CHAPTER 39

Pawnbrokers

Editor's Note

2016 Act No. 262, Section 15, provides as follows:

"SECTION 15. A county or municipality may enact ordinances that are in compliance with, but not more restrictive than the provisions of this act, except that local ordinances may not require the payment of a fee or tax related to a pawn transaction or purchase unless authorized pursuant to this chapter or restrict hours of operation other than between midnight and 6:00 a.m. An ordinance that conflicts with this act is void. This act does not affect the authority of a county or municipality to establish land use controls or require a pawnbroker to obtain a local occupational license."

**SECTION 40‑39‑10.** Definitions.

 The following definitions apply for purposes of this chapter:

 (1) "Person" means an individual, partnership, corporation, joint venture, trust, association, or any other legal entity however organized.

 (2) "Pawnbroker" means any person engaged in the business of lending money on the security of pledged goods, or engaged in the business of purchasing tangible personal property on condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time.

 (3) "Pledged goods" means tangible personal property other than vehicles as defined in Section 56‑3‑20(1) required to be registered and licensed pursuant to Title 56, choses in action, title, securities, or printed evidences of indebtedness, which property is deposited with or otherwise actually delivered into the possession of a pawnbroker in the course of his business in connection with a pawn transaction.

 (4) "Pawnshop" means the location at which or premises in which a pawnbroker regularly conducts business.

 (5) "Month" means that period of time from one date in a calendar month to the corresponding date in the following calendar month, but if there is no corresponding date, then the last day of the following month, and when computations are made for a fraction of a month, a day is one‑thirtieth of a month.

 (6) "Administrator" means the administrator of the Department of Consumer Affairs.

 (7) "Pawn transaction" means the pledging with a pawnbroker under this chapter of a single item of goods or tangible personal property as security for a loan of money. Items that are usually sold as a set are considered a single item and must be included in the same transaction, and a pledged item together with items that are accessories to the pledged item are considered a single item and must be included in the same transaction. A separate pawn transaction retains its separate character when it is renewed, unless the parties agree otherwise.

HISTORY: 1988 Act No. 491, Section 2; 2016 Act No. 262 (H.4090), Section 4, eff June 9, 2016.

Editor's Note

Prior Laws:1900 (23) 427; Civ. C. '02 Section 1749; Civ. C. '12 Section 2625; Civ. C. '22 Section 3946; 1932 Code Section 7130; 1942 Code Section 7130; 1952 Code Section 56‑1151; 1962 Code Section 56‑1151.

Effect of Amendment

2016 Act No. 262, Section 4, in (3), inserted reference to vehicles as defined in Section 56‑3‑20(1).

**SECTION 40‑39‑20.** Department of Consumer Affairs to regulate pawnbrokers; certificate of authority to operate pawnbroker business; background checks; persons ineligible for certificate of authority.

 (A)(1) All pawnbrokers conducting business in this State are under the authority of and regulated by the Department of Consumer Affairs, the administrator of which has the authority to promulgate regulations as he considers necessary to carry out the conditions and intent of this chapter.

 (2) No person may carry on the business of a pawnbroker in any location, whether or not the person has an office, facility, agent, or other physical presence in this State, without first having obtained a certificate of authority for each location from the Department of Consumer Affairs.

 (B) Upon receipt of the application for the certificate of authority, the Department of Consumer Affairs shall notify the law enforcement agency having jurisdiction where the applicant intends to do business. The law enforcement agency may make its recommendation on the issuance of the certificate of authority.

 (C)(1) Before issuance of a certificate of authority, a criminal history background check must be conducted for all owners, partners, members, officers, directors, employees and other persons occupying a similar status or otherwise directly or indirectly controlling the pawnshop. The applicant pawnbroker is responsible for either:

 (a) conducting, documenting, and attesting that a national criminal records check has been completed for each person; or

 (b) submitting consent from each person to a national criminal records check and a set of fingerprints in a form acceptable to the administrator. Using the information supplied by the administrator to SLED, the applicant must undergo a national criminal records check, supported by fingerprints, by the Federal Bureau of Investigation. The results of these criminal records checks must be reported to the administrator. The administrator shall keep all information pursuant to this section privileged, in accordance with applicable state and federal guidelines.

