WEST virginia legislature

2021 regular session

Introduced

Senate Bill 314

By Senators Jeffries, Phillips, and Weld

[Introduced February 17, 2021; referred  
to the Committee on the Judiciary]

A BILL to amend and reenact §47-26-1, §47-26-2, and §47-26-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §47-26-2a, all relating to the regulation of pawnbrokers; removing an exception for certain transactions from the report required of all pawnbrokers; requiring all pawnbrokers to be equipped with certain surveillance equipment and signage effective January 1, 2022; prohibiting pawnbrokers from doing business with certain persons; prohibiting pawnbrokers from purchasing certain items or transacting with certain items from anyone; creating misdemeanor offenses for certain violations; and increasing the penalties for existing criminal offenses related to pawnbrokers.

Be it enacted by the Legislature of West Virginia:

ARTICLE 26. PAWNBROKERS.

§47-26-1. Definitions.

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

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

~~(a)~~ “Pawnbroker” means any person, partnership, association, or corporation, or employee thereof advancing money in a pawn transaction in exchange for collateral in the property of the pledgor. Pawnbroker does not mean any bank which is regulated by the West Virginia Division of Financial Institutions; the Comptroller of the Currency of the United States; the Federal Deposit Insurance Corporation; the Board of Governors of the Federal Reserve System, or any other federal or state authority and all affiliates thereof; and any bank or savings and loan association whose deposits or accounts are eligible for insurance by the Bank Insurance Fund or the Savings Association Insurance Fund or other fund administered by the Federal Deposit Insurance Corporation and all affiliates thereof, any state or federally chartered credit union, and any finance company subject to licensing and regulation by the West Virginia Division of Financial Institutions.

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

~~(c)~~ “Pledgor” means a person who delivers the pledge into the possession of a pawnbroker.

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

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

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

(a) All pawnbrokers shall make and maintain a transaction report on all purchase or pawn transactions. ~~except for refinance pawn transactions or merchandise bought from a manufacturer or wholesaler with an established place of business~~ The required transaction report shall include the following:

(1) The date of the transaction;

(2) The name of the seller;

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

(4) The corresponding pawn ticket number;

(5) The terms of the loan or purchase;

(6) A copy of the seller’s or pledgor’s government photo identification and type: *Provided,* That if the seller or pledgor does not have a government-issued photo identification, the pawnbroker shall have a photograph of the seller or pledgor; and

(7) A detailed description of the property.

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

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

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

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

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

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

(e) A pawnbroker shall equip each location at which it conducts pawn transactions with electronic monitoring/recording equipment that records all public and nonpublic entrances and exits to the building and all transactions being conducted. The equipment shall consist of video or digital imaging of a sufficient resolution and clarity to be easily monitored and reviewed on playback. All business locations shall keep an archive of video for 30 days. A sign of sufficient size informing a customer of a videotaping shall be located in a conspicuous place on the business premises. The requirements in this subsection are effective January 1, 2022.

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

§47-26-2a. Prohibitions.

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

(1) Articles from a minor;

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

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

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

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

§47-26-3. Penalties; pawnbroker.

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

NOTE: The purpose of this bill is to better regulate pawnbrokers.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.