

ACT 192

S.B. NO. 2432

A Bill for an Act Relating to Pawnbrokers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the current law governing pawnbrokers has not been amended in thirty-seven years and may even have been inadequate and out of date when first enacted. A recent federal court ruling found that a typical sale with a buy-back option and buy-back fee constituted a loan which was subject to disclosures required by the federal Truth-in-Lending Act. Viewed as a loan, this typical transaction also exceeded the interest rate allowed by the existing pawnbroker law.

The legislature also finds that the interest schedules contained in existing law are insufficient to allow pawnbrokers to cover their costs and make a reasonable profit.

In short, the current statutory framework is unworkable and places both pawnbrokers and their customers at risk; either the pawnbrokers are violating the law, or the customers must sell their possessions outright, with nothing but chance to allow them to reclaim the goods. The purpose of this Act is to create a new statutory framework which will operate to meet the needs of both parties in a pawn transaction to the end that pawnbrokers may expect a reasonable profit and customers may expect to recover their possessions pursuant to understandable ground rules.

SECTION 2. Chapter 445, part V, Hawaii Revised Statutes, is amended by adding nine new sections to be appropriately designated and to read as follows:

“§445- Pawn transaction agreement; disclosure requirements. (a) All pawn transaction agreements shall be in writing.

(b) The pawnbroker shall provide the customer with a signed copy of the pawn transaction agreement.

(c) The pawn transaction agreement shall include:

- (1) The name, address, and telephone number of the pawnbroker;
- (2) The name, address, telephone number, and date of birth of the customer;
- (3) The type of identification presented by the customer;
- (4) The pawn transaction number;
- (5) The date on which the pawn transaction agreement is signed;
- (6) The net amount paid to, received by, or paid or payable for the account of the customer, expressed as the “amount financed”;
- (7) The dollar amount of the pawn finance charge, expressed as the “finance charge”;
- (8) The rate of the pawn finance charge as applied to the amount financed, expressed as the “annual percentage rate”;
- (9) The total amount that must be paid to redeem the pledged goods on or before the maturity date, expressed as the “total of payments”;
- (10) An identification of pledged goods, including all serial numbers and model numbers, where available, and any other identifying markings or information;
- (11) The maturity date of the pawn transaction;

- (12) A statement to the effect that the customer is not obligated to redeem the pledged goods, and the pledged goods shall be forfeited to the pawnbroker upon the expiration of the last holding period, provided that the pledged goods may be redeemed by the customer within the holding period by making payment of the originally agreed total of payments plus an additional pawn finance charge in accordance with section 445- ; and
- (13) The date on which the holding period expires.

§445- Pawn finance charge. (a) Pawn finance charges shall be deemed to be earned at the time the agreement for the pawn transaction is made and shall not be subject to a refund.

(b) The maturity date of any pawn transaction may be changed to a subsequent date no more than two times by agreement between the customer and the pawnbroker upon payment of the pawn finance charge, and in that event the pawnbroker may contract for and receive another pawn finance charge computed in accordance with this part as for a new transaction.

(c) Pledged goods not redeemed by the customer on or before the date fixed as the maturity date for the transaction in the pawn agreement shall be held by the pawnbroker for at least thirty days following the maturity date, and may be redeemed by the original customer within the holding period by the payment of an additional pawn finance charge equal to one-thirtieth of the pawn finance charge stated in the pawn transaction agreement for each day following the maturity date, including the day on which the pledged goods are redeemed.

(d) Where a pawnbroker is conducting business in accordance with this part, the pawn finance charge shall not be governed by chapter 478.

§445- Prohibited practices. No pawnbroker shall:

- (1) Charge or receive any pawn finance charge exceeding twenty per cent a month;
- (2) Contract for or receive any amounts other than the pawn finance charge in connection with a pawn transaction;
- (3) Accept a pledge or purchase of property from a person under the age of eighteen years;
- (4) Accept any waiver, in writing or otherwise, of any right or protection accorded a customer under this part;
- (5) Fail to exercise reasonable care to protect pledged goods from loss or damage;
- (6) Fail to return pledged goods to a customer within three business days of payment of the full amount due the pawnbroker on the pawn transaction;
- (7) Make any charge for insurance, storage, or handling in connection with a pawn transaction;
- (8) Enter into a pawn transaction which has a maturity date more than one month after the date the pawn transaction agreement is signed;
- (9) Accept pledged goods or buy merchandise from a person unable to supply verification of identity by photo identification card, a state-issued identification card, driver's license, or federal government-issued identification card; or
- (10) Make any agreement requiring the personal liability of a customer in connection with a pawn transaction or creating any obligation on the part of the customer to redeem pledged goods or make any payment on a pawn transaction.

