Chapter 726

(1963 reprint)

Pawnbrokers

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CROSS REFERENCES

Accident and health insurance written in connection with instalment loan, 741.405 to 741.465

Administrative procedures and rules of state agencies, Ch. 183

Credit life insurance, 739.565 to 739.620

Debt consolidating, 697.615

Small loans, Ch. 725

726.390

Usurious interest, 82.010

726.010 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Pawnbroker" means any person, copartnership, association or corporation:

(a) Lending money at a higher rate of interest than 10 percent per annum on the deposit or pledge of personal property other than choses in action, migratory chattels required by law to be registered with the Secretary of State, securities or printed evidences of indebtedness;

(b) Purchasing any personal property other than choses in action, migratory chattels required by law to be registered with the Secretary of State, securities or printed evidences of indebtedness on the direct or implied condition of selling it back at a stipulated price which would amount to the payment of interest or consideration in excess of 10 percent per annum; or

(c) Doing business as storage warehouseman and lending money at a higher rate of interest than 10 percent per annum upon goods, wares, merchandise or personal property pledged or deposited as collateral security other than migratory chattels required by law to be registered with the Secretary of State.

(2) "Pledge" means any article deposited with a pawnbroker in the course of his business as defined in subsection (1) of this section.

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

(4) "Pledge loan" means a loan made by a pawnbroker to a pledgor and secured by a pledge.

726.020 Short title; application of chapter. This chapter shall be known as the Pawnbrokers Act. It is applicable to any person who qualifies under its provisions, and to such other person as shall by violating any of its provisions be subject to the penalties provided in ORS 726.990.

726.030 Construction of chapter. Nothing in this chapter shall be construed or held to limit the rights, powers or privileges granted to any person by any law of this state or of the United States whereby the loaning of money or extending of credit is regulated, provided, that such person is operating in compliance with the provisions of such law.

726.040 Pawnbroker's license required. No person shall engage or continue in the business of a pawnbroker except as authorized by this chapter and without first procuring a license from the Superintendent of Banks as provided in this chapter.

726.050 Residence qualifications of licensee. No license shall be granted to any person, partnership, association or corporation unless that person and all members of any such partnership or association are bona fide residents of this state and unless such corporation is an Oregon corporation in good standing or a foreign corporation legally qualified to do business in this state.

726.060 Application for license; notice of filing; annual fee. (1) Application for the license shall be in writing in the form prescribed by the Superintendent of Banks and shall contain the name and both the residence and business addresses of the applicant, and if the applicant is a partnership or association, of every member thereof, and if a corporation, of each officer and director thereof. The application shall also show the county and city or town with street and number, if any, where the business is to be conducted and such other information which the Superintendent of Banks may require.

(2) Notice of the filing of the application shall be posted in the office of the Superintendent of Banks for 30 days and no license shall be issued before the expiration of that period.

(3) The applicant at the time of making application shall pay to the Superintendent of Banks for the State Banking Fund the sum of $100 as an annual license fee for a period terminating on the last day of the current calendar year. However, if the application is filed after June 30 in any year the license fee shall be $50.

(4) In case the license is not issued, the Superintendent of Banks shall refund to the applicant all the license fee except $25 which shall be retained to cover expenses incurred; otherwise, no part of any license fee shall be refunded.

726.070 Applicants to furnish bond; actions on bond. (1) Accompanying the application the applicant shall also file with the Superintendent of Banks a bond in the sum of $1,000 executed by the applicant as obligor, together with a surety company authorized to do business in this state as surety. This bond shall be executed to the State of Oregon and for the use of the state and of any person who

may have a cause of action against the obligor of the bond under this chapter. The bond shall be conditioned that the obligor will faithfully conform to and abide by the provisions of this chapter and of all rules and regulations lawfully made by the Superintendent of Banks under this chapter, and will pay to the state and to any such person any and all moneys that may become due or owing to the state or to such person from the obligor under and by virtue of the provisions of this chapter. Before the bond is finally accepted by the Superintendent of Banks it shall be approved by the Attorney General.

