

Senate Bill No. 199

(By Senators Klempa, Yost, Snyder and Kessler (Acting President))

[Introduced January 19, 2011; referred to the Committee on
Government Organization; and then to the Committee on the
Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §47-26-1, §47-26-2,
§47-26-3, §47-26-4, §47-26-5, §47-26-6, §47-26-7, §47-26-8 and
§47-26-9, all relating to pawnbrokers; definitions; requiring
pawnbrokers to comply with the provisions of this article;
establishing operating requirements for pawnbrokers;
confiscation of pledged or purchased goods; establishing
requirements for pawn tickets; requiring pawn transaction
reporting; establishing disclosure requirements for pawn
transactions to law-enforcement officers; authorizing the
Commissioner of Banking to promulgate forms and propose
necessary legislative rules; establishing misdemeanor offenses
for persons engaging in the business of pawnbrokers in
violation of the provisions of this article and for persons
using false or altered identification to pawn or sell property

1 to a pawnbroker; and criminal penalties upon conviction
2 thereof.

3 *Be it enacted by the Legislature of West Virginia:*

4 That the Code of West Virginia, 1931, as amended, be amended
5 by adding thereto a new article, designated §47-26-1, §47-26-2,
6 §47-26-3, §47-26-4, §47-26-5, §47-26-6, §47-26-7, §47-26-8 and
7 §47-26-9, all to read as follows:

8 **ARTICLE 26. PAWNBROKERS.**

9 **§47-26-1. Definitions.**

10 (a) "Commissioner" means the Commissioner of Banking of West
11 Virginia established in section one, article two, chapter
12 thirty-one-a of this code;

13 (b) "Pawnbroker" means any person, partnership, association or
14 corporation advancing money in a pawn transaction in exchange for
15 collateral in the property of the pledgor.

16 (c) "Pawn transaction" means a transaction between a
17 pawnbroker and a pledgor where the pledgor's property is placed in
18 the possession of the pawnbroker as security for money or other
19 valuable consideration provided by the pawnbroker on the condition
20 that the pledgor may pay a pawn charge and redeem his or her
21 property within a predetermined time frame: *Provided*, That pawn
22 transactions do not include those transactions where securities or
23 printed evidence of indebtedness are used as security for the
24 transaction.

25 (d) "Pledge" means an article or articles of property

1 deposited with a pawnbroker by a pledgor as security for money or
2 other consideration in a pawn transaction.

3 (e) "Pledgor" means a person who delivers the pledge into the
4 possession of a pawnbroker, unless such person discloses that he or
5 she is acting on behalf of another, and in such an event "pledgor"
6 means the disclosed principal.

7 **§47-26-2. Pawnbrokers to comply with the provisions of this**
8 **article.**

9 (a) On and after July 1, 2011, persons engaged in business as
10 a pawnbroker shall comply with the provisions of this article.

11 (b) Only licensed pawnbrokers that comply with the provisions
12 of this article may:

13 (1) Display any sign or other device in or about a place of
14 business, or use any advertising or printing material that
15 resembles an emblem or sign commonly used by pawnbrokers;

16 (2) Display any sign or other device in or about a place of
17 business or use any advertising or printing material indicating
18 that pawnbroker transactions take place at the business; and

19 (3) Represent to the public that he or she is a pawnbroker or
20 use the word "pawnbroker" either through advertising, soliciting,
21 signs or otherwise.

22 **§47-26-3. Operating requirements of pawnbrokers.**

23 (a) All pawnbrokers shall continuously display their business
24 hours on the exterior front door of their place of business or on
25 another conspicuous location that is clearly visible to the public.

1 (b) Items bought outright by a pawnbroker shall be held for
2 seven days before being disposed of or sold and shall be subject to
3 the reporting requirements of sections six and seven of this
4 article: *Provided*, That items on invoice purchased from a
5 manufacturer or wholesaler with an established place of business
6 are exempt from the provisions of this subsection.

7 (c) Property pledged to or purchased outright by a pawnbroker
8 may not be disfigured or its identity destroyed or affected in any
9 manner while under the control of the pawnbroker nor may any
10 property be concealed for forty-eight hours after the property is
11 received by the pawnbroker: *Provided*, That items on invoice
12 purchased from a manufacturer or wholesaler with an established
13 place of business are exempt from the provisions of this
14 subsection.

15 (d) All pawnbrokers shall obtain a statement from each seller
16 or pledgor on all sale or pawn transactions, except for refinance
17 pawn transactions or merchandise bought from a manufacturer or
18 wholesaler with an established place of business, affirming that
19 the pledger or seller is the lawful owner of the property and that
20 the property is free of all encumbrances. The statement shall
21 appear on the bill of sale or pawn ticket that is completed by the
22 seller or pledgor at the time of the transaction.

