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## PROPERTY Pawnbrokers: Provide Comprehensive Legislation Regulating Loans on Motor Vehicle Titles

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## PROPERTY

### *Pawnbrokers: Provide Comprehensive Legislation Regulating Loans on Motor Vehicle Titles*

**CODE SECTIONS:** O.C.G.A. §§ 44-12-130.3, -130.5, -131 (amended),  
44-12-138 (new), 44-14-403 (amended)

**BILL NUMBER:** HB 1144

**ACT NUMBER:** 1426

**SUMMARY:** The Act makes extensive changes in the manner in which a pawnbroker may offer loans to individuals who pledge the title of their motor vehicle as security. The most significant provisions of the Act set new limits on the amount of interest which may be charged on a pawnbroker loan and require pawnbrokers to provide individuals seeking such loans with detailed disclosure statements. The Act further revises the Georgia Code sections dealing with the leasing of motor vehicles pledged for loans, limitations on the duration of pawn transactions, the amount of storage fees which a pawnbroker may charge, the amount of repossession fees which a pawnbroker may charge for pledged motor vehicles, and the holding periods after such repossession. The Act also imposes certain advertising requirements on pawnbrokers and revises the Code sections concerning liens of pawnbrokers on property which is pledged to them in return for loans by providing a grace period related to the enforcement of such liens.

**EFFECTIVE DATE:** July 1, 1992

#### *History*

Pawnbrokers provide a source for loans which is expedient and requires minimal credit checks or references.<sup>1</sup> Although many items may be given to a pawnbroker in exchange for a loan, one of the most common is a car title.<sup>2</sup> Prior to the enactment of HB 1144, there was

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1. Telephone Interview with Rep. Frank Redding, Jr., House District No. 50 (Apr. 8, 1992) [hereinafter Redding Interview]. Rep. Redding was a cosponsor of HB 1144.

2. *Id.*

no maximum monthly limit on interest or charges on motor vehicle title pawns.<sup>3</sup> Also, no provision existed in the Georgia Code which prohibited a pawnbroker from leasing the car back to the same individual who had received a loan on the car.<sup>4</sup> The lack of a cap on interest and the ability of pawnbrokers to lease cars back to the individuals who took out the loan created considerable potential for abuse and resulted in a number of unconscionable arrangements.<sup>5</sup> Due to the ability of pawnbrokers to command high interest rates and to enter into lease-back agreements with individuals seeking loans, a number of businesses opened which dealt exclusively in motor vehicle loans of this nature.<sup>6</sup> These businesses created, in effect, a new industry engaged exclusively in motor vehicle pawns.<sup>7</sup> The individuals engaged in this activity became known as "title bonds people" and their numbers increased dramatically across the state.<sup>8</sup> This proliferation was based on the lack of restrictions on interest and other charges in the industry.<sup>9</sup> The title bonds pawnbrokers usually charged much higher interest rates for loans than did small pawnbrokers who had been in business for years.<sup>10</sup> The result was that an individual seeking a loan on the title to a motor vehicle could go to a title bonds pawnbroker or a regular pawnbroker and obtain essentially the same loan but at drastically different interest rates and conditions.<sup>11</sup> The result was a lack of uniformity in the pawnshop industry, abuse of the existing laws by title bonds pawnshops, and anger on the part of small pawnshop owners who were rapidly losing business to the title bonds pawnshops.<sup>12</sup>

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3. See 1989 Ga. Laws 819 (formerly found at O.C.G.A. § 44-12-131 (Supp. 1991)).

4. See Eunice Baros, *The High Cost of Fast Cash Caps Proposed on Auto-Pawn Fees Complaints: A Senate Panel is Preparing to Discuss Proposals to Regulate the Industry*, ATLANTA J. & CONST., Feb. 19, 1992, at D3.