 (2) A pawnbroker shall comply with the requirements of item (1) before hiring an employee.

 (3) The applicant pawnbroker shall pay actual costs associated with the criminal history background checks required in this section.

 (D)(1) Upon the filing of an application for a certificate of authority, if the administrator concludes that the financial responsibility and experience of the applicant and its employees, members, partners, officers, and directors, if applicable, command the confidence of the community and warrants belief that the business may be operated honestly, fairly, and efficiently according to the purposes of this chapter and in accordance with all applicable state and federal laws, it shall issue a certificate of authority. If the administrator does not reach this conclusion, he shall refuse to issue the certificate of authority to the applicant and shall notify the applicant of the denial.

 (2) A rebuttable presumption of the financial responsibility and experience necessary to meet the standard in item (1) is created when the person seeking the certificate of authority complies with the provisions contained in Section 40‑39‑50(A).

 (E) A person convicted of a felony may not be issued a certificate of authority to carry on the business of a pawnbroker or in any manner engage in the business of a pawnbroker, except that any person who is in the business of a pawnbroker on July 1, 1988, and who has been convicted of a felony before this date may be issued a certificate of authority and upon receiving it may continue in the business of a pawnbroker but if this person is convicted of a felony on or after July 1, 1988, he may not thereafter be issued a certificate of authority or carry on the business of a pawnbroker after the date of this subsequent felony conviction.

HISTORY: 1988 Act No. 491, Section 2; 2016 Act No. 262 (H.4090), Section 5, eff June 9, 2016.

Editor's Note

Prior Laws:1900 (23) 427; Civ. C. '02 Sections 1748, 1749; Civ. C. '12 Sections 2624, 2625; Civ. C. '22 Sections 3945, 3946; 1932 Code Sections 7129, 7130; 1942 Code Sections 7129, 7130; 1952 Code Section 56‑1152; 1962 Code Section 56‑1152.

Effect of Amendment

2016 Act No. 262, Section 5, added the paragraph designators; in (A)(2), inserted "whether or not the person has an office, facility, agent, or other physical presence in this State"; in (B), deleted text related to background checks; added (C), relating to background checks; added (D), relating to issuing of a certificate of authority; and in (E), thrice substituted "certificate of authority" for "Certificate of Authority".

**SECTION 40‑39‑30.** Certificate of authority required for each business location; penalties; location of retained pledged goods; posting of operation hours.

 (A) No person may carry on the business of a pawnbroker in any location other than the one designated in his certificate of authority, under penalty of administrative fine, revocation of his certificate of authority, or other action by the administrator pursuant to regulation or criminal prosecution as set out in this chapter.

 (B) No pawnbroker may retain pledged goods in a location other than the location designated in the certificate of authority without first filing a notification with the department. A request made pursuant to this subsection must be on a form prescribed by the department.

 (C) A pawnbroker conspicuously shall post the hours of operation and any closure at each location.

HISTORY:1988 Act No. 491, Section 2; 2016 Act No. 262 (H.4090), Section 6, eff June 9, 2016.

Editor's Note

Prior Laws:1900 (23) 427; Civ. C. '02 Section 1749; Civ. C. '12 Section 2625; Civ. C. '22 Section 3946; 1932 Code Section 7130; 1942 Code Section 7130; 1952 Code Section 56‑1153; 1962 Code Section 56‑1153.

Effect of Amendment

2016 Act No. 262, Section 6, inserted the paragraph designators; in (A), twice substituted "certificate of authority" for "Certificate of Authority"; and added (B) and (C), relating to location of retained pledged goods and operation hours postings.

