House Bill 300

By: Representatives Dubnik of the 29th, Bonner of the 73rd, Hawkins of the 27th, Dunahoo of the 31st, Camp of the 135th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Titles 43 and 44 of the Official Code of Georgia Annotated, relating to professions and businesses and property, respectively, so as to revise provisions relating to pawnbrokers to exclude motor vehicle certificates of title from pawn transactions; to remove provisions stating that possession of a motor vehicle certificate of title by pawnbrokers is deemed to be possession of the motor vehicle; to remove references to pawnbrokers repossessing motor vehicles; to remove the ability of pawnbrokers to charge fees relating to registering liens on motor vehicle certificates of title and repossessing motor vehicles; to remove requirements relating to the disclosure of such fees; to revise definitions; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses, is amended in Code Section 43-47-2, relating to definitions relative to used motor vehicle and used motor vehicle parts dealers, by revising subparagraph (A) of paragraph (17) and division (v) of subparagraph (B) of paragraph (17) as follows:

″(17)(A) 'Used motor vehicle dealer,' 'used car dealer,' or 'licensee' means any person who, for commission or with intent to make a profit or gain of money or other thing of value, sells, exchanges, rents with option to purchase, offers, or attempts to negotiate a sale or exchange of an interest in used motor vehicles or who is engaged wholly or in part in the business of selling used motor vehicles, whether or not such motor vehicles are owned by such person. A motor vehicle wholesaler and a motor vehicle broker shall be deemed to be a used motor vehicle dealer or a used car dealer for the purposes of this chapter. Any independent motor vehicle leasing agency which sells or offers for sale used motor vehicles shall be deemed to be a used motor vehicle dealer or a used car dealer for the purposes of this chapter. Any motor vehicle auction company selling or offering for sale used motor vehicles to independent motor vehicle dealers or to individual consumers shall be deemed to be a used motor vehicle dealer or used car dealer for the purposes of this chapter except as otherwise provided in division (x) of subparagraph (B) of this paragraph. Without limiting any of the foregoing, the sale of five or more used motor vehicles in any one calendar year shall be prima-facie evidence that a person is engaged in the business of selling used motor vehicles. A pawnbroker who disposes of ~~all repossessed~~ motor vehicles by selling or exchanging his or her interest in such motor vehicles only to licensees under this chapter shall not be considered a used motor vehicle dealer under this chapter as long as such pawnbroker does not otherwise engage in activities which would bring him or her under the licensing requirements of this chapter.″

″(v) Financial institutions when the financial institution sells its repossessed or leased motor vehicles~~. Finance companies, for purposes of this chapter, shall not include a pawnbroker as defined in Code Section 44-12-130~~;″

**SECTION 2.**

Said title is further amended in Code Section 43-47-3, relating to the State Board of Registration of Used Motor Vehicle Dealers and Used Motor Vehicle Parts Dealers, by revising paragraph (9) of subsection (a) as follows:

″(9) One member shall be a pawnbroker as defined in Code Section 44-12-130 who is in the business of pawning ~~automobile titles~~ motor vehicles and is licensed as a used car dealer; and″

**SECTION 3.**

Title 44 of the Official Code of Georgia Annotated, relating to property, is amended in Code Section 44-12-130, relating to definitions relative to pawnbrokers, by revising paragraph (5) as follows:

″(5) 'Pledged goods' means tangible personal property, including, without limitation, all types of motor vehicles ~~or any motor vehicle certificate of title~~, which property is purchased by, deposited with, or otherwise actually delivered into the possession of a pawnbroker in connection with a pawn transaction. ~~However, for purposes of this Code section, possession of any motor vehicle certificate of title which has come into the possession of a pawnbroker through a pawn transaction made in accordance with law shall be conclusively deemed to be possession of the motor vehicle, and the pawnbroker shall retain physical possession of the motor vehicle certificate of title for the entire length of the pawn transaction but shall not be required in any way to retain physical possession of the motor vehicle at any time. 'Pledged goods'~~ Such term shall not include choses in action, securities, ~~or~~ printed evidences of indebtedness, or any motor vehicle certificate of title.″

**SECTION 4.**

Said title is further amended in Code Section 44-12-131, relating to duration of pawn transactions, lease-back of motor vehicles prohibited, taking possession of motor vehicles, restrictions on interest, fees, or charges, action to recover excessive or undisclosed charges, and consequences of excessive charges, by revising subsection (a) as follows:

"(a)(1) All pawn transactions shall be for 30 day periods but may be extended or continued for additional 30 day periods.

