

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 300

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Leo C. Watchman Jr.

AN ACT

RELATING TO BUSINESS REGULATION; ENACTING THE PAWNBROKING ACT;
REGULATING THE BUSINESS OF PAWNBROKERS; REQUIRING STATE
LICENSING OF PAWNBROKERS; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the
"Pawnbroking Act".

Section 2. DEFINITIONS. -- As used in the Pawnbroking Act:

A. "agency" means the financial institutions
division of the regulation and licensing department, its
director or an employee of the division acting pursuant to
properly delegated authority from the director;

B. "amount financed" means the amount of money
advanced to a pledgor in a pawn transaction;

C. "appropriate law enforcement official" means

1 the administrative head of the law enforcement entity having
2 law enforcement jurisdiction in the geographical location of a
3 pawnshop;

4 D. "beneficial owner" means a person not having
5 legal title to property but having rights in the property that
6 are the usual incidents of ownership;

7 E. "claimant" means a person who claims that his
8 or her property was misappropriated;

9 F. "conveying customer" means a person who
10 delivers property into the custody of a pawnbroker by pawn,
11 sale, consignment or trade;

12 G. "default date" means the next business day
13 following the date on which the pledgor's right to redeem
14 property expires;

15 H. "hold order" means a written direction executed
16 by the appropriate law enforcement official imposing a holding
17 period on property in the possession of a pawnbroker during
18 which neither possession nor title to the property may be
19 transferred;

20 I. "identification" means a government-issued
21 photographic identification signed by the person identified or
22 an electronic image of that document;

23 J. "maturity date" means the date occurring thirty
24 days after the date of the pawn transaction;

25 K. "misappropriated" means stolen, embezzled,

underscored material = new
[bracketed material] = del ete

1 converted or otherwise wrongfully appropriated without
2 permission of the rightful owner of the property;

3 L. "net worth" means a person's total assets less
4 the person's total liabilities as those terms are defined by
5 generally accepted accounting practices;

6 M. "operator" means a person who has charge of an
7 entity or has control of its business or of its
8 establishments, divisions or departments and who has some
9 amount of discretion and independent judgment in taking
10 actions on behalf of the entity;

11 N. "pawn" means the advancement of money to a
12 person conditioned upon that person transferring possession of
13 property to the person advancing money, pledging the property
14 as security for the advancement and having the right to redeem
15 the property on or before the duration of the pawn upon
16 performance of terms and conditions agreed to in writing by
17 the parties;

18 O. "pawn service charge" means a charge that
19 includes:

- 20 (1) interest on the money advanced in a pawn;
21 (2) costs of investigating the title of the
22 pledged property; and
23 (3) costs of storage of and insurance on the
24 pledged property.

25 "Pawn service charge" does not include a governmental tax

underscored material = new
[bracketed material] = delete

1 or fee imposed on the pawnbroker that may be passed on to the
2 pledgor;

3 P. "pawnbroker" means a person who:
4 (1) engages in the business of making pawns;
5 (2) makes a public display containing the
6 words "pawn", "pawnbroker" or "pawnshop" or any derivative of
7 those words; or
8 (3) displays to the public a sign or symbol
9 historically identified with pawns;

10 Q. "pawnbroker transaction form" means the
11 instrument on which a pawnbroker records pawns;

12 R. "pawnshop" means the location at which a
13 pawnbroker conducts business;

14 S. "person" means an individual or other legal
15 entity;

16 T. "pledged goods" means tangible personal
17 property deposited with or otherwise delivered into the
18 possession of a pawnbroker as security for advancement of
19 money;

20 U. "pledgor" means a person who delivers pledged
21 goods into the possession of a pawnbroker in a pawn
22 transaction; and

23 V. "purchase" means the simultaneous transfer of
24 title to and possession of property to a pawnbroker by a
25 person who is transferring the title for the pawnbroker's

underscored material = new
[bracketed material] = delete

1 acquisition for value, consignment or trade for other
2 property.

3 Section 3. LICENSE REQUIRED. --

4 A. A person shall not engage in business as a
5 pawnbroker unless the person has a valid license issued by the
6 agency. A separate license is required for each pawnshop.
7 The agency shall issue more than one license to a person if
8 that person complies with the requirements for each license.

9 B. A licensee who moves a pawnshop to another
10 location shall mail written notice of the change of location
11 to the agency and the appropriate law enforcement official at
12 least thirty days prior to the intended move, and the agency
13 shall then amend the license to indicate the new location.

14 C. A license remains in effect until it is
15 relinquished, suspended or revoked or it expires. All
16 licenses expire on June 30 of the calendar year following the
17 calendar year in which issued. The agency may adopt a rule
18 providing for proration of the license fee when issued for
19 less than twelve months. The amount of the license fee for
20 initial issuance of a license shall be not more than five
21 hundred dollars (\$500) for each license. A licensee shall pay
22 annually to the agency a license renewal fee not to exceed
23 three hundred fifty dollars (\$350) for each license held. The
24 renewal fee is due no later than the date of expiration of the
25 license being renewed. If the annual license fee remains

underscored material = new
[bracketed material] = delete

1 unpaid thirty days after written notice of delinquency is
2 mailed to the licensee by the agency, the license shall expire
3 automatically on that date.

4 D. A temporary license may be issued under the
5 provisions of this section and shall remain in effect until
6 the agency issues a permanent license or the application is
7 denied. The agency may issue a temporary pawnbroker's license
8 for the operation of a pawnshop upon receipt of an application
9 to:

10 (1) transfer an existing license from one
11 person to another; or

12 (2) issue a license when the applicant is an
13 existing licensee.

14 E. A licensee shall apply to the agency for a new
15 license or for a temporary license upon any change, directly
16 or beneficially, in the ownership of a pawnshop unless one or
17 more holders of at least a majority of the equity interest of
18 the pawnshop before the change in ownership continue to hold a
19 majority of that equity interest after the change in
20 ownership.

21 F. Any person applying for or renewing a local
22 business license or registration to engage in business as a
23 pawnbroker must exhibit a current pawnbroker's license from
24 the agency before the local business license or registration
25 may be issued or reissued.