**SECTION 40‑39‑40.** Unauthorized fees prohibited; violative pawn transaction ramifications.

 (A) No pawnbroker may charge or collect any fees, costs, or assessments of any kind or nature other than those specifically allowed under this chapter.

 (B) A person who makes a pawn transaction in violation of this chapter:

 (1) may not collect, receive, or retain any interest or charges on the loan in violation of this chapter; and

 (2) has no right to possess the pledged goods.

HISTORY: 1988 Act No. 491, Section 2; 2016 Act No. 262 (H.4090), Section 7, eff June 9, 2016.

Effect of Amendment

2016 Act No. 262, Section 7, inserted paragraph designator (A), and added (B), relating to violative pawn transaction ramifications.

**SECTION 40‑39‑50.** Bonding and insurance requirements; notice of potential threats to pawned goods.

 (A) A person seeking a certificate of authority to carry on the business of a pawnbroker shall at the time of application for his certificate file with the Department of Consumer Affairs:

 (1) a bond in favor of the department to be executed by the person granted the certificate by a surety company licensed to do business in this State in the penal sum of fifteen thousand dollars to be approved by the administrator. The bond must be conditioned for the faithful performance of the duties and obligations pertaining to the business so authorized; and

 (2) proof of adequate insurance coverage for all pledged goods in the event of loss by fire, theft, burglary or otherwise, or liability to the pledgor.

 (B) Within twenty‑one calendar days after the occurrence of an event that may affect pledged goods, including, but not limited to, fire, theft, or judicial proceedings, a pawnbroker shall file a written notice on a form prescribed by the department describing the event and its expected impact upon the business.

HISTORY: 1988 Act No. 491, Section 2; 2016 Act No. 262 (H.4090), Section 8, eff June 9, 2016.

Editor's Note

Prior Laws:1900 (23) 427; Civ. C. '02 Section 1749; Civ. C. '12 Section 2625; Civ. C. '22 Section 3946; 1932 Code Section 7130; 1942 Code Section 7130; 1952 Code Section 56‑1155; 1962 Code Section 56‑1155.

Effect of Amendment

2016 Act No. 262, Section 8, inserted the paragraph designators; in (A), substituted "A person" for "Every person"; in (A)(1), substituted "by" for "and by two responsible sureties or", substituted "fifteen thousand dollars" for "five thousand dollars", and deleted the prior last three sentences, relating to evidence of financial responsibility; added (A)(2) and (B), relating to insurance and written notice of an event that may affect pledged goods; and made other nonsubstantive changes.

**SECTION 40‑39‑55.** Periodic dollar amount adjustments.

 (A) Effective July 1, 2021, and each fifth July first thereafter, the dollar amounts in Section 40‑39‑50(A)(1) and the dollar amounts concerning loans in Section 40‑39‑100 must be adjusted by the department to reflect the percentage change for the five‑year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

 (B) The administrator shall publish a notice in the State Register of the changes in dollar amounts before May first of each year in which dollar amounts are to change. A person must not be considered to violate the provisions of this chapter with respect to a transaction otherwise complying with those provisions if he relies on dollar amounts appearing in the last notice of the administrator announcing the dollar amounts current at that time.

 (C) The dollar amounts may not change more than ten percent for each adjustment period.

 (D) The dollar amounts in Section 40‑39‑50(A)(1) and Section 40‑39‑100(C) are subject to change in accordance with this section.

HISTORY: 2016 Act No. 262 (H.4090), Section 1, eff June 9, 2016.

**SECTION 40‑39‑60.** Actions on bond.

 If any person is aggrieved by the misconduct of any licensed pawnbroker and recovers judgment against him thereafter, he may, after the return unsatisfied, either in whole or in part, of any execution issued upon the judgment, maintain an action in his own name upon the bond of the pawnbroker in any court having jurisdiction of the amount claimed.

HISTORY: 1988 Act No. 491, Section 2.