§445- Redemption of pledged goods. (a) Except as otherwise provided by this part, any person properly identified as the customer in a pawn transaction or as the assignee or agent thereof, and presenting a pawn transaction agreement to the pawnbroker, shall be presumed to be entitled to redeem the pledged goods described therein.

(b) If a pawn transaction agreement is lost, destroyed, or stolen, the customer may so notify the pawnbroker in writing, and receipt of such notice shall invalidate the pawn transaction agreement as an instrument to redeem the pledged goods, if the pledged goods have not previously been redeemed. Before delivering the pledged goods or issuing a new pawn transaction agreement, the pawnbroker may require the customer to sign a written statement or affidavit concerning the loss, destruction, or theft of the pawn transaction agreement.

§445- Pawnbroker's recourse. (a) Unless found to be stolen, mortgaged, or otherwise encumbered, any pledged goods not redeemed within the last holding period may thereafter, at the option of the pawnbroker, be forfeited and become the property of the pawnbroker.

(b) Where the customer has pledged defective goods, the only recourse of a pawnbroker shall be against the pledged goods.

§445- Pawnbroker liability. Where the pawnbroker has exercised reasonable care in holding pledged goods, a pawnbroker's liability shall be limited to twice the original pawn amount or replacement in kind, at the pawnbroker's option, where the pledged goods have become lost, damaged, or stolen.

§445- Recordkeeping. A copy of all pawn transactions shall be kept on the pawnshop premises and open to inspection by the proper authorities for a period of one year after the maturity date.

§445- Compliance with other applicable law. All pawnbrokers shall comply with the requirements of chapter 486M.

§445- Conformity with federal law. Every pawn transaction agreement that complies with the disclosure requirements of the federal Truth in Lending Act as of the date upon which the pawn transaction agreement is signed shall be deemed to comply with the disclosure provisions of this part."

SECTION 3. Section 445-131, Hawaii Revised Statutes, is amended to read as follows:

"§445-131 [Defined. Every person who advances for interest or for or in expectation of profit, gain, or reward any sum of money upon security of any goods or chattels whatsoever, taken by such person by way of pawn or pledge, shall be deemed and taken to be a pawnbroker within the meaning of section¹ 445-131 to 445-136; provided that nothing therein shall apply to loans or advances made on any goods or chattels, bonds, bills, or other security taken by merchants, bankers, commission agents, or auctioneers in the ordinary and bona fide course of mercantile or banking transactions.] **Definitions.** As used in this part:

"Holding period" means a period of time not less than thirty days after the maturity date, in which a customer has the right to redeem pledged goods by paying a pawnbroker the amount provided in the applicable pawn transaction agreement and an additional pawn finance charge.

"Maturity date" means the date upon which a pawn transaction agreement expires and the holding period begins to run.

"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 shall be one-thirtieth of a month.

"Pawnbroker" means a person engaged in the business of making pawn transactions, but does not include financial institutions whose deposits are federally insured and companies that are regulated or supervised by the division of financial institutions.

"Pawn finance charge" means the sum of all charges, payable directly or indirectly by the customer and imposed directly or indirectly by the pawnbroker, including charges for insurance, handling, storage, and any other charge imposed incidental to the pawn transaction.

"Pawn transaction" means the act of lending money on the security of pledged goods or the act 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.

"Pledged goods" means tangible personal property, other than choses in action, securities, or printed evidences of indebtedness, that is deposited with or otherwise actually delivered into the possession of a pawnbroker in the course of the pawnbroker's business and in connection with a pawn transaction."

SECTION 4. Section 445-135, Hawaii Revised Statutes, is amended to read as follows:

"§445-135 Acting without license; penalty. No person shall engage in business as a pawnbroker without first obtaining a license from the treasurer. Any person who carries on the business of pawnbroker except by authority of the license provided for in [sections 445-131 to 445-134] ~~this part~~ shall be fined not less than \$5,000 nor more than [\$300¹] \$25,000."

SECTION 5. Section 445-136, Hawaii Revised Statutes, is amended to read as follows:

"§445-136 Breach of condition; penalty. Every licensed pawnbroker who fails to comply with any of the [conditions mentioned in section 445-133] provisions of this part shall be fined not more than [\$300] \$2,500 for each violation and shall forfeit the pawnbroker's license."

SECTION 6. Sections 445-133 and 445-134, Hawaii Revised Statutes, are repealed.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 8. This Act shall take effect upon its approval.

(Approved June 12, 1992.)

Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5