(2) A pawnbroker shall not lease back to the seller or pledgor any motor vehicle during a pawn transaction or during any extension or continuation of the pawn transaction.

(3) ~~Unless otherwise agreed, a pawnbroker has upon default the right to take possession of the motor vehicle. In taking possession, the pawnbroker or his agent may proceed without judicial process if this can be done without breach of the peace or may proceed by action~~ Reserved.

(4)(A) During the first 90 days of any pawn transaction or extension or continuation of the pawn transaction, a pawnbroker may charge for each 30 day period interest and pawnshop charges which together equal no more than 25 percent of the principal amount advanced, with a minimum charge of up to $10.00 per 30 day period.

(B) On any pawn transaction which is continued or extended beyond 90 days, a pawnbroker may charge for each 30 day period interest and pawnshop charges which together equal no more than 12.5 percent of the principal amount advanced, with a minimum charge of up to $5.00 per 30 day period.

(C) ~~In addition to the charges provided for in subparagraphs (A) and (B) of this paragraph, in a pawn transaction or in any extension or continuation of a pawn transaction involving a motor vehicle or a motor vehicle certificate of title, a pawnbroker may charge the following:~~

~~(i) A fee equal to no more than any fee imposed by the appropriate state to register a lien upon a motor vehicle title, but only if the pawnbroker actually registers such a lien;~~

~~(ii) No more than $5.00 per day in storage fees, but only if an actual repossession pursuant to a default takes place on a vehicle which was not already in the pawnbroker's possession and only for each day the pawnbroker must actually retain possession of the motor vehicle; and~~

~~(iii) A repossession fee of $50.00 within 50 miles of the office where the pawn originated, $100.00 within 51 to 100 miles, $150.00 within 101 to 300 miles and a fee of $250.00 beyond 300 miles, but only if an actual repossession pursuant to a default takes place on a vehicle which was not already in the pawnbroker's possession~~ Reserved.

(D) If a pledgor or seller requests that the pawnbroker mail or ship the pledged item to the pledgor or seller, a pawnbroker may charge a fee for the actual shipping and mailing costs, plus a handling fee equal to not more than 50 percent of the actual shipping and mailing costs.

(E) In the event the pledgor or seller has lost or destroyed the original pawn ticket, a pawnbroker may, at the time of redemption, charge a fee equal to not more than $2.00.

(5) No other charge or fee of any kind by whatever name denominated, including but not limited to any other storage fee for a motor vehicle, shall be made by a pawnbroker except as set out in paragraph (4) of this subsection.

(6) No fee or charge provided for in this Code section may be imposed unless a disclosure regarding that fee or charge has been properly made as provided for in Code Section 44-12-138.

(7)(A) Any interest, fees, or charges collected which are undisclosed, improperly disclosed, or in excess of that allowed by this subsection may be recovered by the pledgor or seller in an action at law in any superior court of appropriate jurisdiction.

(B) In any such action in which the pledgor or seller prevails, the court shall also award reasonable attorneys' fees, court costs, and any expenses of litigation to the pledgor or seller.

(C) Before filing an action under this Code section, the pledgor or seller shall provide the pawnbroker with a written notice by certified mail or statutory overnight delivery, return receipt requested, that such an action is contemplated, identifying any fees or charges which the pledgor or seller contends are undisclosed, improperly disclosed, or in excess of the fees and charges allowed by this Code section. If the court finds that during the 30 days following receipt of this notice the pawnbroker made a good faith offer to return any excess, undisclosed, or improperly disclosed charges, the court shall award reasonable attorneys' fees, court costs, and expenses of litigation to the pawnbroker.

(D) No action shall be brought under this Code section more than two years after the pledgor or seller knew or should have known of the excess, undisclosed, or improperly disclosed charges."

**SECTION 5.**

Said title is further amended in Code Section 44-12-138, relating to restrictions on advertising and disclosure tickets or statements, by revising subsection (b) as follows:

"(b) Every pawnbroker in every pawn transaction shall present the pledgor or seller with a written disclosure ticket or statement in at least nine-point type, appropriately completed, with no other written or pictorial matter except as provided in subsection (c) of this Code section, containing the following information:

(1) Information identifying the pawnbroker by name and address;

(2) A statement as follows:

'This is a pawn transaction. Failure to make your payments as described in this document can result in the loss of the pawned item. The pawnbroker can sell or keep the item if you have not made all payments by the specified maturity date.';

(3) If the pawned item is a motor vehicle ~~or motor vehicle certificate of title~~, a statement as follows:

