



SPONSOR: Sen. McBride & Rep. Mitchell
Sens. Bushweller, Ennis, Hocker, Poore; Reps.
Briggs King, Mulrooney, Schwartzkopf, Smyk

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 73

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO PAWNBROKERS, SECONDHAND DEALERS AND SCRAP METAL PROCESSORS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 2301, Title 24 of the Delaware Code concerning Pawnbrokers, Secondhand Dealers and Scrap Metal Processors, by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 2301 Definitions.

As used in this chapter:

(1) "Antique dealer" means a person, company, corporation, or member or members of a partnership or firm who sells exclusively goods that are at least 50 years old.

(2) "Automated kiosk" means an interactive device that is permanently installed within a secure retail space and that has the following technological functions:

- a. Monitored remotely by a live representative during all business hours of operation;
- b. Verification of a seller's identity via a government-issued identification card;
- c. Secure storage of goods accepted by the kiosk;
- d. Capture and storage of images during the transaction; and
- e. Electronically report all transactions to law enforcement.

(3) "Consumer" means any person or buyer who purchases a retail product, as defined in paragraph (5) of this section, other than for further purposes of resale or processing.

~~(3) "Exempted Internet acquisitions" means any property acquired by a business licensed under this chapter from an exclusive Internet sale.~~

(4) "Department" shall mean the Department of Safety and Homeland Security.

(5) "Director" shall mean the officer in charge of the Professional Licensing Section of the Division.

(6) "Division" shall mean the Division of the Delaware State Police.

(7) "Exempted Internet acquisitions" means any property acquired by a business licensed under this chapter from an exclusive Internet sale.

(10) "Secretary" shall mean the Secretary of the Department of Safety and Homeland Security.

(11) "Section" shall mean the Professional Licensing Section of the Division.

(12) "Superintendent" shall mean the Superintendent of the Division.

Section 2. Amend § 2308, Title 24 of the Delaware Code concerning Pawnbrokers, Secondhand Dealers and Scrap Metal Processors, by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 2308 Penalties.

(a) Whoever violates this chapter, except where another penalty is provided, shall be guilty of a misdemeanor and, if convicted, may be fined a civil or administrative penalty of not more than \$10,000.

(1) Assessment of a civil or administrative penalty shall be determined by the nature, circumstances, extent and gravity of the violation, or violations, ability of the violator to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation and such other matters as justice requires.

(2) In the event of nonpayment of the administrative penalty after all legal appeals have been exhausted, a civil action may be brought by the Superintendent or his designee in any court of competent jurisdiction, including any Justice of the Peace Court, for collection of the administrative penalty, including interest, attorneys' fees and costs and the validity and appropriateness of such administrative penalty shall not be subject to review.

Section 3. Amend § 2310, Title 24 of the Delaware Code concerning Pawnbrokers, Secondhand Dealers and Scrap Metal Processors, by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 2310 License required.

(a) No person shall carry on the business of a pawnbroker, secondhand dealer or scrap metal processor without first having taken out a license and duly qualified as provided in this chapter.

(b) All licenses granted by the State Police to such persons, citizens of this State and companies existing under the laws of this State to engage in and carry on the business of pawnbroker, secondhand dealer or scrap metal processor shall expire annually on December 31.

(c) The licenses shall designate the address in which the person or company shall carry on the business. No person or company shall engage in or carry on the business of pawnbroker, secondhand dealer or scrap metal processor in any

other building than the one designated in the license. This prohibition does not apply to the acquisition of goods by a pawnbroker, secondhand dealer or scrap metal processor.

(d) The Director may suspend or revoke a license or issue an emergency suspension for a violation of this chapter or regulations promulgated thereunder by the Secretary.

(e) Anyone licensed under this chapter shall notify the Section within five days of being arrested for any misdemeanor or felony crime.

Section 4. Amend § 2311, Title 24 of the Delaware Code concerning Pawnbrokers, Secondhand Dealers and Scrap Metal Processors, by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

~~§ 2311 Licenses; qualifications; issuance by State Police.~~

~~The State Police shall annually on or before March 15 grant licenses to such persons, citizens of this State and companies existing under the laws of this State to engage in and carry on the business of pawnbroker, secondhand dealer or scrap metal processor.~~

~~The licenses shall designate the building in which the person or company shall carry on the business. No person or company shall engage in or carry on the business of pawnbroker, secondhand dealer or scrap metal processor in any other building than the 1 designated in the license. This prohibition does not apply to the acquisition of goods by a pawnbroker, secondhand dealer or scrap metal processor.~~

~~The State Police may suspend or revoke a license for a violation of this chapter or regulations promulgated thereunder by the Secretary of the Department of Safety and Homeland Security.~~

~~§ 2312~~ 2311 Qualifications

(a) An applicant applying for a pawnbroker, secondhand dealer or scrap metal processor license must meet and maintain the following qualifications:

(1) Must be at least 18 years of age.

