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OPPOSITION TESTIMONY

On
Pawnbroker Amendment
H. B. No 64
By
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The Ohio Association of Chiefs of Police is opposed to the amendment in the biennial budget bill that changes various provisions of the pawnbroker law. The amendment creates a two tier system within the pawnbroker industry. Under this system, there will be the regular pawnshop (standard license) and the new Cash America type (license plus). The license plus pawnshops will be allowed to be even less friendlier to crime victims and consumers, and will make the work of law enforcement more difficult. The amendment is substantially the same proposal that has been introduced as a separate bill a number of times; in addition, there have been numerous attempts to amend this proposal into other unrelated bills. In each case the attempts have failed. The Association believes that this proposal does not belong in the budget bill.

The Ohio Association of Chiefs of Police continues to oppose this proposal for the following reasons:

1) Section 4727.061 (lines 52810-52823) would lower the interest rate for license plus licensees on pawned items from 5% to 3%; however, it would allow the license plus pawnbrokers to charge an additional 10% per month in fees on pawned or purchased items—this could result in interest and fees totaling some 156%. This increase in fees comes into play for a crime victim when a crime victim is forced to pay the pawnshop to get his property back after police have found it in the pawnshop. Not only will the crime victim have to pay to get the property, he will also be required to pay fees that will be allowed to be levied by this amendment. (More below)

2) Current law (Section 4727.12) deals with property belonging to a crime victim which is found in a pawnshop. Under this current law provision, when law enforcement finds stolen property in a pawnshop and determines the identity of the crime victim, law enforcement notifies the crime victim that the property is in the pawnshop and the victim can go to the pawnshop in an attempt to recover the property. Pawnshops should give the property back to the crime victim; however, almost all pawnshops require the crime victim to pay to get his property back. The amendment will make it even more difficult for the crime victim to recover his stolen property from a license plus pawnshop. Section 4727.23 (lines 53352-53369) would require the crime victim to notify the license plus pawnbroker in writing that he wants his property back. The writing must contain a complete and accurate description of the property and must be accompanied by proof that the crime victim

owns the property—remember, the police have already located the stolen property and have identified the true owner. In addition, the crime victim must provide a copy of the police report. And the crime victim will still be required to buy his property back. If the license plus pawnbroker disputes the crime victim's claim, the crime victim will be required to file a court action to recover the property. Again, all of this would be required even though police have identified the crime victim and his property.

It should be noted that current law Section 1302.44 provides that a purchaser of goods acquires all title which his transferor had or has power to transfer. A thief has no rights to the property he has stolen—the property belongs to the person from whom it was stolen. Thus, under Section 1302.44 any dealer, other than a pawnbroker or precious metal dealer, who buys stolen property, acquires no title to it even if he did not know it was stolen. However, because of current pawnbroker law and the proposed changes, Section 1302.44 does not apply to pawnbrokers—but it should. Since the pawnshop dealt with the thief, it should be the pawnbroker who should bear the risk. All other businesses accept this risk. The Association believes that pawnbrokers would not be so lax in making questionable purchases if they bore this risk.

It should also be noted that it is a crime to receive stolen property if the person has reasonable cause to believe that the property has been stolen (Sec. 2913.51). Yet, current pawnbroker law recognizes that pawnbroker purchase stolen property from criminals. However, this law, like Section 1302.44, apparently does not apply to pawnbrokers. The Association believes that might not be as many home and vehicle break-ins, thefts from retail businesses, and other theft offenses if pawnbrokers were made subject to Sections 1302.44 and 2913.51.

3) Current law (Section 4727.12(B)—lines 53085-53096) provides a procedure whereby law enforcement can request a pawnshop to put a hold on property suspected to be stolen. The amendment creates a new and complicated and burdensome procedure that law enforcement must follow when requesting a licensee plus to put a hold suspected stolen property (Section 4727.12© through (F), lines 53115-53186). We do not understand what the purpose is other than to require police to undertake additional paper work in order to request the hold. Again, current law already provides a procedure by which police can request a pawnshop to put a particular item on hold.

4) Section 4727.26 as written is confusing (Lines 53407-53412); it appears to deal with the right of a licensee plus pawnbroker to seek redress from a pledger or person who sold him stolen property and then there are lines 53413-53424 which do not seem to apply. In addition, the provision could lead one to believe that if the crime victim files a police report and fully cooperates with the prosecution, he will get his property back from the pawnbroker—the Association does not read it this way.

5) Section 4727.09—this section deals with the daily report that pawnbrokers are to furnish to law enforcement. This report provides a description of all property pledged or purchased. Police use this information to compare it with reports received from crime victims which detail property that has been stolen from them. Current law provides that each law enforcement agency is to determine the type of form on which the pawnbroker is to provide the daily report. The amendment changes this provision for a licensee plus and would give the Superintendent of Financial Institutions in the Department of Commerce the authority to determine the form in which these reports are made (lines 52985-52990). We do not know why this change is necessary since police departments

statewide have worked out reporting systems with pawnshops that work for them. It should also be noted that current law allows for the electronic filing of these daily reports.

New Section 4727.09(D) would require the Superintendent of Financial Institutions to approve a secure law enforcement database reporting system for use by licensees plus to make the daily report. Is this to be a statewide database that can be accessed by all law enforcement, as well as crime victims who are searching for their stolen property? Section 4727.13(A)(3) (lines 53194-etc seq) states that the Department of Commerce may adopt rules describing the data to be used in a secure law enforcement database reporting system to make records available to law enforcement as required under Section 4727.09. This is confusing. What data would be the subject of the rule—would it be data other than that described in Section 4727.09?

A statewide database reporting system would be helpful, but such a system should be compatible with the various databases and computer systems currently in existence and used by law enforcement. In addition, the Attorney General, and not the Department of Commerce, should be involved in developing that system. Current police databases have been created through the Attorney General's office

6) Section 4727.13(G) would allow the Department of Commerce to adopt rules requiring a licensee to file a biennial report with the department that details the number of pawn transactions, number of pledged property items, number of items surrendered to law enforcement, and the total amount of pawn loans. This information is not a public record and apparently would not be available to law enforcement. (Lines 53258-53262)

7) Section 4727.062 would require pawnbrokers to waive any unpaid interest charges and hold pawned property until military personnel returns to the states—this mirrors federal law. Although interest charges will be waived, it appears that the licensee will continue to assess the fees, such as storage, that are provided for in Section 4727.061 (lines 52810-52826). In addition, it should be noted that lines 52821-52822 state that fees made and collected shall not be considered interest for any purpose.