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HOUSE BILL NO. 769

AMENDMENT IN THE NATURE OF A SUBSTITUTE

House Amendments in [] — February 4, 1998

(Patron Prior to Substitute—Delegate Callahan)

A *BILL to amend and reenact §§ 54.1-4000 through 54.1-4005, 54.1-4009 through 54.1-4014, and 59.1-200 of the Code of Virginia and to repeal §§ 54.1-4006 and 54.1-4007, relating to the regulation of pawnbrokers; penalty.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-4000 through 54.1-4005, 54.1-4009 through 54.1-4014, and 59.1-200 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-4000. Definition of pawnbroker.

"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.

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

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

B. The circuit court of any county or city may authorize any county, city or town to issue to any individual ~~who produces satisfactory evidence of his good character, who has not been convicted of a felony or a crime involving moral turpitude in the last ten years,~~ a license to engage in the business of a pawnbroker in that county, city or town. No such license shall be issued by any county, city or town except with such authority. Prior to the issuance of the license, the applicant shall furnish his date of birth and such other information to the licensing authority as may be required by the governing body. The license shall designate the building in which the licensee shall carry on such business. ~~No person shall engage in the business of a pawnbroker without being licensed.~~

C. No person shall engage in the business of a pawnbroker in any location other than the one designated in his license, except with consent of the court which authorized the license.

D. Any person who violates the provisions of this section shall be guilty of a Class 4 *1* misdemeanor. Each day's violation shall constitute a separate offense.

§ 54.1-4002. Local limitations as to number of pawnshops.

A. In addition to all limitations and restrictions and notwithstanding any other relevant provisions of this chapter, the governing body of any county, city or town may *reasonably* limit by resolution or ordinance the number of pawnshops that may be operated at any one time within its territorial limits.

B. The circuit court of any county or city which has, by resolution or ordinance, limited the number of pawnshops therein shall not authorize any license to any pawnbroker after the commissioner of the revenue or other tax assessing officer of the county, city or town over which it has jurisdiction for the issuance of such licenses has filed with the court a statement that the number of licensed pawnshops within the county, city or town has reached the maximum number of pawnshops authorized to be operated therein, unless the number has been reduced below the maximum prescribed. *In the event that a properly licensed pawnbroker sells his business, the circuit court of the county or city shall authorize the county, city or town in which such business operates to issue to the purchaser a new license for the same location if the purchaser has not been convicted of a felony or a crime involving moral turpitude in the last ten years. Prior to the issuance of the license, the purchaser shall furnish his date of birth and such other information to the licensing authority as may be required by the local governing body.*

§ 54.1-4003. Bond required; private action on bond.

A. *No person shall be licensed as a pawnbroker or engage in the business of a pawnbroker without having in existence a bond with surety in the minimum amount of \$50,000 to secure the payment of any judgment recovered under the provisions of subsection B.*

B. Any person who recovers a judgment against a licensed pawnbroker for the pawnbroker's ~~misconduct~~ *fraudulent activities* may maintain an action in his own name upon the bond of the pawnbroker if the execution issued upon such judgment is wholly or partially unsatisfied.

§ 54.1-4004. Memorandum to be given pledgor; fee; lost ticket charge.

Every pawnbroker shall at the time of each loan deliver to the person pawning or pledging anything, a memorandum or note, signed by him, containing the information required by § 54.1-4009. [A one-time two dollar service fee may be charged for any such entry, memorandum or note.] *A lost-ticket fee of five dollars may also be charged, provided that the pawner is notified of the fee on the ticket.*

§ 54.1-4005. Sale of goods pawned.

No pawnbroker shall sell any pawn or pledge *item* until (i) it has been in his possession for ~~four~~

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60 months, unless a shorter period of not the minimum term set forth in the memorandum, but not less than
61 thirty days is agreed to in writing by the pawner, plus a grace period of fifteen days and (ii) a statement
62 of ownership is obtained from the pawner. All sales of items pursuant to this section shall may be made
63 at a public auction conducted by a licensed auctioneer by the pawnbroker in the ordinary course of his
64 business. The governing body of the locality wherein the pawnbroker conducts his business may
65 determine the contents of the statement of ownership.

