

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 1395 (Delegate Rosenberg)
Economic Matters

Business Regulation - Pawnbrokers - Registry

This bill requires the Secretary of Labor, Licensing, and Regulation to maintain a current and complete internal, online registry available through the Internet only to all pawnbrokers in Maryland.

The bill takes effect January 1, 2007.

Fiscal Summary

State Effect: Potential general fund expenditure increase for the Department of Labor, Licensing, and Regulation (DLLR) of \$265,500 in FY 2007 associated with web site development and maintenance. However, these costs may be deferred until obstacles related to the availability of conviction data for the web site can be overcome. Potential minimal general fund revenue increase due to the bill's penalty provision.

Local Effect: Revenues could increase minimally due to the bill's penalty provision.

Small Business Effect: Potential meaningful. Pawnbrokers may be required to purchase hardware and/or software, in addition to an Internet connection, to access the online registry.

Analysis

Bill Summary: The registry is required to contain the names of all persons convicted of specified crimes within three years. If three years have passed since a conviction of one of the specified offenses, the Secretary must remove the person's name from the registry.

A pawnbroker is prohibited from transacting with a person on the registry. The bill requires a pawnbroker, before making a transaction, to require valid positive identification from the person and consult the online registry. A violation by a pawnbroker is a misdemeanor which subjects the violator to a maximum fine of \$5,000.

DLLR is required to adopt regulations to carry out these provisions and may consult with the Department of Public Safety and Correctional Services (DPSCS) for this purpose.

A “pawnbroker” is defined as a person who (1) lends or advances money or other items for profit on the pledge and possession of tangible personal property, or other valuable items, other than securities or written or printed evidences of indebtedness or title; or (2) deals in the purchasing of such property or items on condition of selling the property or item back to the seller at a stipulated price.

Current Law: Under Title 12 of the Business Regulation Article, the Maryland Secondhand Precious Metal Object Dealers and Pawnbrokers Act, “pawnbroker” means a person who engages in pawn transactions. Title 12 does not apply to a pawnbroker located in a county that regulates pawnbrokers unless the pawnbroker does business as a dealer. A “pawn transaction” means a loan of money by a dealer on deposit or pledge of personal property or other valuable thing other than securities or printed evidences of indebtedness, or a purchase by a dealer of personal property or other valuable things on condition of selling the same back at a stipulated price.

“Dealer” means an individual who acquires commercially from the public or trades commercially with the public in secondhand precious metal objects or, unless otherwise provided, a pawnbroker. The term includes a retail jeweler when commercially trading with the public in secondhand precious metal objects.

Licensing

An individual must have a license before the individual does business as a dealer in the State. All pawnbrokers must be licensed as dealers, except for pawnbrokers who are exempt from State licensing due to being located in a county that regulates pawnbrokers unless the pawnbroker does business as a dealer.

The following facts must be taken into consideration in the granting, denial, renewal, suspension, or revocation of a license or the reprimand of a licensee when an applicant or licensee is convicted of a felony or relevant misdemeanors: (1) the nature of the crime; (2) the relationship of the crime to the activities authorized by the license; (3) with respect to a felony, the relevance of the conviction to the fitness and qualification of the

applicant or licensee to act as a pawnbroker or a secondhand precious metal object dealer; (4) the length of time since the conviction; and (5) the behavior and activities of the applicant or licensee before and after the conviction.

Records of Transactions

Each pawnbroker must make a written record, on a form provided by the Secretary of Labor, Licensing, and Regulation of each business transaction that involves:

- lending money on pledge of personal property, other than a security or printed evidence of indebtedness;
- buying personal property on condition of selling it back at a stipulated price; or
- buying specified items for the purpose of resale, including firearms, televisions, watches, personal computers, furs, and tangible personal property pledged as collateral.

Each pawnbroker is required to make a written record, on a form provided by the Secretary, of each transaction that involves the acquisition of any of the specified items for the purpose of resale. A separate record entry must be made for each item involved in a transaction. However, items in a matching set may be recorded as a set if acquired in a single transaction. A dealer must tag each item individually with a number that corresponds to the transaction under which it was acquired. However, items acquired in a matching set may be tagged as a set.

In addition to any other information required by the Secretary, the records of a pawnbroker must include, for each item pawned:

- the type of item;
- its manufacturer, model number, year of manufacture if known, and serial number if known; and
- its color and size.

A dealer must submit a copy of each record to the primary law enforcement unit (Department of State Police, local police department, or sheriff depending on the county in which the license is held). A dealer must allow an authorized law enforcement officer to inspect a record on-site as part of a stolen property investigation or an investigation of a violation of the Act. A dealer who refuses to allow access or to produce records is subject to disciplinary action. In addition, the Secretary is authorized to impose a civil penalty on a licensee for a violation of these provisions of up to \$500 for each violation. In setting the amount of a civil penalty, the Secretary must consider the seriousness of the

violation, the good faith of the violator, any previous violations, the harmful effect of the violation, and any other relevant factors.

Release of Stolen Property

A dealer or pawnbroker is required to release an item of personal property, other than a security or printed evidence of indebtedness, located at the place of business of the dealer or pawnbroker to a primary law enforcement unit if:

- the item is established to have been stolen;
- the owner of the item or victim of the theft has positively identified the item;
- the owner of the item or the agent or designee of the owner has provided an affidavit of ownership;
- the stolen property report describes the item in a specified manner; and
- the law enforcement unit provides a receipt to the dealer or pawnbroker that describes the item and that notifies the dealer or pawnbroker of their right to file an application for a statement of charges against the individual who sold them the item, or other alleged thief for theft.

