

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

**Second Engrossed
Committee Substitute
for
Senate Bill 511**

SENATORS JEFFRIES AND LINDSAY, *original sponsors*

[Originating in the Committee on the Judiciary;

reported on January 29, 2020]

1 A BILL to amend and reenact §47-26-1, §47-26-2, and §47-26-3 of the Code of West Virginia,
2 1931, as amended; and to amend said code by adding thereto two new sections,
3 designated §47-26-2a and §47-26-4, all relating generally to the regulation of
4 pawnbrokers; removing an exception for certain transactions from the report required of
5 all pawnbrokers; requiring all pawnbrokers to be equipped with certain surveillance
6 equipment and signage effective January 1, 2021; prohibiting pawnbrokers from doing
7 business with certain persons; prohibiting pawnbrokers from purchasing certain items or
8 transacting with certain items from anyone; creating misdemeanor offenses for certain
9 violations; directing information to be provided to law enforcement; requiring provision of
10 certain information to a third-party reporting database, and providing certain exceptions to
11 those reporting requirements; and increasing the penalties for existing criminal offenses
12 related to pawnbrokers.

Be it enacted by the Legislature of West Virginia:

ARTICLE 26. PAWNBROKERS.

§47-26-1. Definitions.

1 “General-use prepaid gift card” means a card, code, or other device that is issued on a
2 prepaid basis in a specified amount which may or may not be increased or reloaded in exchange
3 for payment and which is redeemable upon presentation at multiple unaffiliated merchants for
4 goods or services or usable at an automated teller machine.

5 “Gift certificate” means a card, code, or other device that is issued on a prepaid basis in a
6 specific amount that may not be increased or reloaded in exchange for payment and is
7 redeemable upon presentation to a single merchant or an affiliated group of merchants for goods
8 or services.

9 ~~(a)~~ “Pawnbroker” means any person, partnership, association, or corporation, or employee
10 thereof, advancing money in a pawn transaction in exchange for collateral in the property of the
11 pledgor. “Pawnbroker” does not mean any bank which is regulated by the West Virginia Division

12 of Financial Institutions; the Comptroller of the Currency of the United States; the Federal Deposit
13 Insurance Corporation; the Board of Governors of the Federal Reserve System, or any other
14 federal or state authority and all affiliates thereof; any bank or savings and loan association whose
15 deposits or accounts are eligible for insurance by the Bank Insurance Fund or the Savings
16 Association Insurance Fund or other fund administered by the Federal Deposit Insurance
17 Corporation and all affiliates thereof, any state or federally chartered credit union, or any finance
18 company subject to licensing and regulation by the West Virginia Division of Financial Institutions.

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

25 (c) "Pledgor" means a person who delivers the pledge into the possession of a
26 pawnbroker.

27 (d) "Purchase" or "purchase transaction" means the transfer and delivering of goods by a
28 person to a pawnbroker by acquisition for value, consignment, or trade for other goods. This
29 definition does not include purchases by pawnbrokers of items not used or intended for resale,
30 consignment, or trade of the item to another.

31 "Store gift card" means a card, code, or other device that is issued on a prepaid basis in
32 a specified amount, whether or not that amount may be increased or reloaded, either in exchange
33 for payment or as a means of refunding money which is redeemable upon presentation at a single
34 merchant or an affiliated group of merchants for goods and services.

§47-26-2. Purchase and pawn transaction records.

1 (a) All pawnbrokers shall make and maintain a transaction report on all purchase or pawn
2 transactions. ~~except for refinance pawn transactions or merchandise bought from a manufacturer~~

3 ~~or wholesaler with an established place of business~~ The required transaction report shall include
4 the following:

5 (1) The date of the transaction;

6 (2) The name of the seller;

7 (3) The name of the clerk who handled the transaction;

8 (4) The corresponding pawn ticket number;

9 (5) The terms of the loan or purchase;

10 (6) A copy of the seller's or pledgor's government photo identification and type: *Provided,*

11 That if the seller or pledgor does not have a government-issued photo identification, the
12 pawnbroker shall have a photograph of the seller or pledgor; and

13 (7) A detailed description of the property.

14 (b) For purposes of meeting the requirements of subsection (a) of this section, a detailed
15 description of the property shall include the following:

16 (1) In the case of firearms, the description shall include the brand, model, caliber, type,
17 and serial number;

18 (2) In the case of jewelry, the type of jewelry presented, the karat weight, whether it is
19 made of white gold, yellow gold, or other precious metals, and other description of the stones,
20 shape, cut, and oddities, etc., which are sufficient to describe the article of jewelry; or

21 (3) In the case of other types of articles and property, the description shall include the type
22 of article, brand, model, and serial number on the article, or any other ~~such~~ identifying information
23 or description ~~to~~ which is sufficient to specifically describe the item or property.

24 (c) The seller or pledgor shall ~~be required to~~ sign the pawn transaction statement or
25 purchase transaction statement, and a signed statement from the seller or pledgor affirming
26 ownership shall appear on the bill of sale or pawn ticket that is completed by the seller or pledgor
27 at the time of the transaction.

28 (d) The pawnbroker shall maintain the original of all purchase or pawn transaction
29 statements for three years and shall make the original copies of the purchase or pawn transaction
30 statements available for inspection by law-enforcement officers and law-enforcement agencies
31 upon request during the posted hours of operation of the business.