66 § 54.1-4009. Records to be kept; credentials of person pawning goods.

67 A. Every pawnbroker shall keep at his place of business an accurate and legible record of each loan
68 or transaction in the course of his business. The account shall be recorded at the time of the loan or
69 transaction and shall include:

70 1. A description, serial number, and a statement of ownership of the goods, article or thing pawned
71 or pledged or received on account of money loaned thereon;

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

73 3. The amount of money loaned thereon at the time of pledging the same;

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

75 5. The fees charged by the pawnbroker, itemizing each fee charged;

76 5- 6. The full name, residence address, work place, and home and work telephone numbers telephone
77 number, and driver's license number or other form of identification of the person pawning or pledging
78 the goods, article or thing, together with a particular description, including the height, weight, date of
79 birth, race, gender, hair and eye color, and any other identifying marks, of such person;

80 6- 7. Verification of the identification by the exhibition of a government-issued identification card
81 such as a driver's license or military identification card. The record shall contain the type of
82 identification exhibited, the issuing agency, and the number thereon;

83 7- 8. The terms and conditions of the loan, including the period for which any such loan may be
84 made; and

85 8- 9. All other facts and circumstances respecting such loan.

86 B. The Superintendent of State Police shall promulgate regulations specifying the nature of the
87 particular description for the purposes of subdivision A 5 6 above.

88 The Superintendent of State Police shall promulgate regulations specifying the nature of identifying
89 credentials of the person pawning or pledging the goods. Such credentials shall be examined by the
90 pawnbroker, and an appropriate record retained thereof.

91 § 54.1-4010. Daily reports.

92 Every pawnbroker shall prepare a daily report of all goods, articles or things pawned or pledged with
93 him that day and shall file such report by noon of the following day with the chief of police or other
94 law-enforcement officer of the county, city or town where his business is conducted designated by the
95 local attorney for the Commonwealth to receive it. The report shall include the pledgor's name, and
96 residence of the pledgor, and driver's license number or other form of identification, and a description
97 of the goods, article articles or thing other things pledged and shall be in writing and clearly legible to
98 any person inspecting it.

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

101 § 54.1-4011. Officers may examine records or property; warrantless search and seizure authorized.

102 Every pawnbroker and every employee of the pawnbroker shall admit to the pawnbroker's place of
103 business during regular business hours, the chief law-enforcement officer, or his designee any duly
104 authorized law-enforcement officer of the jurisdiction where the business is being conducted, or any
105 law-enforcement official of the state or federal government. The pawnbroker or employee shall permit
106 the officer to (i) examine all records required by this chapter and any article listed in a record which is
107 believed by the officer to be missing or stolen and (ii) search for and take into possession any article
108 known to him to be missing, or known or believed by him to have been stolen. However, the officer
109 shall not take possession of any article without providing to the pawnbroker a receipt.

110 § 54.1-4012. Property pawned not to be disfigured or changed.

111 No property received on deposit or pledge by any pawnbroker shall be disfigured or its identity
112 destroyed or affected in any manner so long as it continues in pawn or in the possession of the
113 pawnbroker; nor shall any property be concealed for forty-eight hours after the property is received by
114 the pawnbroker while in pawn.

115 § 54.1-4013. Care of tangible personal property; evaluation fee.

116 A. Pawnbrokers shall store, or take care to for and protect from damage during disuse, all blankets,
117 clothing, carpets, furs, rugs, dress goods, cloths, mirrors, oil paintings, glass and chinaware, pianos,
118 organs, curtains, beddings and upholstered furniture pawned or pledged with them. Pawnbrokers shall be
119 allowed to charge two percent per month in addition to the regular charges for the first three months, or
120 part thereof, while such goods remain as pledge for money advanced all of the tangible personal
121 property in the pawnbroker's possession and protect the property from damage or misuse. Nothing in

this chapter shall be construed to mean that pawnbrokers are insurers of pawned property in their possession.