(2) If any person is aggrieved by the misconduct of a pawnbroker or by his violation of any law and recovers judgment therefor, such person may, after the return unsatisfied either in whole or in part of any execution issued upon such judgment, maintain an action for his own use upon the bond of the pawnbroker in any court having jurisdiction of the amount claimed. The Superintendent of Banks shall furnish to anyone applying therefor, a certified copy of any such bond filed with him upon the payment of a fee of $5 and the certified copy shall be prima facie evidence in any court that the bond was duly executed and delivered by each pawnbroker whose name appears thereon.

726.080 Issuance and denial of licenses; appeal. (1) Conditioned upon the applicant's compliance with this chapter, the payment of the license fee, the filing of a bond and approval thereof by the Attorney General and in the absence of any reason or condition which in the judgment of the Superintendent of Banks might warrant the refusal of the granting of a license, he shall issue a license within 10 days after the expiration of the required 30-day filing period.

(2) If the application is denied, the Superintendent of Banks shall endorse thereon with the date the word "Disapproved" and shall immediately advise the applicant by registered mail of the reason therefor.

(3) The applicant shall have the right of appeal from the decision to the circuit court for the county of the city or town mentioned in the application. Such appeal must be taken within 30 days after date of mailing of the notice of disapproval.

726.090 Form of license; posting; transferability. The licenses shall be in a form prescribed by the Superintendent of Banks and shall state the address at which the business is to be conducted, the full name of the pawnbroker and date of expiration of the license. The license shall be kept conspicuously posted in the place of business of the pawnbroker and shall not be transferable or assignable.

726.100 Additional licenses to same applicant. No pawnbroker shall transact any business within the scope of this chapter except under the name at the place of business named in his license. The Superintendent of Banks may issue more than one license to the same pawnbroker upon his compliance with all the provisions of this chapter governing an original issuance of a license for each such additional license. Each additional license shall be for a separate and distinct place of business for the making and completing of pledge loans as provided in this chapter.

726.110 Change of place of business. Whenever a pawnbroker changes his place of business to another location within the same city or town, he shall at once give written notice thereof to the Superintendent of Banks and shall surrender his license for cancelation, together with the payment of a fee of $5 for a new license. Thereupon a new license shall be issued by the Superintendent of Banks for the new location for the unexpired term of the original license. No change in the place of business of a pawnbroker to a location outside of the city or town named in the original license shall be permitted under the same license.

726.120 Annual fee and bond. Every pawnbroker, on or before December 15 of each year, shall pay to the Superintendent of Banks the annual license fee of $100 for the next succeeding calendar year and shall at the same time file with the Superintendent of Banks a bond in the same amount and of the same character as required by ORS 726.070.

726.130 Annual report of licensee. Every pawnbroker, on or before January 15, shall submit to the Superintendent of Banks an annual report under oath in such form as may be prescribed by the superintendent, giving the following information:

(1) The number of pledge loans and total amount outstanding at the beginning of the year.

(2) The number of pledge loans made during the year and the aggregate amount thereof.

(3) The number of pledge loans canceled

during the year and the aggregate amount thereof.

(4) The number of pledge loans and total amount outstanding at the close of the year.

(5) Any other information which may be called for by the Superintendent of Banks.

726.140 False entries and statements prohibited. No pawnbroker or any agent, member, officer or employe thereof, or any other person shall make or cause to be made any false entry or statement in any record or in any report filed with the Superintendent of Banks calculated to deceive any person.

726.150 Revocation and suspension of licenses. (1) The Superintendent of Banks, upon 10 days' notice to the pawnbroker stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity for a hearing shall revoke any license under this chapter if he finds that:

(a) The pawnbroker has failed to pay the annual license fee or to maintain in effect the required bond or to comply with any demand, ruling or requirement of the Superintendent of Banks lawfully made pursuant to and within the authority of this chapter or to comply with the provisions of law to keep the corporation in good standing if such pawnbroker is a corporation; or

(b) The pawnbroker has violated any provision of this chapter or any rule or regulation lawfully made by the superintendent under and within the authority of this chapter.

(2) The Superintendent of Banks may, without notice or hearing, suspend any license for a period not exceeding 30 days, pending investigation.

(3) The Superintendent of Banks may revoke or suspend only the particular license with respect to which grounds for revocation or suspension occur or exist, or, if he finds that such grounds for revocation or suspension are of general application to all offices or to more than one office operated by the pawnbroker, he shall revoke or suspend all the licenses issued to the pawnbroker or such number of licenses as such grounds apply to, as the case may be.

