

Enrolled
House Bill 2066

Sponsored by Representative NATHANSON (at the request of Oregon Pawnbrokers Association)
(Presession filed.)

CHAPTER

AN ACT

Relating to pawnbrokers; amending ORS 726.010, 726.280, 726.370 and 726.380.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 726.010 is amended to read:

726.010. As used in this chapter[, *unless the context requires otherwise*]:

[(1) "Director" means the Director of the Department of Consumer and Business Services.]

[(2)] (1) "Pawnbroker" means [*any*] a person, copartnership, association or corporation **that**:

(a) [*Lending*] **Lends** money at a [*higher*] rate of interest **greater** than 10 percent per annum on the deposit or pledge of personal property [*other than choses in action, vehicles required by law to be registered with the Department of Transportation, securities or printed evidences of indebtedness*];

(b) [*Purchasing any*] **Purchases** personal property [*other than choses in action, vehicles required by law to be registered with the Department of Transportation, securities or printed evidences of indebtedness*] on the direct or implied condition of selling [*it*] **the personal property** back at a stipulated price that would amount to [*the payment of*] **paying** interest or consideration in excess of 10 percent per annum; or

(c) [*Doing*] **Does** business as a storage [*warehouseman*] **warehouse operator** and [*lending*] **lends** money at a [*higher*] rate of interest **greater** than 10 percent per annum upon goods, wares, merchandise or personal property pledged or deposited as collateral security [*other than vehicles required by law to be registered with the Department of Transportation*].

(2)(a) **"Personal property" means tangible property a person owns, including:**

(A) **Chattels and moveables, such as merchandise, furniture, goods, machinery, tools and equipment, supplies and media;**

(B) **Pledges that are not required to be registered with the Department of Transportation;**

(C) **Snowmobiles, as defined in ORS 801.490;**

(D) **Trailers that have a loaded weight of not more than 8,000 pounds and that are designed or manufactured, or are otherwise suitable, for carrying a boat, snowmobile or all-terrain vehicle; and**

(E) **Equipment used for farming.**

(b) **"Personal property" does not include:**

(A) **Pledges that are required to be registered with the Department of Transportation, unless the pledge is a snowmobile or a trailer described in paragraph (a) of this subsection;**

(B) **Choses in action;**

(C) **Securities or printed evidence of indebtedness; or**

(D) Intangible property.

(3) "Pledge" means *[any article]* **personal property** deposited with a pawnbroker in the course of the business of the pawnbroker *[as defined in subsection (2) of this section]*.

(4) "Pledgor" means *[the]* **a person** who delivers a pledge into the possession of a pawnbroker, unless the person discloses that the person is or was acting for another, in which event "pledgor" means the disclosed principal.

(5) "Pledge loan" means a loan *[made by]* **that** a pawnbroker **makes** to a pledgor and **that is** secured by a pledge.

SECTION 2. ORS 726.280 is amended to read:

726.280. (1) Every pawnbroker shall keep a register in which *[shall be recorded]* **the pawnbroker records** in ink or in electronic form:

(a) The date of the transaction.

(b) The serial number of the pledge loan.

(c) The name and address of the pledgor, or if *[the pledge is made by]* a person acting as agent for a disclosed principal **makes a pledge**, the name and address of **the** principal and **the** agent.

(d) An identifying description of the *[article or articles pledged]* **pledge**.

(e) The amount of the pledge loan.

(f) The date on which *[such]* **the** pledge loan was canceled.

(g) A notation as to whether *[it]* **the pledge** was redeemed or renewed, or whether the pledge was forfeited.

(h) A notation that indicates that a lien search of the pledge has been conducted in the pledgor's county of residence or with the state agency that is responsible for recording liens on the category of property to which the pledge belongs.

(2) All entries in the register *[shall]* **must** be made in the English language and *[shall]* **must** be open to the inspection of any public official, police officer or any other person who is duly authorized or empowered by the laws of this state to make *[such]* **an** inspection.

(3) Every pawnbroker shall maintain an alphabetical file from which can be determined the total obligations of any one pledgor.

(4) Subject to the provisions of this chapter, the Director of the Department of Consumer and Business Services may prescribe the form of other books and records *[to be kept by]* the pawnbroker **must keep**. All records shall be preserved and available for at least two years after making the final entry on any pledge loan recorded *[therein]* **in the books or records**.

SECTION 3. ORS 726.370 is amended to read:

726.370. (1) If more than one person claims the right to redeem a pledge, the pawnbroker *[shall incur no liability]* **is not liable** for refusing to deliver the pledge until the respective rights of the claimants have been adjudicated **unless the pawnbroker fails to verify whether the pledge is subject to a lien or other encumbrance, if the pledge is:**

(a) **A boat, as defined in ORS 830.005;**

(b) **A snowmobile, as defined in ORS 801.490;**

(c) **A trailer, as described in ORS 726.010 (2)(a)(D); or**

(d) An all-terrain vehicle that is not required to be registered with the Department of Transportation.

(2) In *[case of]* an action brought against the pawnbroker for recovery of the pledge, the pawnbroker may as a defense require all known claimants to interplead.

(3) If *[no action is brought against the pawnbroker by either claimant]* **either claimant does not bring an action against the pawnbroker** within 30 days after notice of an adverse claim, the pawnbroker may *[proceed to]* dispose of the pledge as provided in this chapter.

SECTION 4. ORS 726.380 is amended to read:

726.380. (1) A pawnbroker *[shall be]* **is** liable for the loss of a pledge or a part *[thereof]* **of a pledge** or for *[injury thereto resulting]* **an injury to a pledge that results** from failure to exercise reasonable care. *[Such care shall include]* **Reasonable care includes** maintaining sufficient insurance coverage against possible loss *[due to]* **as a result of** fire, theft and burglary so as to protect

the interest of the pledgor for the amount of the loan. [In case of loss the burden of proof to establish due care shall be upon the pawnbroker.]

(2) A pawnbroker shall hold a pledge in a gated, secured facility that is designed, constructed, furnished and maintained to present physical deterrents to a person's ability to enter into the facility without authorization and remove the pledge, if the pledge is:

- (a) A boat, as defined in ORS 830.005;**
- (b) A snowmobile, as defined in ORS 801.490;**
- (c) A trailer, as described in ORS 726.010 (2)(a)(D); or**
- (d) An all-terrain vehicle that is not required to be registered with the Department of Transportation.**

(3) The pawnbroker has the burden of proof to establish due care if a pledge is lost.

(4) The pawnbroker [shall have] has a first lien on any pledge for the amount of the pledge loan and interest in all cases except where goods are stolen or where a prior lien exists by virtue of any provision of law.

Passed by House March 19, 2013

.....
Ramona J. Line, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate May 22, 2013

.....
Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2013

Approved:

.....M,....., 2013

.....
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

.....
Kate Brown, Secretary of State