5. See *id.* In one case, an individual needed a loan to help pay for his daughter's surgery. *Id.* He took his car to a local pawnbroker and, within minutes, he had turned over his car title in exchange for a loan of \$925. *Id.* He also entered into a lease-back agreement which allowed him to keep his car. *Id.* Six days later, the man's car was seized in the middle of the night and the pawnbroker demanded \$1401.08. *Id.*

6. Redding Interview, *supra* note 1.

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

*HB 1144*

In response to the problems facing the pawnbroker industry, the Office of Consumer Affairs, a number of consumer advocates, legal aid lawyers, regulated small loan companies, and pawnshop operators sought legislative regulations on title bonds loans.<sup>13</sup> The Legislature addressed the concerns of these groups by enacting HB 1144 which requires pawnbrokers to make disclosures to individuals seeking a loan before entering into any agreement,<sup>14</sup> limits the amount of interest which pawnbrokers may charge on such loans,<sup>15</sup> restricts pawnbrokers from leasing cars back to individuals who have given them as collateral for loans,<sup>16</sup> and adds new regulations on pawnbrokers concerning the storage and repossession of automobiles.<sup>17</sup> The Act further places advertising regulations on pawnbrokers,<sup>18</sup> and provides a grace period for individuals to repay money which they have borrowed on their automobile titles.<sup>19</sup>

The Act changes the definitions of certain terms related to pawnbroker transactions. The definition of a "pawn transaction" is expanded to include a wider range of situations than did the previous definition.<sup>20</sup> The definition of "pledged goods" now specifically incorporates "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."<sup>21</sup>

In addition, the Act limits the duration of pawn transactions to thirty days with the potential for thirty day renewals after the first such period has elapsed.<sup>22</sup> The Act also prohibits pawnbrokers from leasing a pawned automobile back to the pledgor,<sup>23</sup> limits the maximum amount a pawnbroker may charge for motor vehicle lien registration to the actual cost of such registration,<sup>24</sup> limits storage fees,<sup>25</sup> limits

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13. Baros, *supra* note 4; Redding Interview, *supra* note 1.

14. O.C.G.A. § 44-12-138 (Supp. 1992).

15. *Id.* § 44-12-131 (Supp. 1992).

16. *Id.*

17. *Id.*

18. *Id.* § 44-12-138(a)(1) (Supp. 1992).

19. *Id.* § 44-14-403(b)(1) (Supp. 1992).

20. *See* 1989 Ga. Laws 819 (formerly found at O.C.G.A. § 44-12-130(3) (Supp. 1989)); O.C.G.A. § 44-12-130(3) (Supp. 1992).

21. O.C.G.A. § 44-12-130(5) (Supp. 1992).

22. *Id.* § 44-12-131(a)(1) (Supp. 1992).

23. *Id.* § 44-12-131(a)(2) (Supp. 1992).

24. *Id.* § 44-12-131(a)(4)(C)(i) (Supp. 1992).

25. *Id.* § 44-12-131(a)(4)(C)(ii) (Supp. 1992).

repossession fees,<sup>26</sup> limits shipping fees,<sup>27</sup> and limits fees chargeable for lost pawn tickets.<sup>28</sup>

Perhaps the most significant provision is the limitation of the maximum monthly interest rate on motor vehicle title loans to 25 percent during the first three months and 12.5 percent in subsequent months.<sup>29</sup> Under prior law, there were few limits on maximum monthly interest on motor vehicle title loans.<sup>30</sup> The absence of limits allowed such pawn transactions to be abused.<sup>31</sup> The purpose of the new structure is to keep interest from accruing at such a high rate for such a long period of time that the debt cannot be repaid.<sup>32</sup> By cutting in half the interest which the pawnbroker may charge after the first three months, the pawnbroker is more likely to take possession of the pawned property.<sup>33</sup>

The Act provides a cause of action against any pawnbroker who imposes "[a]ny interest, fees, or charges collected which are undisclosed, improperly disclosed, or in excess of that allowed."<sup>34</sup> The Act provides for the recovery of attorneys' fees, court costs, and expenses of litigation,<sup>35</sup> and requires that the individual contemplating a lawsuit under the section "shall provide the pawnbroker with a written notice by certified mail, 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."<sup>36</sup> The legislative purpose behind these provisions was essentially the same as that for the other regulations imposed by HB 1144—a desire to bring uniformity to the pawnbroker industry and to reduce abusive and unconscionable agreements arising from motor vehicle title loans.<sup>37</sup>

The Act also adds a provision which regulates advertising by pawnbrokers.<sup>38</sup> Under this provision, pawnbrokers may not use the word "loan" in their advertisements and are required to use the words "pawn" or "pawn transaction."<sup>39</sup> Pawnbrokers are also required to

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26. *Id.* § 44-12-131(a)(4)(C)(iii) (Supp. 1992).