726.160 Notice of revocation or suspension; appeal. Whenever the Superintendent of Banks revokes or suspends a license issued pursuant to this chapter he shall notify the pawnbroker to that effect by registered mail. The revocation or suspension shall be effective as of the date of mailing the notice and the pawnbroker shall thereupon surrender his license. The notice shall state the reasons supporting the revocation or suspension. The pawnbroker has the right of appeal from such decision to the circuit court in the county in which his place of business is located but the appeal must be taken within 30 days.

726.170 Reinstatement and reissue of license; fee. The Superintendent of Banks may reinstate any suspended license or issue a new license to a pawnbroker whose license has been revoked, upon the pawnbroker's compliance with the provisions of law or any demand, ruling or requirement lawfully made by the superintendent pursuant to and within the authority of this chapter. For such reinstatement or issuance of a new license a fee of $25 shall be paid.

726.180 Expiration of license; effect of expiration, revocation or surrender. Every license issued under this chapter shall remain in force until it has expired or has been surrendered, revoked or suspended in accordance with the provisions of this chapter. No revocation, suspension or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the pawnbroker and any borrower.

726.190 Surrender of license. Any pawnbroker may surrender any license by delivering to the Superintendent of Banks written notice that he thereby surrenders such license, but such surrender shall not affect the pawnbroker's civil or criminal liability for acts committed prior to the surrender.

726.200 to 726.240 [Reserved for expansion]

726.250 Investigation and examination of licensee. (1) For the purpose of discovering violations of this chapter or securing information lawfully required by him under this chapter, the Superintendent of Banks may at any time, either personally or by a duly appointed examiner or deputy, investigate the pledge loans and business and examine the books, accounts, records and files used therein of every pawnbroker and of every person who he has reason to believe is doing the business described in ORS 726.010, whether that person acts or claims to act as principal or agent, or under or without the authority of this chapter. For such purpose the Superintendent of Banks or his duly appointed examiner or deputy shall have free access to the place of business, books, accounts, papers, records, files, safes and

vaults of all such persons. The Superintendent of Banks or his duly appointed examiner or deputy may examine under oath all persons whose testimony he may require relative to such pledge loans or business.

(2) At least once a year or as often as he may deem necessary the Superintendent of Banks or a duly appointed examiner or deputy shall make an examination of the pledge loans and business, office records and files of each licensed pawnbroker.

726.260 Rules and regulations. The Superintendent of Banks may make such general rules and regulations and such specific rulings, demands and findings as may be necessary for the proper conduct of the pawnbroker business and the enforcement of this chapter, in addition and not inconsistent with this chapter.

726.270 Prohibited transactions. No pawnbroker shall:

(1) Transact any business on Sunday, nor between the hours of 9 p.m. and 7 a.m. except that on Saturday he may transact business up to the hour of 10 p.m.

(2) Accept a pledge from any person who is under the age of 18 years.

(3) Convert or dispose of any unredeemed pledge before the time to redeem it has expired or before the pledge has been forfeited to him as provided in ORS 726.400.

726.280 Register and records of licensees. (1) Every pawnbroker shall keep a register in which shall be recorded in ink:

(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, the name and address of principal and agent.

(d) An identifying description of the article or articles pledged.

(e) The amount of the pledge loan.

(f) The date on which such pledge loan was canceled.

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

(2) All entries in the register shall be made in the English language and shall 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 inspection.

(3) Subject to the provisions of this chapter the Superintendent of Banks may prescribe the form of other books and records to be kept by the pawnbroker. All records shall be preserved and available for at least two years after making the final entry on any pledge loan recorded therein.

726.290 Signing of card, stub or record by pledgor. The pawnbroker shall at the time of making a loan require the pledgor or his agent to write his signature and address on a card, ticket, stub or any other approved record, bearing the serial number of the loan corresponding to that recorded in the pawnbroker's register as provided in ORS 726.280. If the person is unable to write he shall sign his mark, and in such event the pawnbroker shall record on the signature card, stub or record such information as will enable him to identify the person in case of the loss of the ticket.