1 Section 4. ELIGIBILITY FOR LICENSE. --

2 A. To be eligible for a pawnbroker's license, an
3 applicant shall:

4 (1) have a net worth of at least fifty
5 thousand dollars (\$50,000) established pursuant to generally
6 accepted accounting practices or file with the agency a bond
7 issued by a surety company holding a certificate of authority
8 from the superintendent of insurance to do business in this
9 state in the amount of ten thousand dollars (\$10,000) for each
10 license;

11 (2) not have been convicted or found guilty
12 of, or pled guilty or nolo contendere to, regardless of
13 adjudication, a felony within the last ten years and not be
14 acting as a beneficial owner for someone who has been
15 convicted or found guilty of, or pled guilty or nolo
16 contendere to, regardless of adjudication, a felony within the
17 last ten years; and

18 (3) not have been convicted or found guilty
19 of, or pled guilty or nolo contendere to, regardless of
20 adjudication, within the last ten years, a crime that the
21 agency finds directly relates to the duties and
22 responsibilities of a pawnbroker and not be acting as a
23 beneficial owner for someone who has been convicted or found
24 guilty of, or pled guilty or nolo contendere to, regardless of
25 adjudication, within the last ten years, a crime that the

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 agency finds directly relates to the duties and
2 responsibilities of a pawnbroker.

3 B. In lieu of the bond requirement in Paragraph
4 (1) of Subsection A of this section, the applicant may
5 establish a certificate of deposit or an irrevocable letter of
6 credit in a New Mexico banking institution in the amount of
7 the bond. The original bond, certificate of deposit or letter
8 of credit shall be filed with the agency. The agency shall be
9 the beneficiary of the bond, certificate of deposit or letter
10 of credit. The bond, certificate of deposit or letter of
11 credit shall be in favor of the agency for the use and benefit
12 of any consumer who is injured by the fraud,
13 misrepresentation, breach of contract, financial failure or
14 violation of any provision of the Pawnbroking Act by the
15 pawnbroker. The liability on the bond may be enforced by
16 filing a suit in a court of competent jurisdiction. The bond,
17 certificate of deposit or letter of credit shall be applicable
18 and liable only for the payment of claims duly adjudicated by
19 order of the court. The bond, certificate of deposit or
20 letter of credit shall be payable on a pro rata basis as
21 determined by the court if the aggregate amount of claims
22 exceed the amount of the bond, certificate of deposit or
23 letter of credit, but the aggregate amount paid may not exceed
24 that amount.

25 C. If the agency cannot verify that the applicant

underscored material = new
[bracketed material] = delete

1 meets the net worth requirement for a license, the agency may
2 require a finding, including the presentation of a current
3 balance sheet, by a certified public accountant that the
4 accountant has reviewed the books and records of the applicant
5 and that the applicant meets the net worth requirement.

6 D. If an applicant is not an individual, the
7 eligibility requirements of this section, other than the
8 requirements of Paragraph (1) of Subsection A of this section,
9 apply to each operator of the pawnshop and to each direct or
10 beneficial owner of at least thirty-five percent of the equity
11 interest of the pawnshop and, if the applicant is a
12 corporation, to each officer and director of the corporation.

13 Section 5. APPLICATION FOR LICENSE. --

14 A. An application for a pawnbroker's license, for
15 the transfer of an existing pawnbroker's license or for the
16 approval of a change in the ownership of a licensee's pawnshop
17 shall be verified by the individual signing it and shall state
18 the full name and place of residence of the applicant, the
19 place where the business is to be conducted and other relevant
20 information required by the agency.

21 B. If the applicant is not an individual, the
22 application shall include the full name and address of each
23 direct or beneficial owner of at least a ten percent equity
24 interest in the applicant, and if the applicant is a
25 corporation, the application shall also state the full name

underscored material = new
[bracketed material] = delete

1 and address of each officer and director unless the corporate
2 applicant is owned directly or beneficially by a person that
3 as an issuer has a class of securities registered under
4 Section 12 of the federal Securities Exchange Act of 1934, or
5 under Section 15(d) of that act, is an issuer of registered
6 securities required to file reports with the securities and
7 exchange commission and files with the agency the information,
8 documents and reports required to be filed with the securities
9 and exchange commission.

10 C. Each application for a license shall be
11 accompanied by an application fee set by the agency not to
12 exceed five hundred dollars (\$500) for the first location
13 applied for, and if the application includes additional
14 locations, not to exceed three hundred fifty dollars (\$350)
15 for each additional location. The amount of this fee shall be
16 sufficient to cover the license fee for the first year's
17 operation, the actual cost for fingerprint analysis for each
18 owner application and the costs of investigating the
19 applicant. Application fees are not refundable. The agency
20 shall adopt reasonable rules to provide for waiver of
21 fingerprint analysis or background investigation, or both, in
22 those cases in which the applicant has on record with another
23 state office or a federal office current fingerprint analysis
24 and background investigation data.

25 D. When the application and the required fee are

underscored material = new
[bracketed material] = delete

1 received, the agency shall investigate the facts, approve the
2 application and issue a license to the applicant if the agency
3 finds that the eligibility requirements for the license are
4 satisfied. The license must be prominently displayed in a
5 place in the pawnshop that is readily and easily observable by
6 business customers.

7 E. The agency shall take action to issue or deny
8 issuance of a license within sixty days of the date of
9 application. If no action is taken within that time period
10 the license is deemed approved unless the agency notifies the
11 applicant of an extension of the application period for a
12 definite time based upon reasonable cause found by the agency.