(2) Must submit a current valid Delaware business license issued by the Delaware Division of Revenue,

(3) Must notify the Section, within 10 days, of any change of address, phone number, email address or contact person for the business.

(4) Must not have any pending criminal charges.

(5) Must not have been convicted of a felony within five years of application date.

(6) Must not have been convicted of any misdemeanor involving a theft-related offense, or moral turpitude within three years of the application.

Section 5. Amend § 2312, Title 24 of the Delaware Code concerning Pawnbrokers, Secondhand Dealers and Scrap Metal Processors, by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

~~§ 2312 License fees.~~

~~(a) Every person receiving a license for conducting the business of pawnbroker shall pay the State Police \$50 to go to the State's General Fund.~~

~~(b) Every person receiving a license for conducting the business of secondhand dealer shall pay the State Police \$50 to go to the State's General Fund.~~

~~(c) Every person receiving a license for conducting the business of scrap metal processor shall pay the State Police \$50 to go to the State's General Fund.~~

~~(d) Every person receiving a license for conducting the business of pawnbroker, secondhand dealer or scrap metal processor, shall annually pay a reasonable subscription fee, not to exceed \$300, to the electronic reporting system designated by the Secretary of the Department of Safety and Homeland Security.~~

§ 2312 Records.

(a) The Section shall keep a register of all applications for pawnbrokers, secondhand dealers and scrap metal processors and complete records, changes and additions to rules and regulations, hearings and such other matters as the Secretary shall determine. Such records shall constitute prima facie evidence of the proceedings of the Secretary.

(b) The Section pursuant to approval of the Secretary shall:

(1) Adopt and, from time to time, revise such rules and regulations and standards not inconsistent with the law as may be necessary to enable it to carry into effect this chapter;

(2) Deny or withdraw approval from applicants for failure to meet approved application procedures and other criteria;

(3) Oversee renewal applications and appropriate fees;

(4) Conduct hearings upon request for denial, suspension or revocation of a pawnbroker, secondhand dealer or scrap metal processor license;

(5) Have the power to issue subpoenas and compel the attendance of witnesses, and administer oaths to persons giving testimony at hearings;

(6) Have all the duties, powers and authority necessary to the enforcement of this chapter, as well as such other duties, powers and authority as it may be granted from time to time by the Secretary.

Section 6. Amend § 2313, Title 24 of the Delaware Code concerning Pawnbrokers, Secondhand Dealers and Scrap Metal Processors, by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

~~§ 2313 Pawnbroker's insurance.~~

~~Every person applying for a license to conduct the business of a pawnbroker shall first effect an insurance policy against fire for \$50,000 for the protection of goods, pawned or pledged.~~

§ 2313 License fees.

(a) Every person receiving a license for conducting the business of pawnbroker shall pay the Division \$50 to go to the State's General Fund.

(b) Every person receiving a license for conducting the business of secondhand dealer shall pay the Division \$50 to go to the State's General Fund.

(c) Every person receiving a license for conducting the business of scrap metal processor shall pay the Division \$50 to go to the State's General Fund.

(d) Every person receiving a license for conducting the business of pawnbroker, secondhand dealer or scrap metal processor, shall annually pay a reasonable subscription fee, not to exceed \$300, to the electronic reporting system designated by the Secretary.

Section 7. Amend § 2314, Title 24 of the Delaware Code concerning Pawnbrokers, Secondhand Dealers and Scrap Metal Processors, by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

~~§ 2314 Annual state report.~~

~~The State Police shall maintain an annual report setting forth the list of licensed pawnbrokers, secondhand dealers and scrap metal processors in this State and their respective addresses and contact information.~~

§ 2314 Disciplinary Proceedings; appeal.

(a) Grounds – Subject to the provisions of this chapter, the Director, pursuant to the authority of the Secretary may impose any of the following sanctions (subsection (b)) of this section singly or in combination when it finds a licensee is guilty of any offense described herein:

(1) Conducting a pawnbroker, secondhand dealer or scrap metal processor without a license; or

(2) Failure to comply with electronic reporting requirements pursuant to § 2302 of this chapter; or

(3) Failure to comply with holding period requirements pursuant to § 2304 of this chapter; or

(4) Obtaining criminal charges or convictions pursuant to § 2311(a) of this chapter; or

- (5) Failure to comply with inspection requests pursuant to § 2305 of this chapter; or
- (6) Failure to notify the local law enforcement agency upon suspicion of stolen goods pursuant to § 2306 of this chapter; or
- (7) Violating prohibited transactions pursuant to § 2307 of this chapter; or
- (8) Submitting false or fraudulent information material to any application for a license; or
- (9) Violating any provision of this chapter or any rule or regulation promulgated by the Secretary.