726.300 Contents of pawntickets; effect. (1) The pawnbroker shall at the time of making a pledge loan deliver to the pledgor or his agent a memorandum or pawnticket on which shall be legibly written or printed the following:

(a) The date of the transaction.

(b) The serial number of the pledge loan.

(c) The article or articles pledged.

(d) The amount of the pledge loan.

(e) The rate of interest charged on the loan.

(f) The name and address of the pawnbroker.

(g) Such other terms and conditions not inconsistent with this chapter as the pawnbroker may wish to insert.

(2) Nothing appearing on the pawnticket shall relieve the pawnbroker of the obligation of exercising reasonable care in the safe keeping of articles pledged with him.

726.310 Holder presumed entitled to redeem. Except as otherwise provided in this chapter, the holder of the memorandum or pawnticket shall be presumed to be the person entitled to redeem the pledge. The pawnbroker shall deliver the pledge to the person presenting such memorandum or pawnticket upon payment of principal and interest due on the pledge loan.

726.320 Redemption by mail. When a pawnticket, instead of being presented in person, is sent to the pawnbroker by mail, accompanied with a money order, bank draft or cash for the amount due including the cost of shipment as desired and 25 cents for packing, the pledge shall be securely packed and for-

warded by the pawnbroker in accordance with the remitter's instructions. If the remittance is insufficient to cover the amount due, the cost of shipment as desired and 25 cents for packing, the pawnbroker shall either notify the remitter of the amount of the deficiency or send the pledge subject to the payment of the deficiency by the consignee. The pawnbroker's liability for the pledge shall cease upon delivery thereof to the carrier or his agent.

726.330 Delivery of pledge upon surrender of pawnticket. Except as otherwise provided in this chapter, a pawnbroker shall not be required to deliver a pledge except upon surrender of the pawnticket, unless the ticket is impounded or its negotiation enjoined by a court of competent jurisdiction.

726.340 Loss, destruction or theft of pawnticket; pawnbroker's liability. If the pawnticket or memorandum is lost, destroyed or stolen, the pledgor shall so notify the pawnbroker in writing. The receipt of such notice shall be treated by the pawnbroker as a stop against the pledge loan, and thereafter the provisions of ORS 726.310 and 726.320 shall not apply to such pledge loan. Before delivering the pledge or issuing a new pawnticket in such event, the pawnbroker may require the pledgor to make an affidavit of the alleged loss, destruction or theft of the ticket. Upon receipt of the affidavit, or in case no affidavit is required, then within not less than three nor more than five days from receipt of notice of the loss of the ticket, the pawnbroker shall permit the pledgor either to redeem the pledge or to receive a new ticket upon the payment of accrued interest, and the pawnbroker shall incur no liability for so doing unless he has previously received written notice of an adverse claim. This section shall not be construed as in any manner limiting or affecting the pawnbroker's legal liability in cases where goods are stolen or other legal defects of title exist in the pledgor.

726.350 Alteration. The alteration of a pawnticket shall not excuse the pawnbroker who issued it from liability to deliver the pledge according to the terms of the pawnticket as originally issued, but shall relieve him of any other liability to the pledgor or holder of the pawnticket.

726.360 Spurious pawntickets. If a pawnticket is presented to a pawnbroker which purports to be the one issued by him, but which is found to be spurious, the pawnbroker may seize and retain it without any liability whatsoever to the holder thereof. Any such pawnticket so seized shall be delivered or mailed to the Superintendent of Banks accompanied by a letter of explantion.

726.370 Multiple claimants of pledge; interpleader. If more than one person claims the right to redeem a pledge, the pawnbroker shall incur no liability for refusing to deliver the pledge until the respective rights of the claimants have been adjudicated. In case of an action brought against the pawnbroker for recovery of the pledge, he may as a defense require all known claimants to interplead. If no action is brought against the pawnbroker by either claimant within 30 days after notice of an adverse claim he may proceed to dispose of the pledge as provided in this chapter.

726.380 Loss of or injury to pledge; lien on pledge. A pawnbroker shall be liable for the loss of a pledge or a part thereof or for injury thereto resulting from his failure to exercise reasonable care. In case of loss the burden of proof to establish due care shall be upon the pawnbroker. He shall have 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.