13 F. Fees collected pursuant to this section by the
14 agency shall be deposited into the general fund.

15 Section 6. DISCIPLINARY ACTION BY AGENCY AGAINST
16 LICENSEE--APPLICATION OF PROVISIONS OF UNIFORM LICENSING ACT--
17 VOLUNTARY SURRENDER OF LICENSE.--

18 A. The agency may enter an order imposing one or
19 more of the penalties set forth in Subsection B of this
20 section if the agency finds that:

21 (1) a licensee violated or is operating in
22 violation of a mandatory or prohibitive provision of the
23 Pawnbroking Act or of the rules adopted or orders issued
24 pursuant to that act or has aided or conspired with another
25 person to violate such a provision;

underscored material = new
[bracketed material] = delete

1 (2) a licensee made a material false
2 statement in any application, document or record required to
3 be submitted or retained under the Pawnbroking Act;

4 (3) a condition exists that, had it existed
5 when a license was issued, would have justified the agency's
6 refusal to issue a license;

7 (4) a licensee refused or failed, or any of
8 its principal officers refused or failed, after notice, to
9 produce any document or records or disclose any information
10 required to be produced or disclosed under this section or the
11 rules of the agency;

12 (5) a licensee made a material false
13 statement in response to any request or investigation by the
14 agency or the attorney general; or

15 (6) a licensee intentionally defrauded the
16 public through dishonest or deceptive means.

17 B. Upon a finding as set forth in Subsection A of
18 this section, the agency may:

19 (1) impose an administrative fine not to
20 exceed one thousand dollars (\$1,000) for each act by a
21 licensee that constitutes a violation of a mandatory or
22 prohibitive provision of the Pawnbroking Act or a rule or an
23 order issued pursuant to that act;

24 (2) direct that a licensee cease and desist
25 specified activities;

underscored material = new
[bracketed material] = delete

- 1 (3) revoke or suspend a license;
- 2 (4) place a licensee on probation for a
- 3 period of time, subject to those conditions specified by the
- 4 agency; or
- 5 (5) issue a formal written reprimand to a
- 6 licensee.

7 C. An administrative proceeding that could result
8 in the entry of an order imposing a penalty specified in
9 Subsection B of this section is governed by the provisions of
10 the Uniform Licensing Act.

11 D. If the agency has reasonable cause to believe
12 that a person is operating in violation of the Pawnbroking
13 Act, the agency may bring a civil action seeking temporary or
14 permanent injunctive relief and other appropriate civil
15 relief, including a civil penalty not to exceed five thousand
16 dollars (\$5,000) for each violation, restitution and damages
17 for injured customers, court costs and reasonable attorney
18 fees in the district court for the county in which the
19 violation is alleged to be occurring. An action brought
20 pursuant to this subsection is barred unless commenced within
21 two years of the date of the violation.

22 E. The agency may terminate an investigation or
23 action commenced pursuant to this section upon agreement by
24 the offender to pay a stipulated civil penalty, make
25 restitution or pay damages to customers or satisfy any other

underscored material = new
[bracketed material] = del ete

1 relief authorized in this section.

2 F. The remedies provided for in this section are
3 in addition to any other remedy provided by law.

4 G. A licensee may surrender a license by mailing
5 it to the agency with written notice of its surrender. The
6 surrender of a license does not affect the civil or criminal
7 liability of the licensee for acts committed before the
8 surrender of the license.

9 H. The revocation, suspension or surrender of a
10 license does not impair or affect the obligation of any
11 preexisting lawful contract between the licensee and any
12 pledgor. Any pawn transaction made by a person not licensed
13 as a pawnbroker is voidable, in which case the person forfeits
14 the right to collect any money, including principal and any
15 charges, from the pledgor in connection with the transaction
16 and is obligated to return to the pledgor the pledged goods in
17 connection with the transaction.

18 I. The agency may reinstate a suspended license or
19 issue a new license to a person whose license has been revoked
20 if after a hearing it determines that no fact or condition
21 then exists that would have justified the agency in originally
22 refusing to issue a license.

23 Section 7. PAWNBROKER TRANSACTION FORM --

24 A. At the time a pawnbroker enters into any pawn
25 or purchase transaction, the pawnbroker shall complete a

underscored material = new
[bracketed material] = delete

1 sequentially numbered pawnbroker transaction form for the
2 transaction, including an indication of whether the
3 transaction is a pawn or a purchase, and the pledgor or seller
4 shall sign the completed form. The agency shall design an
5 approved pawnbroker transaction form. The agency shall
6 include designated entries on the form for at least the
7 following information:

8 (1) the name and address of the pawnshop;
9 (2) except for items that are identical or
10 substantially similar, do not bear serial or model numbers, do
11 not contain precious metal or gemstones and are not firearms,
12 which items may be described by quantity and a single general
13 description using easily understood laymen's terms, a complete
14 and accurate description of the pledged goods or purchased
15 goods, including the following information for each item, if
16 applicable:

- 17 (a) brand name;
- 18 (b) model number;
- 19 (c) manufacturer's serial number;
- 20 (d) size;
- 21 (e) color, as apparent to the untrained
22 eye;
- 23 (f) precious metal type, weight and
24 content, if known;
- 25 (g) gemstone description in

underscored material = new
[bracketed material] = delete

1 nontechnical language, including the type and approximate
2 number of stones;

3 (h) in the case of firearms, the type
4 of action, caliber or gauge, number of barrels, barrel length
5 if under eighteen inches and finish;

6 (i) any other unique identifying marks,
7 numbers, names or letters; and

8 (j) in the case of Native American
9 jewelry and artifacts, a description that is normally accepted
10 in the trade or culture;

11 (3) the name, address, home telephone number,
12 date of birth, physical description and right thumbprint of
13 the pledgor or seller;

14 (4) the date and time of the transaction;

15 (5) the type of identification accepted from
16 the pledgor or seller, including the issuing agency and the
17 identification number;

18 (6) in the case of a pawn:

19 (a) the amount of money advanced, which
20 must be designated as the amount financed;

21 (b) the maturity date of the pawn;

22 (c) the date on which the pledgor's
23 right to redeem pledged property expires, which shall be
24 thirty days after the maturity date of the pawn, or the next
25 business day after the thirtieth day if the thirtieth day is

underscored material = new
[bracketed material] = del ete

1 not a business day, and the amount due on that date;

2 (d) the pawn service charge payable on
3 the maturity date, which must be designated as the finance
4 charge;

5 (e) the amount financed plus the
6 finance charge that must be paid to redeem the pledged goods
7 on the maturity date, which must be designated as the total of
8 payments;

9 (f) the annual percentage rate,
10 computed according to the applicable regulations adopted by
11 the federal reserve board pursuant to the federal Truth in
12 Lending Act; and