'Failure to make your payment as described in this document can result in the loss of your motor vehicle~~. The pawnbroker can also charge you certain fees if he or she actually repossesses the motor vehicle~~.';

(4) A statement that the length of the pawn transaction is 30 days and that it can only be renewed with the agreement of both parties and only for 30 day incremental periods;

(5) The annual percentage rate, computed in accordance with the federal Truth in Lending Act and regulations under the federal Truth in Lending Act, for the first 30 days of the transaction, computed as if all interest and pawnshop charges were considered to be interest;

(6) The annual percentage rate, computed in accordance with the federal Truth in Lending Act and regulations under the federal Truth in Lending Act, for each 30 day period in which the pawn transaction might be continued or extended, computed as if all interest and pawnshop charges were considered to be interest. For purposes of identifying the annual percentage rate after the second continuation or extension, a single statement which identifies an annual percentage rate for each possible 30 day period thereafter shall meet the requirements of this Code section;

(7) A statement in dollar amounts of how much it will cost the seller or pledgor to redeem the merchandise in the first 30 day period of the transaction;

(8) A statement in dollar amounts of how much it will cost the seller or pledgor to redeem the merchandise in any 30 day period after the first 30 day period of the pawn transaction, provided that all fees and charges have been kept current;

(9) A statement of the specific maturity date of the pawn transaction;

(10) A statement of how long, the grace period, the pledged goods may be redeemed after the specific maturity date and the dollar amount which will be required to redeem the pledged goods after the specific maturity date;

(11) A statement that after the grace period the pledged goods become the property of the pawnbroker;

(12) If the pawn transaction involves a motor vehicle~~ or motor vehicle certificate of title~~, a statement that the pawnbroker may not charge a storage fee for the motor vehicle~~ unless the pawnbroker repossesses the motor vehicle pursuant to a default~~;

(13) ~~If the pawn transaction involves a motor vehicle or motor vehicle certificate of title, a statement that the pawnbroker may charge a storage fee for a repossessed motor vehicle not to exceed $5.00 per day, but only if the pawnbroker actually repossesses and actually must store the motor vehicle~~ Reserved;

(14) ~~If the pawn transaction involves a motor vehicle or motor vehicle certificate of title, a statement that the pawnbroker may charge a repossession fee, not to exceed $50.00, but only if the pawnbroker actually repossesses the motor vehicle~~ Reserved;

(15) ~~If the pawn transaction involves a motor vehicle or motor vehicle certificate of title, a statement that the pawnbroker may charge a fee to register a lien upon the motor vehicle certificate of title, not to exceed any fee actually charged by the appropriate state to register a lien upon a motor vehicle certificate of title, but only if the pawnbroker actually places such a lien upon the motor vehicle certificate of title~~ Reserved;

(16) A statement that any costs to ship the pledged items to the pledgor or seller can be charged to the pledgor or seller, along with a handling fee to equal no more than 50 percent of the actual costs to ship the pledged items; and

(17) A statement that a fee of up to $2.00 can be charged for each lost or destroyed pawn ticket.″

**SECTION 6.**

Said title is further amended in Code Section 44-14-403, relating to lien of pawnbroker, action for interference, grace period on pawn transactions, extension or continuation of maturity date, and redemption of goods after maturity date, by revising paragraphs (1) and (4) of subsection (b) as follows:

″(b)(1) There shall be a grace period on all pawn transactions. On pawn transactions involving motor vehicles ~~or motor vehicle certificates of title~~, the grace period shall be 30 calendar days; on all other pawn transactions the grace period shall be ten calendar days. In the event that the last day of the grace period falls on a day in which the pawnbroker is not open for business, the grace period shall be extended through the first day following upon which the pawnbroker is open for business. The pawnbroker shall not sell the pledged goods during the grace period.″

″(4) Any attempt to circumvent the interest rates and charges as specified in Code Section 44-12-131 shall be null and void. A pawn transaction shall be considered to have been extended or continued unless:

(A) All charges, fees, and the principal have actually been paid or repaid on the previous pawn transaction;

(B) The pledged goods in the previous transaction~~, including but not limited to a motor vehicle certificate of title,~~ have actually been restored to the possession of the pledgor or seller; and

(C) The pledged goods in the previous transaction have been removed from the business premises of the pawnbroker ~~and, in the case of a motor vehicle certificate of title, any lien on the motor vehicle certificate of title has been removed or released~~.″

**SECTION 7.**

All laws and parts of laws in conflict with this Act are repealed.