Editor's Note

Prior Laws:1900 (23) 427; Civ. C. '02 Section 1750; Civ. C. '12 Section 2626; Civ. C. '22 Section 3947; 1932 Code Section 7131; 1942 Code Section 7131; 1952 Code Section 56‑1156; 1962 Code Section 56‑1156.

**SECTION 40‑39‑70.** Recordkeeping; identity verifications; only owners or their agents may pawn or sell.

 (A) A pawnbroker shall keep a record, at the time of any loan or purchase, containing an account and description of the goods, articles, or things pawned, pledged, or purchased, the amount of money loaned thereon, the time of pledging them, the charges, or the rate of interest to be paid on the loan, and the name and residence of the person selling, pawning, or pledging the goods, articles, or things.

 (B) Before a pledge or purchase, the pawnbroker shall verify the identity of the pledgor or seller by reviewing a state‑issued or federally issued photographic identification card, including a United States military identification card, or a passport issued by the United States.

 (C) A pawn or purchase transaction must be performed by the owner of the property, or his authorized agent, whose identity and agency relationship must be verified by the pawnbroker.

HISTORY: 1988 Act No. 491, Section 2; 2016 Act No. 262 (H.4090), Section 9, eff June 9, 2016.

Editor's Note

Prior Laws:1900 (23) 427; Civ. C. '02 Section 1751; Civ. C. '12 Section 2627; Civ. C. '22 Section 3948; 1932 Code Section 7132; 1942 Code Section 7132; 1952 Code Section 56‑1157; 1962 Code Section 56‑1157; 1962 (52) 1959.

Effect of Amendment

2016 Act No. 262, Section 9, inserted paragraph designator (A); in (A), inserted "or purchase", and inserted "selling"; and added (B) and (C), relating to identity verification and transaction performance requirements.

**SECTION 40‑39‑80.** Pawn tickets; content requirements; executions; special circumstances.

 (A) A pawnbroker, at the time of each loan or purchase, shall deliver to the person selling, pawning, or pledging any articles, at no charge, a memorandum signed by the pawnbroker and the person pawning or pledging any articles containing the substance of the entry required by Section 40‑39‑70. If the memorandum is lost, the pledgor may receive a duplicate upon payment of a fee not exceeding three dollars. The administrator may prescribe the form to be used.

 (B)(1) The pawn ticket for a pledge or purchase transaction must satisfy the requirements of the Truth in Lending Act and Regulation Z, must identify whether the transaction is a pawn or purchase, and at a minimum must include:

 (a) the name and address of the pledgor or seller;

 (b) the date of birth of the pledgor or seller;

 (c) the driver's license number or other state or federal government‑issued photographic identification number of the pledgor or seller;

 (d) the transaction date;

 (e) the transaction maturity date;

 (f) the amount financed or purchase price;

 (g) the finance charge;

 (h) the total of payments;

 (i) the annual percentage rate;

 (j) a statement of the pledgor or seller that the pledgor or seller is the lawful owner of the pledged or sold property;

 (k) the name and business address of the pawnbroker; and

 (l) a complete and accurate description of the pledged or purchased goods including any applicable:

 (i) brand name;

 (ii) model number;

 (iii) manufacturer's serial number, if issued by the manufacturer and not intentionally defaced, altered or removed;

 (iv) size;

 (v) color, as apparent to the untrained eye, not applicable to diamonds;

 (vi) precious metal type, weight, and content, if known or indicated;

 (vii) gemstone color and shape, as apparent to the untrained eye, and number of stones;

 (viii) type of action, caliber or gauge, number of barrels, barrel length and finish if the item is a firearm; and

 (ix) any other unique markings, numbers, names, or letters.

 (2) In addition to the requirements of item (1), the pledgor or seller shall sign the form after the pawnbroker confirms positive identification of the pledgor or seller.

 (3) Notwithstanding the provisions of subsection (B)(1)(i) through (ix), in the case of multiple items of a similar nature delivered together in one transaction which do not bear serial or model numbers and which do not include precious metals or gemstones, such as musical or video recordings, books, and hand tools, the description of the items is adequate if it contains the quantity of items and a description of the type of items delivered.