726.390 Interest rates and charges. (1) No pawnbroker shall charge, contract for or receive interest at a rate in excess of three percent per month computed exactly on unpaid balances on pledge loans to any person in the aggregate sum of $300 or less. However, on pledge loans redeemed within the first month the pawnbroker may charge a month's interest, and he may charge $1 where the interest allowed amounts to less. The interest shall not be compounded and no amount whatsoever shall be deducted or received in advance.

(2) No further or other charge or amount whatsoever shall be charged, contracted for or received in addition to the interest provided for in this section.

(3) No pawnbroker shall charge, contract for or receive any interest, discount or consideration at a rate greater than 10 percent per annum on pledge loans to any person in the aggregate sum of more than $300.

726.400 Retention of unredeemed pledges; forfeiture of pledges. (1) A pawn-

broker shall retain every unredeemed pledge in his possession for not less than 12 months after the date of the last payment of either principal or interest or from the date of the pledge loan if no payment of either principal or interest has been received. However, if the unredeemed pledge secures a pledge loan in the original amount of $30 or less, or consists of a watch, clothing, wearing apparel, furs, trunks, suitcases, golf bags or musical instruments such pledge shall be retained for not less than six months from the date of the last payment of either principal or interest or from the date of the pledge loan if no payment of interest or principal has been received.

(2) Before any pledge may be deemed forfeited, the pawnbroker after the expiration of the respective periods mentioned in subsection (1) of this section must cause a notice to be mailed in writing in a securely closed, postpaid, registered letter, return receipt required, directed to the pledgor at the last known address shown on the pawnbroker's record, notifying such pledgor of the forfeiture of the pledge. The registered return receipt card or the returned envelope shall be kept on file by the pawnbroker for at least two years from date of mailing thereof as evidence of the notification.

(3) Any pledge which is not redeemed within 30 days from the date of mailing of the notice shall be deemed forfeited and the pawnbroker shall thereby acquire all the right, title and interest of the pledgor therein to hold and dispose of the pledge as his own property.

726.410 Record of forfeited pledges. Every pawnbroker shall keep a separate record in ink, fully itemized, of all forfeited pledges. The record shall contain the following information:

(1) The number of the pledge.

(2) The name and address of the pledgor.

(3) The date of the pledge loan or the date of the last payment received as interest or principal.

(4) The date of mailing notice.

(5) The date of forfeiture.

726.420 Effect of conviction of charging excessive interest or fees. If any pawnbroker or agent, member, officer or employe thereof, or any other person is convicted by a court of competent jurisdiction of having charged, contracted for or received any interest, fees or other charges in excess of those permitted by ORS 726.390, then the pledge loan shall be void. The pawnbroker shall forfeit the right to collect or receive any principal, interest or charges whatsoever. He shall upon order of the court return to the pledgor free from the pawnbroker's lien the pledge pledged by the pledgor without tender of principal and interest and shall pay into the county school fund of the county wherein the loan is made all payments and all fees or other charges previously collected under such pledge loan.

726.430 Duties of district attorney relating to Pawnbrokers Act. The district attorney of the judicial district in which the place of business of the pawnbroker is located, upon receipt of written advice from the Superintendent of Banks relative to any violations of this chapter which are subject to penalties prescribed in ORS 726.990, shall immediately investigate such violation and institute proceedings to enforce the provisions of the law. The cost of all such investigations and proceedings shall be paid by the county in the same manner as in other criminal procedures. The district attorney shall also represent the Superintendent of Banks in all cases where an appeal is taken under the provisions of this chapter.

726.440 to 726.980 [Reserved for expansion]

726.990 Penalties. (1) Violation, or participation in the violation, of ORS 726.040, 726.100, 726.110, 726.140, 726.270, 726.390 or 726.400 by any pawnbroker or any agent, member, officer or employe thereof, or any other person is punishable, upon conviction, by a fine of not less than $100 nor more than $500 or by imprisonment in the county jail for not less than one month and not more than six months, or both.

(2) Upon conviction under subsection (1) of this section, no license shall be granted to such person, nor to the husband or wife of such person, nor to any partnership, association or corporation of which he is an agent or member, until two years after the date of the conviction.