13 (g) a statement on the front or back of
14 the pawnbroker transaction form that notifies the pledgor
15 that: 1) any personal property pledged to a pawnbroker within
16 this state that is not redeemed by the date the pledgor's
17 right to redeem expires is forfeited on the default date to
18 the pawnbroker, and absolute right, title and interest in and
19 to the property vest in and are deemed conveyed to the
20 pawnbroker by operation of law, and no further notice is
21 necessary; 2) the pledgor is not obligated to redeem the
22 pledged goods; 3) if the pawnbroker transaction form is lost,
23 destroyed or stolen, the pledgor must immediately advise the
24 issuing pawnbroker by mail or in person evidenced by a signed
25 receipt; and 4) a pawn may be extended upon mutual agreement

. 119703. 3

underscored material = new
[bracketed material] = delete

1 of the parties;

2 (7) in the case of a purchase, the amount of
3 money paid for the goods or the monetary value assigned to the
4 goods in connection with the transaction; and

5 (8) a statement signed by the pledgor or
6 seller before a witness or a notary that the pledgor or seller
7 of the item represents and warrants that it is not stolen,
8 that it has no liens or encumbrances against it, that it is
9 not the subject of an outstanding pawn transaction and that
10 the pledgor or seller is the rightful owner of the goods and
11 has the right to enter into the transaction.

12 B. A pawnbroker shall use a form that is
13 substantially similar to the agency-approved form and that
14 contains entry spaces designating all of the required
15 information specified in Subsection A of this section.
16 However, a pawnbroker's form may be formatted to conform to
17 his business systems and may contain additional information.

18 Section 8. RECORD KEEPING--REPORTING.--

19 A. A pawnbroker shall maintain a copy of each
20 completed pawnbroker transaction form on the pawnshop premises
21 for at least one year after the date of the transaction. On a
22 weekly basis, the pawnbroker shall deliver to the appropriate
23 law enforcement official a compiled report or copies of the
24 pawnbroker transaction forms for each of the transactions
25 occurring during the previous business week. Other

underscored material = new
[bracketed material] = delete

1 arrangements for reporting may be agreed upon between the
2 pawnbroker and the appropriate law enforcement official. The
3 pawnbroker may delete or block out information disclosing the
4 amount of a pawn transaction on the copy of the pawnbroker
5 transaction form furnished. When an electronic image of a
6 pledgor or seller identification is accepted for a
7 transaction, the pawnbroker shall maintain the electronic
8 image in order to meet the same record keeping requirements as
9 for the original transaction form. If a criminal
10 investigation occurs, the pawnbroker shall, upon request,
11 provide a clear and legible copy of the image to the
12 appropriate law enforcement official.

13 B. If the appropriate law enforcement agency
14 supplies the software and the pawnbroker has computer
15 capability, pawn transactions shall be electronically
16 transferred. If a pawnbroker does not presently have computer
17 capability, the appropriate law enforcement agency may provide
18 the pawnbroker with a computer and all necessary equipment for
19 the purpose of electronically transferring pawn transactions.
20 The appropriate law enforcement agency shall retain ownership
21 of the computer unless otherwise agreed upon. The pawnbroker
22 shall maintain the computer in good working order, ordinary
23 wear and tear excepted. In the event the pawnbroker transfers
24 pawn transactions electronically, the pawnbroker is not
25 required to also deliver to the appropriate law enforcement

underscored material = new
[bracketed material] = del ete

1 official the original or copies of the pawnbroker transaction
2 forms. The appropriate law enforcement official may, for the
3 purposes of a criminal investigation, request that the
4 pawnbroker produce an original of a transaction form that has
5 been electronically transferred, and the pawnbroker shall
6 deliver this form to the official before the close of the next
7 business day.

8 C. All goods delivered to a pawnbroker in a pawn
9 transaction must be securely stored and maintained in an
10 unaltered condition within the jurisdiction of the appropriate
11 law enforcement official for a period of thirty calendar days
12 after the transaction unless redeemed earlier by the original
13 pledgor. The pawnbroker shall make records relating to
14 pledged goods available for inspection by the appropriate law
15 enforcement official during normal business hours throughout
16 the period. The pawnbroker must store and maintain pledged
17 goods for the period prescribed in Section 9 of the
18 Pawnbroking Act unless the pledged goods are redeemed earlier
19 by the holder of the original pawn ticket.

20 D. Each item pledged in a pawn transaction shall
21 have attached to it a tag with an alphabetic or numeric
22 identification matching that item with its corresponding
23 pawnbroker transaction form.

24 Section 9. PLEDGED GOODS NOT REDEEMED. -- Pledged goods
25 not redeemed by the pledgor on or before the maturity date of

underscored material = new
[bracketed material] = delete

1 a pawn shall be held by the pawnbroker for at least thirty
2 days following that date or until the next business day after
3 the thirtieth day if the thirtieth day is not a business day,
4 which date is the date on which the pledgor's right to redeem
5 the pledged goods expires. Pledged goods not redeemed by that
6 date are automatically forfeited to the pawnbroker on the
7 default day unless an extension is agreed to as provided in
8 Subsection B of Section 10 of the Pawnbroking Act. Absolute
9 right, title and interest in and to the goods vest in and are
10 deemed conveyed to the pawnbroker by operation of law, and no
11 further notice is necessary. A pledgor has no obligation to
12 redeem pledged goods, make any payment on a pawn or spend any
13 of the proceeds from a pawn transaction in the pawnshop.

14 Section 10. PAWN SERVICE CHARGES. --

15 A. In a pawn transaction, a pawnbroker may
16 contract for and receive a pawn service charge. The interest
17 component of the pawn service charge is deemed to be fifteen
18 percent of the amount financed for each thirty-day period in a
19 pawn transaction. The pawnbroker may charge any amount of
20 pawn service charge, if the total amount, inclusive of the
21 interest component, does not exceed twenty-five percent of the
22 amount financed for each thirty-day period in a pawn
23 transaction, except that the pawnbroker is entitled to receive
24 a minimum pawn service charge of ten dollars (\$10.00) per
25 transaction for each thirty-day period.

underscored material = new
[bracketed material] = delete

1 B. The date on which the right to redeem pledged
2 goods may be extended to a subsequent date by mutual agreement
3 between the pledgor and the pawnbroker if it is evidenced by a
4 written memorandum, a copy of which shall be supplied to the
5 pledgor, clearly specifying the extended date and the pawn
6 service charges owed on that date. The pawnbroker may require
7 a minimum extension of not more than thirty days. The daily
8 pawn service charge for the extension shall be equal to the
9 pawn service charge for the original thirty-day period divided
10 by thirty days. There is no limit on the number of extensions
11 that the parties may agree to.

