection B, or (ii) in an effort to obtain a serial number or other information for*
172 *identification purposes. In addition no person shall take in pawn or buy any property on which the*
173 *serial number has been removed, changed, or altered without the consent of the chief law-enforcement*
174 *officer or his designee in the county, city, or town where the pawnbroker or secondhand dealer conducts*
175 *business.*

176 B. *Between July 1, 2008, and July 1, 2013, a 15-calendar-day holding period on all secondhand*
177 *goods from the date such items are purchased by pawnbrokers and secondhand dealers will be*
178 *implemented in phases over a period of five years. Until the expiration of a holding period, the*
179 *pawnbroker or secondhand dealer shall not sell, alter, or dispose of a purchased item in whole or in*
180 *part, or remove it from the county, city, or town in which the purchase was made.*

181 *The phase-in of the 15-calendar-day holding period on secondhand goods purchased by pawnbrokers*

182 *and secondhand dealers will be finalized on July 1, 2013, with each phase-in period leading up to that*
183 *date being implemented as follows:*

184 *1. Between July 1, 2008, and June 30, 2009, no holding period will be enforced in order to allow*
185 *pawnbrokers and secondhand dealers to have the opportunity to make the necessary arrangements for*
186 *storage of secondhand goods.*

187 *2. Between July 1, 2009, and June 30, 2010, a three-calendar-day holding period will be in effect.*

188 *3. Between July 1, 2010, and June 30, 2011, a six-calendar-day holding period will be in effect.*

189 *4. Between July 1, 2011, and June 30, 2012, a nine-calendar-day holding period will be in effect.*

190 *5. Between July 1, 2012, and June 30, 2013, a 12-calendar-day holding period will be in effect.*

191 *6. Effective July 1, 2013, the entire 15-calendar-day holding period on all secondhand goods*
192 *purchased by pawnbrokers and secondhand dealers will become effective.*

193 § 54.1-4013. Care of tangible personal property; evaluation fee.

194 A. Pawnbrokers *or secondhand dealers* shall store, care for and protect all of the tangible personal
195 property in the pawnbroker's possession and protect the property from damage or misuse. Nothing in this
196 chapter shall be construed to mean that pawnbrokers are insurers of pawned property in their possession.

197 B. A pawnbroker may charge a monthly storage fee for any items requiring storage, which fee shall
198 not exceed ~~five~~ *seven* percent of the amount loaned on such item.

199 § 54.1-4014. Penalties; violation of the Virginia Consumer Protection Act.

200 A. Except as otherwise provided in § 54.1-4001, any licensed pawnbroker *or secondhand dealer* who
201 violates any of the provisions of this chapter shall be guilty of a Class 4 misdemeanor. In addition, the
202 court may revoke or suspend the pawnbroker's *or secondhand dealer's* license for second and subsequent
203 offenses.

204 B. Additionally, any violation of the provisions of the chapter shall constitute a prohibited practice in
205 accordance with § 59.1-200 and shall be subject to any and all of the enforcement provisions of the
206 Virginia Consumer Protection Act (§ 59.1-196 et seq.).