(b) Disciplinary Sanctions. –

- (1) Permanently revoke a license.
- (2) Suspend a license.
- (3) Issue a letter of reprimand.
- (4) Refuse to issue a license.
- (5) Refuse to renew a license.
- (6) Issue an emergency suspension
- (7) Or otherwise discipline.

(c) Procedure. –

- (1) After receipt of written notice from the Section of the denial, suspension, emergency suspension or revocation of a license, the applicant or license holder shall be afforded a hearing before the Superintendent or his designee.
- (2) The accused may be represented by counsel who shall have the right of examination and cross examination.
- (3) Testimony before the Superintendent shall be under oath.
- (4) A record of the hearing shall be made. At the request and expense of any party such record shall be transcribed with a copy to the other party.
- (5) The decision of the Superintendent shall be based upon sufficient legal evidence. If the charges are supported by such evidence, the Superintendent may refuse to issue, or revoke or suspend a license, or otherwise discipline an individual. A suspended license may be reissued by the Section at the direction of the Superintendent.

(d) All decisions of the Superintendent shall be final and conclusive. Where the applicant or licensee is in disagreement with the action of the Superintendent, the practitioner may appeal the Superintendent's decision to the Secretary within 30 days of service or the postmarked date of the copy of the decision mailed to the individual. The appeal shall be on the record to the Secretary as provided in the Administrative Procedures Act §§ 10142-10145 of Title 29.

(e) All decisions of the Secretary shall be final and conclusive. Where the applicant or licensee is in disagreement with the action of the Secretary, the practitioner may appeal the decision to the Superior Court.

(1) An appeal pursuant to this section must be filed within 30 days of service or the postmarked date of the copy of the written decision and order of the Secretary is mailed.

(2) An appeal pursuant to this section is on the record without a trial de novo.

(3) The Secretary's decision to deny, revoke, suspend or otherwise restrict a person's license is not stayed upon appeal unless so ordered by the Superior Court.

Section 8. Amend § 2315, Title 24 of the Delaware Code concerning Pawnbrokers, Secondhand Dealers and Scrap Metal Processors, by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 2315 Rate of interest.

~~No person conducting the business of a pawnbroker shall ask, demand or receive a greater rate of interest than 30 percent per month on any loans secured by pledge of personal property.~~

§ 2315 Pawnbroker's insurance.

Every person applying for a license to conduct the business of a pawnbroker shall first effect an insurance policy against fire for \$50,000 for the protection of goods, pawned or pledged.

Section 9. Amend § 2316, Title 24 of the Delaware Code concerning Pawnbrokers, Secondhand Dealers and Scrap Metal Processors, by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

~~§ 2316 Unlicensed pawnbrokers, secondhand dealers or scrap metal processors.~~

~~(a) Any pawnbroker, second hand dealer, or scrap metal processor operating without the required license may be issued a cease and desist order by the Delaware State Police and will not be permitted to operate without first obtaining such license.~~

~~(b) Any property acquired by a pawnbroker, secondhand dealer, or scrap metal processor during the time they were unlicensed is subject to forfeiture.~~

§ 2316 Rate of interest.

No person conducting the business of a pawnbroker shall ask, demand or receive a greater rate of interest than 30 percent per month on any loans secured by pledge of personal property.

Section 10: Amend § 2317, Title 24 of the Delaware Code concerning Pawnbrokers, Secondhand Dealers and Scrap Metal Processors, by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 2317 Unlicensed pawnbrokers, secondhand dealers or scrap metal processors.

202 (a) Any pawnbroker, second hand dealer, or scrap metal processor operating without the required license may be issued
203 a cease and desist order by the Division and will not be permitted to operate without first obtaining such license.

204 ~~(b) Any property acquired by a pawnbroker, secondhand dealer, or scrap metal processor during the time they were~~
205 ~~unlicensed is subject to forfeiture.~~

206 (b) Whenever, in the judgment of the Director pursuant to authority of the Superintendent or his designee, any
207 pawnbroker, secondhand dealer or scrap metal processor has engaged in any acts or practices which constitutes a
208 violation of any provision of this chapter or any rule or regulation or issued thereunder, the Director may request the
209 Attorney General to make application to the Court of Chancery for an order enjoining such acts or practices for an order
210 directing compliance and, upon a showing by Director that such entity has engaged or about to engage in such acts or
211 practices, a permanent or temporary injunction, restraining order or other order may be granted.

SYNOPSIS

This Act provides clearer language concerning license requirements, gives licensees a much clearer understanding of prohibited acts, discipline and penalties; and grants the ability of the Professional Licensing Section to promulgate regulations, and additional powers needed to oversee this chapter.

Author: Senator McBride