12 C. The total amount of pawn service charges that a
13 pawnbroker may collect in the case of pledged goods redeemed
14 at any time within thirty days after the date of the pawn is
15 the amount provided in Subsection A of this section. The
16 total amount of pawn service charges that a pawnbroker may
17 collect in the case of redemptions occurring at any time more
18 than thirty days after the date of the pawn is twice the
19 amount provided in Subsection A of this section, except that
20 for redemptions occurring more than sixty days after the date
21 of the pawn, pawn service charges continue to accrue from and
22 after the sixtieth day at the daily rate determined as
23 provided in Subsection B of this section. Any unused pawn
24 service charge paid in advance by the pledgor shall be
25 refunded by the pawnbroker.

underscored material = new
[bracketed material] = delete

1 D. Pledged goods may be redeemed by agreement
2 between the pledgor and the pawnbroker that the pledgor shall
3 mail in advance all money due and a reasonable charge assessed
4 by the pawnbroker to recover his cost and expenses involved in
5 the packaging, insuring and shipping of the pledged goods.
6 The pawnbroker shall ship, mail or otherwise have the goods
7 delivered to the pledgor and shall insure the pledged goods in
8 an amount acceptable to the pledgor. The pawnbroker's
9 liability for loss or damage to the pledged goods is limited
10 to the amount of the insurance coverage obtained.

11 E. Any interest, charge or fees contracted for or
12 received, directly or indirectly, in excess of the amounts
13 authorized pursuant to this section are prohibited, may not be
14 collected and render the pawn transaction voidable, in which
15 case the pawnbroker shall forfeit the right to collect twice
16 the amount of the pawn service charge contracted for in the
17 pawn and, upon the pledgor's written request received by the
18 pawnbroker within thirty days after the maturity date, shall
19 be obligated to return to the pledgor the pledged goods
20 delivered to the pawnbroker in connection with the pawn upon
21 payment of the balance remaining due, but there shall be no
22 penalty for a violation resulting from an accidental and bona
23 fide error that is corrected upon discovery. Any action to
24 circumvent the limitation on pawn service charges collectible
25 pursuant to this section is voidable. In the event a pledgor

underscored material = new
[bracketed material] = delete

1 makes a partial payment on a pawn that reduces the amount
2 financed, any additional pawn service charges shall be
3 calculated on the remaining balance of the original amount
4 financed.

5 Section 11. PROHIBITED ACTS. -- A pawnbroker, or an
6 employee or agent of a pawnbroker, may not:

7 A. falsify or intentionally fail to make an entry
8 of any material matter in a pawnbroker transaction form;

9 B. refuse to allow the agency, the appropriate law
10 enforcement official or the attorney general, or any of their
11 designated representatives having jurisdiction, to inspect
12 completed pawnbroker transaction forms or pledged or purchased
13 goods during the ordinary hours of the pawnbroker's business
14 or other time acceptable to both parties;

15 C. intentionally obliterate, discard or destroy a
16 completed pawnbroker transaction form sooner than one year
17 after the date of the transaction;

18 D. accept a pledge or purchase property from a
19 person under the age of eighteen years;

20 E. make any agreement requiring or allowing the
21 personal liability of a pledgor or the waiver of any of the
22 provisions of this section;

23 F. knowingly enter into a pawn or purchase
24 transaction with any person who is under the influence of
25 alcohol or controlled substances when the condition is

underscored material = new
[bracketed material] = delete

1 apparent to an unskilled observer;

2 G. knowingly enter into a pawn or purchase
3 transaction with any person using the name of another;

4 H. conduct any pawn or purchase transaction at a
5 drive-through window or similar device in which the pledgor or
6 seller remains in a vehicle while conducting the transaction;

7 I. fail to return or replace pledged goods to a
8 pledgor upon payment of the full amount due the pawnbroker,
9 unless the pledged goods have been placed under a hold order
10 pursuant to Section 15 of the Pawnbroking Act or other
11 applicable state or federal law, taken into custody by a court
12 or otherwise disposed of by a court order;

13 J. sell or otherwise charge for insurance in
14 connection with a pawn transaction, except in connection with
15 the shipment of pledged goods redeemed by mail as provided in
16 Section 10 of the Pawnbroking Act;

17 K. engage in a loan transaction at or within a
18 licensed pawnshop location in which the only security for the
19 loan is:

20 (1) the retention by the lender of possession
21 of the evidence of title to a motor vehicle, commonly referred
22 to as a "title loan transaction"; or

23 (2) acceptance of a personal check or payroll
24 check, commonly referred to as a "payday loan";

25 L. lease pledged goods to the pledgor or any other

underscored material = new
[bracketed material] = delete

1 party;

2 M operate a pawnshop between the hours of 10:00
3 p.m. and 7:00 a.m.; or

4 N. knowingly hire anyone to work in a pawnshop who
5 has been convicted of, or entered a plea of guilty or nolo
6 contendere to, or had adjudication deferred for a felony
7 within the last seven years, or been convicted of, or entered
8 a plea of guilty or nolo contendere to, or had adjudication
9 deferred for a crime within the last seven years that involves
10 theft, larceny, dealing in stolen property, receiving stolen
11 property, burglary, embezzlement, obtaining property by false
12 pretenses, possession of altered property or any fraudulent or
13 dishonest dealing.