HISTORY: 1988 Act No. 491, Section 2; 2016 Act No. 262 (H.4090), Section 10, eff June 9, 2016.

Editor's Note

Prior Laws:1900 (23) 427; Civ. C. '02 Section 1752; Civ. C. '12 Section 2628; Civ. C. '22 Section 3949; 1932 Code Section 7133; 1942 Code Section 7133; 1952 Code Section 56‑1158; 1962 Code Section 56‑1158.

Effect of Amendment

2016 Act No. 262, Section 10, inserted paragraph designator (A); in (A), inserted "or purchase" and "selling", and made other nonsubstantive changes; and added (B), relating to pawn ticket requirements.

**SECTION 40‑39‑90.** Books to be kept open for inspection.

 Records kept by pawnbrokers pursuant to this chapter must at all reasonable times be open to the inspection by court officials, law enforcement officers, the administrator of the Department of Consumer Affairs, and their designees. Any loan records identifying any individual must be handled in a confidential manner at all times.

HISTORY: 1988 Act No. 491, Section 2.

Editor's Note

Prior Laws:1900 (23) 427; Civ. C. '02 Section 1753; Civ. C. '12 Section 2629; Civ. C. '22 Section 3950; 1932 Code Section 7134; 1942 Code Section 7134; 1952 Code Section 56‑1159; 1962 Code Section 56‑1159.

**SECTION 40‑39‑100.** Charges on loans.

 (A) A pawnbroker may charge interest on loans not exceeding the following amounts:

 (1) at the rate of two dollars and fifty cents per thirty‑day period for each ten dollars loaned for the first fifty dollars loaned;

 (2) at the rate of two dollars per thirty‑day period for each ten dollars loaned on that portion of the loan exceeding fifty dollars but not exceeding one hundred dollars;

 (3) at the rate of one dollar and fifty cents per thirty‑day period for each ten dollars loaned on that portion of the loan exceeding one hundred dollars but not exceeding two hundred dollars;

 (4) at the rate of one dollar per thirty‑day period for each ten dollars loaned on that portion of the loan exceeding two hundred dollars but not exceeding one thousand dollars;

 (5) at the rate of fifty cents per thirty‑day period for each ten dollars loaned on that portion of the loan exceeding one thousand dollars but not exceeding the maximum amount in subsection (C).

 (B) No pawnbroker may separate or divide a pawn transaction into two or more transactions for the purpose or with the effect of obtaining a total pawn interest rate in excess of that authorized for an amount financed equal to the total of the amounts financed in the resulting transactions.

 (C) No pawnbroker may make a loan in excess of fifteen thousand dollars. Every pawnbroker shall post the rates in a form which is prescribed by the administrator. The following statement must be included in the posted rate schedule:

 "Consumers: All pawnbrokers operating in South Carolina are required by law to post a schedule showing the maximum rate of LOAN FINANCE CHARGES stated as dollars for each ten dollars for each thirty‑day period that the pawnbroker intends to charge for various types of pawn transactions. The purpose of this requirement is to assist you in comparing the maximum rates that pawnbrokers charge, thereby furthering your understanding of the terms of pawn transactions and helping you to avoid the uninformed use of credit.

 NOTE: Pawnbrokers are prohibited only from granting credit at rates higher than those specified above. A pawnbroker may be willing to grant you credit at rates that are lower than those specified, depending on the amount, terms, collateral, and your credit worthiness."

HISTORY: 1988 Act No. 491, Section 2; 2016 Act No. 262 (H.4090), Section 11, eff June 9, 2016.

Editor's Note

Prior Laws:1900 (23) 427; Civ. C. '02 Section 1754; Civ. C. '12 Section 2630; Civ. C. '22 Section 3951; 1932 Code Section 7135; 1942 Code Section 7135; 1952 Code Section 56‑1160; 1962 Code Section 56‑1160; 1962 (52) 1959; 1982 Act No. 385, Section 57(2)f.