27. *Id.* § 44-12-131(a)(4)(D) (Supp. 1992).

28. *Id.* § 44-12-131(a)(4)(E) (Supp. 1992).

29. *Id.* § 44-12-131(a)(4)(A) (Supp. 1992).

30. 1989 Ga. Laws 819 (formerly found at O.C.G.A. § 44-12-131 (Supp. 1991)).

31. Redding Interview, *supra* note 1.

32. *Id.*

33. *Id.*

34. O.C.G.A. § 44-12-131(a)(7)(A) (Supp. 1992).

35. *Id.* § 44-12-131(a)(7)(B) (Supp. 1992).

36. *Id.* § 44-12-131(a)(7)(C) (Supp. 1992).

37. Redding Interview, *supra* note 1.

38. O.C.G.A. § 44-12-138(a)(1) (Supp. 1992).

39. *Id.*

place the words "pawn" or "pawn transaction" on business signs.<sup>40</sup> These provisions were designed to eliminate confusion on the part of consumers as to what type of transaction is offered by a particular business such as a pawnbroker.<sup>41</sup>

The Act also requires detailed disclosures relating to the nature of the transaction prior to entering into a loan agreement.<sup>42</sup> The disclosure statement must be in writing and must contain such information as the applicable interest rates, the duration of the transaction, and the price it will cost the borrower to regain the pledged property.<sup>43</sup> The purpose behind this provision is to make borrowers more aware of the type of transaction which they are entering into and to require pawnbrokers to disclose information which often arose as "hidden costs" under prior law.<sup>44</sup>

The final change promulgated by the Act provides a grace period during which pledged goods or motor vehicles not redeemed by the pledgor may not be forfeited to the pawnbroker.<sup>45</sup> Under prior law, no such grace period existed and goods not redeemed by the end of the transaction period were automatically forfeited to the pawnbroker.<sup>46</sup>

The changes in the Act were a combination of ideas which had previously been suggested by legislators.<sup>47</sup> HB 1144 was essentially a "negotiated piece of legislation" which incorporated these concepts into its final version.<sup>48</sup>

Such comprehensive regulation of the pawnbroker industry was necessary for a number of reasons. Not only was there a lack of uniformity due to the emergence of "title bonds" pawnbrokers, but the lack of limits on interest and fees led to unconscionable agreements and unfair results. With the passage of HB 1144, pawnbrokers will now be required to limit the amount of interest and fees charged. Pawnbrokers will also be required to disclose the terms of any pawn transactions in complete detail and will be subject to suit if they fail to do so. The Act

40. *Id.* § 44-12-138(a)(2) (Supp. 1992).

41. Redding Interview, *supra* note 1.

42. O.C.G.A. § 44-12-138(b) (Supp. 1992).

43. *Id.*

44. Redding Interview, *supra* note 1.

45. O.C.G.A. § 44-14-403(b)(1) (Supp. 1992).

46. 1989 Ga. Laws 819 (formerly found at O.C.G.A. § 44-14-403 (Supp. 1991)).

47. One idea had been to stop pawnbrokers from charging a storage fee for storing cars when the pawnbrokers did not actually have possession of the cars. *Id.* Rep. Redding had also sought to regulate the interest rates charged in pawn transactions by bringing the industry under the control of the banking laws. *Id.*

48. *Id.*

serves to protect consumers and “brings uniformity to the pawnbroker industry.”<sup>49</sup>

*J. Anthony Love*

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49. *Id.*