14 Section 12. RIGHT TO REDEEM - LOST PAWNBROKER TRANSACTION
15 FORM --

16 A. The holder of a valid pawn ticket is presumed
17 to be the owner of the pledged property and is entitled to
18 redeem the pledged goods described in the pawnbroker
19 transaction form. The person redeeming the pledged goods
20 shall sign the pledgor's copy of the pawnbroker transaction
21 form, which the pawnbroker may retain as evidence of the
22 person's receipt of the pledged goods in good and acceptable
23 condition. If the pledgor has appointed an authorized
24 representative to redeem the pledged goods, that person must
25 present written authorization from the original pledgor and

underscored material = new
[bracketed material] = delete

1 show identification to the pawnbroker, and the pawnbroker
2 shall record that person's name and address on the pawnbroker
3 transaction form retained by the pawnshop.

4 B. If a pledgor's copy of the pawnbroker
5 transaction form is lost, destroyed or stolen, the pledgor
6 shall notify the pawnbroker in writing either by certified
7 mail, return receipt requested, or personal delivery evidenced
8 by a signed receipt, and receipt of this notice invalidates
9 the pawnbroker transaction form if the pledged goods have not
10 previously been redeemed. Before delivering the pledged goods
11 or issuing a new pawnbroker transaction form, the pawnbroker
12 shall require the pledgor to make a written statement of the
13 loss, destruction or theft of the pledgor's copy of the
14 pawnbroker transaction form. The pawnbroker must record on
15 the written statement the type of identification and the
16 identification number accepted from the pledgor, the date the
17 statement is given and the number of the pawnbroker
18 transaction form that was lost, destroyed or stolen. The
19 statement must be signed by the pawnbroker or the pawnshop
20 employee who accepts the statement from the pledgor. A
21 pawnbroker is entitled to a fee not to exceed ten dollars
22 (\$10.00) in connection with each lost, destroyed or stolen
23 pawnbroker transaction form and the taking of a properly
24 prepared written statement.

25 C. If pledged goods are lost or damaged while in

underscored material = new
[bracketed material] = delete

1 the possession of the pawnbroker, the pawnbroker may satisfy
2 the pledgor's claim by replacing the lost or damaged goods
3 with like kinds of merchandise of equal value, with which the
4 pledgor can reasonably replace the goods. Replacement is a
5 defense to any civil action based upon the loss or damage of
6 the goods.

7 Section 13. PAWNBROKER'S LIEN. -- A pawnbroker has a
8 possessory lien on the pledged goods pawned as security for
9 the funds advanced, the pawn service charge owed and the other
10 charges authorized under the Pawnbroking Act but not for other
11 debts due to the pawnbroker. A pawnbroker has no recourse
12 against a pledgor for payment on a pawn transaction except for
13 the pledged goods themselves. Except as otherwise provided in
14 this section, the pawnbroker must retain possession of the
15 pledged goods until the lien is satisfied or until the default
16 date. The pawnbroker may be compelled to relinquish
17 possession of the pledged goods only after receipt of the
18 applicable funds advanced plus the accrued service charge and
19 other authorized charges, upon court order, or as otherwise
20 provided by law.

21 Section 14. CLAIMS AGAINST PLEDGED GOODS HELD BY
22 PAWNBROKERS. --

23 A. To obtain possession of pledged goods held by a
24 pawnbroker that a claimant claims to be misappropriated, the
25 claimant shall notify the pawnbroker in writing, either by

underscored material = new
[bracketed material] = delete

1 certified mail, return receipt requested, or personal delivery
2 evidenced by signed receipt, of the claimant's claim to the
3 pledged goods. The notice shall contain a complete and
4 accurate description of the pledged goods and shall be
5 accompanied by a legible copy of the applicable law
6 enforcement agency's report on the misappropriation of the
7 property. If the claimant and the pawnbroker do not resolve
8 the matter within ten days after the pawnbroker's receipt of
9 the notice, the claimant may petition a court of competent
10 jurisdiction to order the return of the property, naming the
11 pawnbroker as a defendant, and must serve the pawnbroker with
12 a copy of the petition. The pawnbroker shall hold the
13 property described in the petition until the right to
14 possession is resolved by the parties or by the court. The
15 court shall waive any filing fee for the petition to recover
16 the property, and the sheriff shall waive the service fees.

17 B. If, after notice and a hearing, the court finds
18 that the property was misappropriated and orders the return of
19 the property to the claimant, the claimant may recover from
20 the pawnbroker the costs of the action and the claimant's
21 reasonable attorney fees.

22 C. If a conveying customer is convicted, pleads
23 guilty or nolo contendere to or adjudication is deferred to a
24 charge of theft or dealing in stolen property, the court shall
25 order the conveying customer to repay the pawnbroker the full

underscored material = new
[bracketed material] = delete

1 amount he received from the pawnbroker for the property, plus
2 all applicable pawn service charges.

3 D. If the court finds that the claimant failed to
4 comply with the requirements in Subsection A of this section
5 or otherwise finds against the claimant, the claimant is
6 liable for the defendant's costs, including reasonable
7 attorney fees.

8 E. The sale, pledge or delivery of tangible
9 personal property to a pawnbroker by a person in this state is
10 considered to be:

11 (1) an agreement by the person who sells,
12 pledges or delivers the tangible personal property that the
13 person is subject to the jurisdiction of the court in all
14 civil actions and proceedings arising out of the pledge or
15 sale transaction filed by either a resident or nonresident
16 plaintiff;

17 (2) an appointment of the secretary of state
18 by any nonresident of this state as that person's lawful
19 attorney and agent upon whom may be served all process in
20 suits pertaining to the actions and proceedings arising out of
21 the sale, pledge or delivery; and

22 (3) an agreement by a nonresident that
23 process in a suit so served has the same legal force and
24 validity as if personally served in this state.

25 Section 15. HOLD ORDERS--ISSUANCE--REQUIRED

. 119703. 3

underscored material = new
[bracketed material] = delete

1 INFORMATION- - PROCEDURES. - -

2 A. When an appropriate law enforcement official
3 has probable cause to believe that property in the possession
4 of a pawnbroker is misappropriated, the official may place a
5 hold order on the property. The hold order shall impose a
6 holding period not to exceed ninety days unless extended by
7 court order. The appropriate law enforcement official may
8 rescind, in writing, any hold order. An appropriate law
9 enforcement official may place only one hold order on
10 property.