Effect of Amendment

2016 Act No. 262, Section 11, inserted paragraph designators (A), (B), and (C); in (A), substituted "A pawnbroker" for "Pawnbrokers"; in (A)(5), substituted "not exceeding the maximum amount in subsection (C)" for "not exceeding two thousand dollars"; and in (C), substituted "in excess of fifteen thousand dollars" for "in excess of two thousand dollars", and substituted "post the rates" for "post these rates".

**SECTION 40‑39‑110.** Vesting of title to pledged property.

 If any loan remains unpaid for a period of sixty days from the due date or any renewal or extension thereof, the title of the borrower or pledgor to the property pledged to secure the loan shall vest in the pawnbroker, without advertising, sale, or accountability to the pledgor, if the pawn ticket or memorandum delivered to the borrower in accordance with Section 40‑39‑80, contains on the back thereof a notice to that effect, and if a printed or written notice of the impending forfeiture is mailed to the pledgor at the address given on the pawn ticket, at least ten days prior to the forfeiture date. This notice must contain a description of the article pledged, and the amount due thereon as of the date of the notice. No notice is required on loans of fifty dollars or less.

HISTORY: 1988 Act No. 491, Section 2.

Editor's Note

Prior Laws:1900 (23) 427; Civ. C. '02 Section 1755; Civ. C. '12 Section 2631; Civ. C. '22 Section 3952; 1932 Code Section 7136; 1942 Code Section 7136; 1952 Code Section 56‑1161; 1962 Code Section 56‑1161; 1962 (52) 1959.

**SECTION 40‑39‑120.** Certificate of authority renewals; penalties for noncompliance; limited operations after lapses.

 (A) A pawnbroker applying for a certificate of authority shall tender to the department a fee of two hundred seventy‑five dollars plus all other applicable fees required by other agencies to process the application. The administrator may revoke any certificate of authority if the pawnbroker has violated this chapter or any regulation or order lawfully made pursuant to this chapter, or if facts or conditions exist which would clearly have justified the administrator in refusing to grant a certificate of authority had these facts or conditions been known to exist at the time the application for certificate of authority was made. The administrator may promulgate regulations for obtaining and revoking the certificate of authority. Certificates of authority must be renewed on a yearly basis. Applications for renewal must be accompanied by a renewal fee of two hundred seventy‑five dollars.

 (B) If a pawnbroker's certificate of authority is not renewed before June thirtieth, the administrator shall assess the pawnbroker in addition to the renewal in subsection (A). If a pawnbroker fails to renew his certificate of authority within thirty days after the date the certificate of authority expires or otherwise maintain a valid certificate of authority, the administrator shall require the pawnbroker to comply with the requirements for the initial issuance of a certificate of authority pursuant to this chapter, in addition to any assessment that has accrued.

 (C) In the event of closure because of surrender or revocation of a certificate of authority, a pawnbroker shall, for the sole purpose of allowing a pledgor to redeem pledged goods, maintain usual business hours at the pawnshop for ninety days after the latest maturity date of a pawn transaction made at that pawnshop or transfer of pledged goods to a pawnbroker with a valid certificate of authority.

HISTORY: 1988 Act No. 491, Section 2; 2016 Act No. 262 (H.4090), Section 12, eff June 9, 2016.

Editor's Note

Prior Laws:1900 (23) 427; Civ. C. '02 Section 1749; Civ. C. '12 Section 2625; Civ. C. '22 Section 3946; 1932 Code Section 7130; 1942 Code Section 7130; 1952 Code Section 56‑1163; 1962 Code Section 56‑1163.

Effect of Amendment

2016 Act No. 262, Section 12, inserted paragraph designator (A); in (A), made nonsubstantive changes in capitalization of the phrase "certificate of authority"; and added (B) and (C), relating to penalties for noncompliance and limited operations after lapses.