32 (e) A pawnbroker shall equip each location at which it conducts pawn transactions with
33 electronic monitoring/recording equipment that records all public and nonpublic entrances and
34 exits to the building and all transactions being conducted. The equipment shall consist of video
35 or digital imaging of a sufficient resolution and clarity to be easily monitored and reviewed on
36 playback. All business locations shall keep an archive of video for 30 days. A sign of sufficient
37 size informing a customer of a videotaping shall be located in a conspicuous place on the business
38 premises. The requirements in this subsection are effective January 1, 2021.

39 ~~(e)~~ (f) The information required to be collected pursuant to this section is confidential, is
40 not public record, and should only be disclosed as provided in this section or otherwise provided
41 by law: *Provided*, That the confidential nature of this information in no way impedes the
42 pawnbroker's duty to accurately collect and timely provide the information to law enforcement.

§47-26-2a. Prohibitions.

1 A pawnbroker, in the course of business, may not purchase, accept in pawn, receive in
2 trade, or exchange for goods:

3 (1) Articles from a minor;

4 (2) Articles from a person who appears to be intoxicated or under the influence of a
5 controlled substance at the time of the transaction;

6 (3) Articles that the pawnbroker knows, or has reason to believe, are stolen;

7 (4) A general-use prepaid gift card, store gift card, store credit, merchandise card, gift
8 certificate, activated phone card, or similar items; or

9 (5) Property with serial numbers, personalized inscriptions or initials, or other identifying
10 marks that the pawnbroker knows, or has reason to believe, have been intentionally altered or
11 rendered illegible.

§47-26-3. Penalties; pawnbroker.

1 A pawnbroker who violates the provisions of this article is guilty of a misdemeanor and,
2 upon conviction thereof, shall be fined not less than ~~\$100~~ \$250 and not more than ~~\$200~~ \$1,000
3 for each offense. A pawnbroker convicted of a third violation of this article within a two-year period
4 shall be confined in jail for up to 30 days in addition to the fine assessed.

§47-26-4. Providing information to law-enforcement agencies; providing information
through third-party database.

1 (a) The pawnbroker shall satisfy the requirements of §47-26-2 of this code by transmitting
2 the pawn and purchase transaction information electronically to a database in accordance with
3 this section: *Provided*, That paper copies shall be made available for an on-site inspection upon
4 request of any appropriate law-enforcement authority.

5 (b) As used in this section:

6 (1) "Database" means a computer database established and maintained by a third party
7 engaged in the business of establishing and maintaining one or more databases;

8 (2) "Permitted user" means a person authorized by law-enforcement personnel to access
9 the database;

10 (3) "Reportable data" means the information required to be recorded by pawnbrokers for
11 pawn and purchase transactions pursuant to §47-26-2 of this code, excluding the information
12 recorded under §47-26-2(b)(1) of this code;

13 (4) "Reporting pawnbroker" means a pawnbroker who transmits reportable data
14 electronically to the database; and

15 (5) "Search" means the accessing of a single database record.

16 (c) The database shall provide appropriate law-enforcement officials with the information
17 contained in §47-26-2 of this code to facilitate the investigation of alleged property crimes while
18 protecting the privacy rights of pawnbrokers and pawnshop customers with regard to their
19 transactions.

20 (d) The database shall enable reporting pawnbrokers to transmit to the database through
21 the Internet reportable data for each pawn and purchase transaction. The database shall contain
22 the reportable data recorded by reporting pawnbrokers pursuant to this section. The database
23 shall also contain security features and protections necessary to ensure that the reportable data
24 maintained in the database can only be accessed by permitted users in accordance with the
25 provisions of this section. Pawn and purchase transaction information shall maintain its
26 confidential status and shall only be used for law-enforcement purposes consistent with the
27 provisions of this article.

28 (e) A pawnbroker shall be responsible for establishing and maintaining the database. A
29 pawnbroker may charge law-enforcement agencies for access to the database. Law-enforcement
30 agencies may be charged directly by the third party or by the pawnbroker for access to the
31 database, and the charge shall be reasonable in relation to the costs of the pawnbroker in
32 establishing and maintaining the database.

33 (f) The information in the database may only be accessible through the Internet to
34 permitted users who have provided a secure identification or access code to the database. A
35 permitted user may access database information from any jurisdiction within this state. The
36 database shall record, for each search, the identity of the permitted user, the pawn or purchase
37 transaction involved in the search, and the identity of any customer accessed through the search.
38 Each search record shall be made available to other permitted users within this state regardless
39 of their jurisdiction.

40 (g) A pawnbroker shall meet the following requirements:

41 (1) Provide all reportable data to permitted users by transmitting it through the Internet to
42 the database;

43 (2) Transmit all reportable data for one business day to the database prior to the end of
44 the following business day; and

45 (3) Make available for on-site inspection to any appropriate law-enforcement official, upon
46 request, paper copies of any pawn or purchase transaction documents.

47 (h) If a reporting pawnbroker or permitted user discovers any error in the reportable data,
48 notice of the error shall be given to the database, which has 30 days in which to correct the error.

49 Any reporting pawnbroker experiencing a computer malfunction preventing the transmission of
50 reportable data or receipt of search requests is allowed no more than 60 days to repair the
51 malfunction, and during that period the pawnbroker is not in violation of this section if good faith
52 efforts are made to correct the malfunction.

53 (i) A reporting pawnbroker is not obligated to incur any cost, other than Internet service
54 costs, in preparing, converting, or delivering its reportable data to the database.