11 B. Upon the expiration of the holding period, the
12 pawnbroker shall notify, in writing, the appropriate law
13 enforcement official by mail that the holding period has
14 expired. If on the tenth day after the mailing of the
15 notification, the pawnbroker has not received from a court an
16 extension of the hold order on the property and the property
17 is not the subject of a proceeding under Section 14 of the
18 Pawnbroking Act, title to the property shall vest in and is
19 deemed conveyed by operation of law to the pawnbroker, free of
20 liability for claims but subject to restrictions contained in
21 the pawn transaction contract and subject to the provisions of
22 the Pawnbroking Act.

23 C. A hold order shall specify:
24 (1) the name and address of the pawnbroker;
25 (2) the name, title and identification number

underscored material = new
[bracketed material] = delete

1 of the representative of the appropriate law enforcement
2 official or the court placing the hold order;

3 (3) if applicable, the name and address of
4 the appropriate law enforcement official or court to which the
5 representative is attached and the number, if any, assigned to
6 the claim regarding the property;

7 (4) the transaction number and a complete
8 description of the property to be held, including model number
9 and serial number if applicable;

10 (5) the name of the person reporting the
11 property to be misappropriated, unless prohibited by law;

12 (6) the mailing address of the pawnbroker
13 where the property is held; and

14 (7) the expiration date of the holding
15 period.

16 D. The pawnbroker or the pawnbroker's
17 representative shall sign and date a copy of the hold order as
18 evidence of receipt of the hold order and the beginning of the
19 ninety-day holding period.

20 E. Except as otherwise provided in this
21 subsection, a pawnbroker may not release or dispose of
22 property subject to a hold order except pursuant to a court
23 order, a written release from the appropriate law enforcement
24 official or the expiration of the holding period of the hold
25 order. While a hold order is in effect, the pawnbroker shall

. 119703. 3

underscored material = new
[bracketed material] = delete

1 upon request release the property subject to the hold order to
2 the custody of the appropriate law enforcement official for
3 use in a criminal investigation. The release of the property
4 to the custody of the appropriate law enforcement official is
5 not considered a waiver or release of the pawnbroker's
6 property rights or interest in the property. Upon completion
7 of the criminal proceeding, the property shall be returned to
8 the pawnbroker unless the court orders other disposition.
9 When another disposition is ordered, the court shall
10 additionally order the conveying customer to pay restitution
11 to the pawnbroker in the amount received by the conveying
12 customer for the property together with reasonable attorney
13 fees and costs.

14 Section 16. CRIMINAL PENALTIES. --

15 A. A person who engages in business as a
16 pawnbroker without first securing a license is guilty of a
17 fourth degree felony and shall be sentenced pursuant to the
18 provisions of Section 31-18-15 NMSA 1978.

19 B. A person who willfully violates a mandatory or
20 prohibitory provision of the Pawnbroking Act, who willfully
21 makes a false entry in any record specifically required by
22 that act or who knowingly makes a false statement in
23 connection with a pawn transaction is guilty of a fourth
24 degree felony and shall be sentenced pursuant to the
25 provisions of Section 31-18-15 NMSA 1978.

. 119703. 3

underscored material = new
[bracketed material] = delete

1 Section 17. INJUNCTIONS. --When the agency has reasonable
2 cause to believe that a person is violating the Pawnbroking
3 Act, it may enter an order requiring the person to stop the
4 violation. The agency may petition the district court for the
5 county in which the alleged violation is occurring to enjoin
6 the person from engaging in the violation, continuing the
7 violation or doing any act in furtherance of the violation.
8 The court may order a preliminary or permanent injunction.

9 Section 18. RECORDS OF THE DEPARTMENT OF PUBLIC
10 SAFETY. --The department of public safety, if requested, shall
11 furnish the agency arrest and conviction records in its
12 possession of an individual applying for or holding a license
13 pursuant to the Pawnbroking Act.

14 Section 19. CONFLICTING ORDINANCES. --A county or
15 municipality may enact an ordinance that is in
16 compliance with but not more restrictive than, the Pawnbroking
17 Act. A local ordinance may not restrict hours of operations
18 other than between midnight and 6:00 a.m. A provision of an
19 ordinance that conflicts with this section is void. Nothing
20 in the Pawnbroking Act affects the authority of a county or
21 municipality to establish land use controls or require a
22 pawnbroker to obtain a local occupational license.

23 Section 20. RULEMAKING AUTHORITY. --The agency shall
24 adopt, amend, repeal and promulgate reasonable rules necessary
25 for the efficient administration and enforcement of the

underscored material = new
[bracketed material] = delete

1 Pawnbroking Act. Rules adopted pursuant to this section and
2 the agency's administration of that act are exempt from the
3 authority of the superintendent of regulation and licensing
4 pursuant to Section 9-16-6 NMSA 1978.

5 Section 21. ADVISORY COMMITTEE. --

6 A. To assist the agency in its rulemaking
7 responsibilities pursuant to Section 20 of the Pawnbroking
8 Act, an advisory committee of five members shall be appointed
9 by the agency. The committee's membership shall consist of:

10 (1) three licensed pawnbrokers, each residing
11 in a different congressional district in the state;

12 (2) the director of the agency or his
13 designee; and

14 (3) the secretary of taxation and revenue or
15 his designee.

16 B. The director of the agency or his designee
17 shall serve as chair of the advisory committee, and it shall
18 meet at his call.

19 C. The licensed pawnbroker members of the
20 committee shall be reimbursed for their expenses incurred in
21 attending and participating in committee meetings pursuant to
22 the Per Diem and Mileage Act.

23 Section 22. TEMPORARY PROVISION--TRANSITION PERIOD FOR
24 COMPLIANCE.-- A pawnbroker operating a pawnshop in business and
25 licensed pursuant to the Pawnbroking Act prior to July 1, 1999

underscored material = new
[bracketed material] = delete

1 has until January 1, 2000 to comply with the provisions of the
2 Pawnbroking Act before the financial institutions division of
3 the regulation and licensing department may initiate any
4 administrative or civil action against the pawnbroker.