B. A pawnbroker may charge a storage fee for any items requiring storage, which fee shall not exceed seven percent of the amount loaned on such item for the period of the loan.

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

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

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

§ 59.1-200. Prohibited practices.

A. The following fraudulent acts or practices committed by a supplier in connection with a consumer transaction are hereby declared unlawful:

1. Misrepresenting goods or services as those of another;

2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;

3. Misrepresenting the affiliation, connection or association of the supplier, or of the goods or services, with another;

4. Misrepresenting geographic origin in connection with goods or services;

5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits;

6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;

7. Advertising or offering for sale goods which are used, secondhand, repossessed, defective, blemished, deteriorated, or reconditioned, or which are "seconds," irregulars, imperfects, or "not first class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds," irregulars, imperfects or "not first class";

8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell at the price or upon the terms advertised.

In any action brought under this subdivision, the refusal by any person, or any employee, agent, or servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph shall not apply when it is clearly and conspicuously stated in the advertisement or offer by which such goods or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement or offer did in fact have or reasonably expected to have at least such quantity or amount for sale;

9. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts installed;

11. Misrepresenting by the use of any written or documentary material which appears to be an invoice or bill for merchandise or services previously ordered;

12. Notwithstanding any other provision of law, using in any manner the words "wholesale," "wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the supplier's business, unless the supplier is actually engaged primarily in selling at wholesale or in manufacturing the goods or services advertised or offered for sale;

13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages, or penalties which are void or unenforceable under any otherwise applicable laws of this Commonwealth, or under federal statutes or regulations;

14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction;

15. Violating any provision of §§ 3.1-796.78, 3.1-796.79, or § 3.1-796.82, relating to the sale of certain animals by pet dealers which is described in such sections, is a violation of this chapter;

16. Failing to disclose all conditions, charges, or fees relating to:

a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not less than twenty days after date of purchase, a cash refund or credit to the purchaser's credit card

account for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase. In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any refund may be delayed for a period of ten banking days to allow for the check to clear. This subdivision does not apply to sale merchandise which is obviously distressed, out of date, post season, or otherwise reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser has requested the supplier to order merchandise of a specific or unusual size, color, or brand not ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in § 46.2-100;

b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill of sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches the agreement;

16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess of five dollars (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment on such account. Suppliers shall give consumers written notice of such credit balances within sixty days of receiving overpayments. If the credit balance information is incorporated into statements of account furnished consumers by suppliers within such sixty-day period, no separate or additional notice is required;

17. If a supplier enters into a written agreement with a consumer to resolve a dispute which arises in connection with a consumer transaction, failing to adhere to the terms and conditions of such an agreement;

18. Violating any provision of the Virginia Health Spa Act, Chapter 24 (§ 59.1-294 et seq.) of this title;

19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et seq.) of this title;

20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et seq.) of this title;

21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4 (§ 59.1-207.17 et seq.) of this title;

22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.) of this title;

23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32 (§ 59.1-424 et seq.) of this title;

24. Violating any provision of § 54.1-1505;

25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter 17.6 (§ 59.1-207.34 et seq.) of this title;

26. Violating any provision of § 3.1-949.1, relating to the pricing of merchandise;

27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.) of this title;

28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.) of this title;

29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et seq.) of this title;

30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et seq.) of this title;

31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.) of this title; and

32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1; and

33. *Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1.*

B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or lease solely by reason of the failure of such contract or lease to comply with any other law of this the Commonwealth or any federal statute or regulation, to the extent such other law, statute or regulation provides that a violation of such law, statute or regulation shall not invalidate or make unenforceable such contract or lease.

2. That §§ 54.1-4006 and 54.1-4007 of the Code of Virginia are repealed.

3. That the provisions of § 54.1-4001 of this act shall not apply to any pawnbroker licensed in the Commonwealth before July 1, 1998.