A dealer must retain in their place of business any item of personal property or other valuable thing, other than securities or printed evidence of indebtedness, for an additional period of 12 days, if the item has not been positively identified and the primary law enforcement unit requests retention with reasonable cause to believe the item has been stolen.

When a primary law enforcement unit no longer needs an item for evidence, the primary law enforcement unit must give the item to its owner. A dealer or pawnbroker who is required to release an item under these provisions is not entitled to reimbursement for any pledge or purchase price paid for the item from the law enforcement unit to which the item was released, the item's owner, or the victim of the theft.

Background: There are 274 licensed secondhand dealers and pawnbrokers in Maryland. The following counties regulate pawnbrokers and/or secondhand dealers:

- Anne Arundel (pawnbrokers);
- Baltimore City (pawnbrokers, secondhand property, antique, and consignment goods businesses);
- Calvert (pawnbrokers);
- Harford (pawnbrokers);

- Howard (pawnbrokers – Chapter 379 of 2005 requires a licensed dealer of precious metal objects in Howard County to submit a copy of specified records electronically to law enforcement units by the end of each business day; it does not apply to an antique dealer that does not engage in pawn transactions and holds a valid trader’s license or dealer’s license under State law);
- Prince George’s (secondhand and pawn dealers); and
- Washington (pawnbrokers).

The Montgomery County Council is authorized to regulate pawnbrokers, but no other reference to pawnbrokers or pawnshops is in the county code. Secondhand personal property dealers are regulated, but these provisions do not mention pawnbrokers specifically. These dealers are defined as “conducting the business of buying, obtaining, acquiring or receiving secondhand personal property and any person engaged as an auctioneer.”

Queen Anne’s County also has express powers to regulate pawnshops, but there is no additional reference in the county code.

Garrett County designates the sheriff’s department as the primary law enforcement agency for the purposes of the State secondhand and precious metals and gem dealers provisions, but does not mention either these dealers or pawnbrokers otherwise.

The Criminal Justice Information System (CJIS) Central Repository is established within DPSCS to collect, manage, and disseminate Maryland criminal history record information for criminal justice and noncriminal justice (*e.g.*, employment and licensing) purposes. CJIS is a fingerprint-supported system for positive identification. CJIS is the database containing the criminal history record information reflecting the official fingerprint-supported criminal record of each offender charged and adjudicated in Maryland. The CJIS Central Repository is administratively managed by DPSCS and is designated by the FBI as Maryland’s State identification bureau for the exchange of criminal history records.

Only a “criminal justice unit,” as defined in statute, may have direct access to information maintained by CJIS. Protocols currently exist for indirect access to the information through a request and response process on a case-by-case basis.

The Judicial Information Systems (JIS), a unit of the Administrative Office of the Courts, maintains conviction databases for the Maryland Judiciary. Although JIS information may be accessed electronically by the public, it is not complete. JIS data does not include, for instance, conviction data from the Montgomery County or Prince George’s County circuit courts.

State Fiscal Effect: DLLR does not currently license all pawnbrokers in the State. Licenses issued under Title 12 of the Business Regulation Article are required only for those pawnbrokers not currently regulated by local government or for any pawnbroker who directly buys or sells secondhand precious metal objects in addition to operating as a traditional pawnbroker. Accordingly, the users of the registry required under the bill would not be limited to DLLR licensees.

Under this bill, daily updated information on certain criminal convictions would have to be transferred to DLLR on a daily update basis to be made available to pawnbrokers on the internal online registry. DLLR advises that it would operate such a registry as an adjunct to its electronic licensing system.

DLLR also advises that, because of security concerns, it would be insufficient to build a system reliant solely on multiple unique identifiers. The use of the registry would need to be tied to specific registered terminals at a pawnbroker's business location. This would add to the cost. Based on consultations with the DLLR Office of Information Technology and the current vendor for DLLR's E-licensing system, general fund expenditures could increase by an estimated \$265,546 in fiscal 2007, which accounts for the bill's January 1, 2007 effective date. This estimate reflects the cost of hiring one administrator for the web site. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salary and Fringe Benefits	\$24,476
Web Site Development Costs	235,000
Other Operating Expenses	<u>6,070</u>
Total FY 2007 State Expenditures	\$265,546

Future year expenditures reflect: (1) a full salary with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses, including web site maintenance costs of \$20,000 annually.

However, Legislative Services advises that a web site registry developed and uploaded by DLLR could not be currently populated with conviction data as required under the bill. This is due to two reasons:

- CJIS data (fingerprint based) may not be directly accessed by a noncriminal justice unit and any indirect, case-by-case access could not fulfill the bill's requirement for the registry to be maintained as complete and current.

- While case records information for the District Court and the Circuit Court of Baltimore City is entered at the close of business daily, the JIS web site data do not include information from the Montgomery County or Prince George's County circuit courts, and some information may be restricted.

While DLLR may be able to provide a web site "registry" in fiscal 2007, it is not clear when information on convictions required under the bill would be available to populate that site. Accordingly, until this hurdle could be overcome, costs associated with new personnel and web site maintenance would be delayed.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Public Safety and Correctional Services; Department of Legislative Services

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