5 Section 23. REPEAL. -- Sections 56-12-1 through 56-12-16
6 NMSA 1978 (being Laws 1985, Chapter 228, Sections 1 through
7 16) are repealed.

8 Section 24. EFFECTIVE DATE. -- The effective date of the
9 provisions of this act is July 1, 1999.

1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
3
4
5

6 February 9, 1999
7

8 Mr. Speaker:
9

10 Your BUSINESS AND INDUSTRY COMMITTEE, to whom has
11 been referred
12

13 HOUSE BILL 300
14

15 has had it under consideration and reports same with
16 recommendation that it DO PASS, amended as follows:

17 1. On page 34, line 16, strike "more" and insert in lieu
18 thereof "less".
19

20 2. On page 34, line 17, strike "not".
21

22 3. On page 34, line 18, strike "other than".
23

24 4. On page 34, line 18, after "a.m." strike the remainder
25 of the line and strike line 19 through "void.". ,

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HBIC/HB 300

Page 38

and thence referred to the JUDICIARY COMMITTEE.

Respectfully submitted,

Debbie A. Rodella, Vice
Chairwoman

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____

The roll call vote was 11 For 0 Against

Yes: 11
Excused: Luna
Absent: None

127345.1

J:\99BillSWP\H0300

. 119703.3

underscored material = new
[bracketed material] = delete

1 **FORTY- FOURTH LEGISLATURE**
2 **FIRST SESSION, 1999**

3
4 **February 27, 1999**

5
6
7 **Mr. Speaker:**

8
9 **Your JUDICIARY COMMITTEE, to whom has been referred**

10 **HOUSE BILL 300, as amended**

11
12 **has had it under consideration and reports same with**
13 **recommendation that it DO PASS, amended as follows:**

14
15 1. On page 3, line 18, strike "that", strike all of
16 lines 19 through 24 and insert in lieu thereof "for interest
17 on the money advanced in a pawn."

18 2. On page 7, line 4, after "(1)" strike the remainder
19 of the line and strike line 5 and strike line 6 through
20 "or".

21
22 3. On page 8, line 7, after the first occurrence of
23 "bond" insert "for each license issued".

24
25 4. On page 8, strike line 25 and on page 9, strike
lines 1 through 5.

. 119703. 3

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

3 HJC/HB 300aa

Page 40

4
5 5. Reletter the succeeding subsection.

6 6. On page 9, line 8, after "Subsection A" insert "and
7 of Subsection B".

8
9 7. On page 15, line 5, after "form" insert "or shall
10 approve an existing form for pawnbroker transactions".

11 8. On page 20, line 24, before "Pledged" insert the
12 subsection designation "A".

13
14 9. On page 21, line 5, strike "Pledged" and insert in
15 lieu thereof "Except as provided in Subsection B of this
16 section, pledged".

17
18
19
20
21
22
23
24
25
underscored material = new
[bracketed material] = del ete

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HJC/HB 300aa

Page 41

10. On page 21, between lines 13 and 14, insert:

"B. A pledgor may redeem pledged goods after the
pledgor's right to redeem expires if:

(1) the pledged goods are in the possession
of the pawnbroker and title is vested in him by virtue of
the provisions of this section; and

(2) the pledgor pays the pawnbroker the
amount of the original loan plus accrued interest to the
date of redemption or the market value of the pledged goods,
whichever is less."

11. On page 21, line 16, after the period strike the
remainder of the line and strike lines 17 through 25 and
insert in lieu thereof:

"The amount of the pawn service charge shall be ten
dollars (\$10.00) or ten percent of the amount loaned,
whichever is greater, for each thirty-day period in the pawn
transaction."

12. On page 23, line 11, strike ", charge or fees" and

. 119703. 3

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

3 HJC/HB 300aa

Page 42

4 on line 12, strike ", directly or indirectly,".

6 13. On page 24, line 16, strike "one year" and insert
7 in lieu thereof "two years".

9 14. On page 25, line 14, after the word "transaction"
10 strike the comma and insert in lieu thereof a semi-colon;
11 strike "except in connection with", and strike lines 15 and
12 16.

13 15. On page 26, line 19, after the period strike the
14 remainder of the line strike lines 20 through 22, and on
15 line 23 strike "condition.".

underscored material = new
[bracketed material] = delete

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HJC/HB 300aa

Page 43

16. On page 26, line 25, strike "and" and on page 27,
strike lines 1 through 3 and insert in lieu thereof:

"or the original pawn ticket unless the original pawn ticket
has been reported stolen."

17. On page 35, line 8, strike "five" and insert in
lieu thereof "six".

18. On page 35, line 13, strike "and".

19. On page 35, line 15, strike the period and insert
in lieu thereof "; and" and between lines 15 and 16, insert
"(4) a member of law enforcement."

Respectfully submitted,

R. David Pederson, Chairman

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HJC/HB 300aa

Page 44

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 2 Against

Yes: 6

No: Garcia, Godbey

Excused: Luna, Mallory, T. Taylor, Vaughn

Absent: None

. 128390. 1

J:\99BillsWP\H0300

underscored material = new
[bracketed material] = delete

. 119703. 3

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

1 HJC/HB 300aa

Page 45

2

3

4

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

5

6

7

8

March 11, 1999

9

Mr. President:

10

11

Your CORPORATIONS & TRANSPORTATION COMMITTEE, to

12

whom has been referred

13

14

HOUSE BILL 300, as amended

15

has had it under consideration and reports same with

16

recommendation that it DO PASS, and thence referred to the

17

JUDICIARY COMMITTEE.

18

19

Respectfully submitted,

20

21

22

23

24

Roman M. Maes, Chairman

25

. 119703. 3

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

1 HJC/HB 300aa

Page 46

2

3

4

Adopted _____ Not

5

Adopted _____

6

(Chief Clerk)

(Chief Clerk)

7

8

9

Date _____

10

11

The roll call vote was 6 For 0 Against

12

Yes: 6

13

No: 0

14

Excused: Aragon, McKibben, Rawson, Robinson

15

Absent: None

16

17

H0300CT1

18

19

20

21

22

23

24

25

. 119703. 3

underscored material = new
[bracketed material] = delete