**SECTION 40‑39‑130.** Pawnbrokers to comply with federal law; enforcement powers of administrator.

 All pawnbrokers shall comply with the Federal Truth in Lending Act. The administrator has the administrative enforcement powers set forth in Section 108 of the Federal Truth in Lending Act.

HISTORY: 1988 Act No. 491, Section 2.

**SECTION 40‑39‑140.** Third‑party ownership of pledge and sold property; returns; pawnbroker remedies and liability exemption.

 (A) No pawnbroker shall accept property from a pledgor or seller upon which there is evidence of ownership by a third party without first taking reasonable steps to ascertain its true ownership. Any such item accepted for pawn or purchased by a pawnbroker must be returned on demand without fee to the third party owner.

 (B)(1) If property in the possession of a pawnbroker was leased to a pledgor or seller when the pledgor or seller pledged or sold the property to the pawnbroker, the pawnbroker shall return the property to the lessor if the lessor provides the pawnbroker with evidence that the property was the lessor's property and was leased to the pledgor or seller at the time the property was pledged or sold to the pawnbroker. For the purposes of this section, a lease or other written agreement containing a matching item description shall be sufficient evidence of the lessor's ownership of the property.

 (2) If property in the possession of a pawnbroker was leased to a pledgor or seller when the pledgor or seller pledged or sold the property to the pawnbroker and the pawnbroker returns the property to the lessor, the pledgor or seller must pay the pawnbroker:

 (a) the amount financed, the finance fee for the pawn transaction, and any costs associated with collecting those amounts and fees, if the property was pledged to the pawnbroker; or

 (b) the amount that the pawnbroker paid the seller and any costs associated with collecting that amount if the property was sold to the pawnbroker.

 (3) A pawnbroker is not liable to the pledgor or seller of property that is recovered by a lessor under item (1) for returning the property to a lessor.

HISTORY: 1988 Act No. 491, Section 2; 2016 Act No. 262 (H.4090), Section 13, eff June 9, 2016.

Effect of Amendment

2016 Act No. 262, Section 13, inserted paragraph designator (A); in (A), inserted "or seller" and "or purchased"; and added (B), relating to returns and pawnbroker remedies and liability exemption.

**SECTION 40‑39‑145.** Hold orders.

 (A)(1) When an appropriate law enforcement official has probable cause to believe that property in the possession of a pawnbroker is misappropriated or stolen, he may place a written hold order on the property. The written hold order must impose a holding period not to exceed ninety days unless extended by court order. The appropriate law enforcement official may rescind, in writing, any hold order. An appropriate law enforcement official may place only one hold order on the property at any given time.

 (2) A hold order must specify:

 (a) the name and address of the pawnbroker;

 (b) the name, title, and identification number of the representative of the appropriate law enforcement official or the court placing the hold order;

 (c) the name and address of the appropriate law enforcement official or court to which such representative is attached and the number, if any, assigned to the claim regarding the property;

 (d) a complete description of the property to be held, including model number and serial number if applicable;

 (e) the name of the person reporting the property to be misappropriated or stolen, unless otherwise prohibited by law;

 (f) the mailing address of the pawnbroker where the property is held; and

 (g) the expiration date of the holding period.

 (3) The pawnbroker or his representative must sign and date a copy of the hold order as evidence of receipt of the hold order and the beginning of the ninety‑day holding period.

 (4)(a) Except as provided in subitem (b), a pawnbroker may not release or dispose of property subject to a hold order except pursuant to a court order, a written release from the appropriate law enforcement official, or the expiration of the holding period of the hold order.

 (b) While a hold order is in effect, the pawnbroker shall, upon request, release the property subject to the hold order to the custody of the appropriate law enforcement official for use in a criminal investigation. The release of the property to the custody of the appropriate law enforcement official is not considered a waiver or release of the pawnbroker's property rights or interest in the property. Upon completion of the criminal proceeding, the property must be returned to the pawnbroker unless the court orders another disposition, in which case the court additionally shall order the conveying customer to pay restitution to the pawnbroker in the amount received by the conveying customer for the property together with reasonable attorney's fees and costs.