23 (e) All pawnbrokers and their employees or agents shall admit
24 the chief law-enforcement officer, or his or her authorized agent
25 with the approval of the chief, of the jurisdiction where the

1 business is located or any law-enforcement officer of the state
2 during the pawnbroker's posted, regular business hours. The
3 pawnbroker shall permit the officer to examine all records,
4 including pawn tickets and pawn transaction forms, required by this
5 article and any property listed in a record that is believed by the
6 officer to be missing or stolen.

7 **§47-26-4. Confiscation of pledged or purchased goods.**

8 (a) Pledged or purchased goods may not be confiscated without
9 a police report being filed by the rightful owner of the property.

10 (b) Pledged or purchased goods can be put on a one-time,
11 [thirty](#) day hold by the authorized law-enforcement authorities.

12 **§47-26-5. Powers and duties of the banking commissioner.**

13 The commissioner shall prescribe and publish all forms may be
14 necessary, and may propose rules for legislative approval in
15 accordance with the provisions of article three, chapter
16 twenty-nine-a of this code as needed, to effectuate the provisions
17 of this article.

18 **§47-26-6. Requirements for pawn tickets.**

19 (a) Every pawnbroker shall keep at his or her place of
20 business an accurate and legible record of all pawn tickets written
21 by the pawnbroker for the previous three years. A pawn ticket
22 shall be written in ink or by another permanent recordation method
23 of each transaction made in the course of his or her business. The
24 pawn ticket shall be made at the time of the transaction and shall
25 include at a minimum:

1 (1) A description of the make, manufacturer, model, model
2 number, size, shape, serial number, year of manufacture or other
3 description of the property received;

4 (2) The time, date and place of the transaction;

5 (3) A transaction number for each individual piece of property
6 received;

7 (4) The full name, residence address, and home telephone
8 number of the person or persons, together with a personal
9 description, including the height, weight, date of birth, social
10 security number, hair and eye color of such person or persons;

11 (5) Verification of the identity of the person by the
12 pawnbroker by examining the state-issued identification card,
13 driver's license or federal passport other government-issued photo
14 identification card of the person and noting the identification
15 exhibited, the issuing agency, and the number thereon with a copy
16 thereof being kept by the pawnbroker;

17 (6) The maturity date, amount financed, finance charge, total
18 payments, annual percentage rate, payment schedule and prepayment
19 terms;

20 (7) The signature of the pledgor upon placing the pledge and
21 upon redeeming the pledge; and

22 (b) In addition to the information required in subsection (a)
23 of this section, a description of firearms including the
24 manufacturer, make model and serial number of the firearms.

25 **§47-26-7. Required transaction reporting on a pawn transaction**

1 **form.**

2 (a) Every pawnbroker shall each day prepare a report on a pawn
3 transaction form of all the transactions conducted by the
4 pawnbroker for that day. Transactions shall be entered on the
5 report in chronological order of the occurrences of the
6 transactions.

7 (b) The pawn transaction form shall include all the
8 information required by section five of this article.

9 (c) The pawn transaction form shall be made available to
10 law-enforcement officers pursuant to section three of this article.

11 **§47-26-8. County and municipal regulation of pawnbrokers.**

12 This article may not be construed to prohibit or otherwise
13 limit any county or municipality of this state from adopting an
14 ordinance, to the extent that the ordinance does not conflict or
15 create lesser requirements than this article or any other provision
16 of this code, establishing additional requirements of pawnbrokers
17 within its jurisdiction. Pawnbrokers located in a county or
18 municipality in which an ordinance establishes reporting
19 requirements to local law-enforcement officials are not required to
20 provide duplicate information to other law-enforcement officials
21 pursuant to section three of this article.

22 **§47-26-9. Criminal penalties for violation of this article.**

23 (a) Any person who engages in the business of a pawnbroker in
24 violation of this article is guilty of a misdemeanor and, upon
25 conviction thereof, shall be fined not more than \$1,000.

1 (b) Any person selling or pledging property to a pawnbroker
2 who uses false or altered identification or a false declaration of
3 ownership in violation of the provisions in this article is guilty
4 of a misdemeanor and, upon conviction thereof, shall be fined not
5 more than \$500 or confined in jail not more than one year, or both
6 fined and confined.

NOTE: The purpose of this bill is to establish operating and other requirements for pawnbrokers and pawn transactions. The bill: establishes operating requirements for pawnbrokers; establishes procedures for confiscation of goods; establishes requirements for pawn tickets; requires pawn transaction reporting; establishes disclosure requirements for pawn transactions to law-enforcement officers; authorizes the Commissioner of Banking to promulgate forms and propose necessary legislative rules; and establishes misdemeanor offenses for persons engaging in the business of a pawnbroker in violation the provisions of this article and for persons using false or altered identification to pawn or sell property to a pawnbroker and criminal penalties upon conviction thereof.

This article is new; therefore, strike-throughs and underscoring have been omitted.