 (B) Upon the expiration of the holding period, the pawnbroker shall notify, in writing, the appropriate law enforcement official by certified mail, return receipt requested, that the holding period has expired. If, on the tenth day after the written notice has been received by the appropriate law enforcement official, the pawnbroker has not received from a court an extension of the hold order on the property and the property is not the subject of a proceeding under this subsection, title to the property shall vest in and be deemed conveyed by operation of law to the pawnbroker, free of any liability for claims but subject to any restrictions contained in the pawn transaction contract and subject to this chapter.

HISTORY: 2016 Act No. 262 (H.4090), Section 2, eff June 9, 2016.

**SECTION 40‑39‑150.** Administrative orders; penalties.

 (A) Upon finding that an action of a pawnbroker is in violation of the provisions of this chapter or of a law or regulation of this State or of the federal government or an agency of the state or federal government, the administrator may issue an administrative order requiring the pawnbroker to cease and desist from the action and may suspend, revoke, or refuse to issue a certificate of authority by order.

 (B) The administrator also may issue an administrative order imposing administrative penalties of up to seven hundred fifty dollars for each offense upon persons violating any of the provisions of this chapter up to a maximum of fifteen thousand dollars for the same set of transactions or occurrences. Each violation constitutes a separate offense. In addition, a person violating the provisions of Sections 40‑39‑20 and 40‑39‑30 is guilty of a misdemeanor and, upon conviction, must be punished by a fine not exceeding one thousand dollars or by imprisonment for a term not exceeding sixty days, or both.

HISTORY: 1988 Act No. 491, Section 2; 1991 Act No. 142, Section 26; 2005 Act No. 128, Section 11; 2016 Act No. 262 (H.4090), Section 14, eff June 9, 2016.

Effect of Amendment

2016 Act No. 262, Section 14, rewrote the section, transferring the authority to order certain equitable relief from the administrative law court to the department.

**SECTION 40‑39‑155.** Contested case hearings.

 A person aggrieved by the final administrative order may request a contested case hearing before the Administrative Law Court pursuant to the court's rules of procedure. If the person fails to timely request a contested case hearing, the department may bring an action to enforce its order pursuant to Chapter 23, Title 1.

HISTORY: 2016 Act No. 262 (H.4090), Section 3, eff June 9, 2016.

**SECTION 40‑39‑160.** Violations of Sections 40‑39‑80, 40‑39‑100, 40‑39‑110, and 40‑39‑130; pledgor's cause of action against pawnbroker.

 (1) If a pawnbroker violates Section 40‑39‑80, 40‑39‑100, 40‑39‑110, or 40‑39‑130, the pledgor has a cause of action to recover from the pawnbroker actual damages and the right in an action other than a class action to recover from the person violating these provisions a penalty in an amount to be determined by the court of not less than one hundred nor more than one thousand dollars. No action pursuant to this subsection may be brought more than one year after the scheduled or accelerated maturity of the debt.

 (2) A pledgor is not obligated to pay a charge in excess of that allowed by this chapter, and has a right of refund of any excess charge paid within ten days of written demand. A refund may not be made by reducing the consumer's obligation by the amount of the excess charge unless the pawnbroker has notified the pledgor that the pledgor may request a refund and the pledgor has not so requested within ten days thereafter.

 (3) In an action in which it is found that a pawnbroker has violated this chapter, the court shall award to the pledgor the costs of the action and to the pledgor's attorney reasonable fees. In determining attorney's fees the amount of recovery on behalf of the consumer is not controlling.

 (4) Liability to the pledgor for violation of Section 40‑39‑130 is in lieu of and not in addition to his liability under the Federal Truth in Lending Act. No action with respect to the same violation may be maintained pursuant to both subsection (1) of this section and the Federal Truth in Lending Act.

HISTORY: 1988 Act No. 491, Section 2.