

1989 Assembly Bill 58

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1989 WISCONSIN ACT 257

AN ACT to repeal 138.10 (1); to amend 948.63 (1); and to repeal and recreate 134.71 of the statutes, relating to: regulating pawnbrokers and secondhand article and jewelry dealers and providing penalties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 134.71 of the statutes is repealed and recreated to read:

134.71 Pawnbrokers and secondhand article and jewelry dealers. (1) DEFINITIONS. In this section:

(a) "Article" means any of the following articles except jewelry:

1. Audio-visual equipment.
2. Bicycles.
3. China.
4. Computers, printers, software and computer supplies.
5. Computer toys and games.
6. Crystal.
7. Electronic equipment.
8. Fur coats and other fur clothing.
9. Ammunition and knives.
10. Microwave ovens.
11. Office equipment.
12. Pianos, organs, guitars and other musical instruments.
13. Silverware and flatware.
14. Small electrical appliances.
15. Telephones.

(am) "Charitable organization" means a corporation, trust or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary or educational purposes or for the prevention of cruelty to children or animals, no part of the net

earnings of which inures to the benefit of any private shareholder or individual.

(b) "Customer" means a person with whom a pawnbroker, secondhand article dealer or secondhand jewelry dealer or an agent thereof engages in a transaction of purchase, sale, receipt or exchange of any secondhand article or secondhand jewelry.

(c) "Jewelry" means any tangible personal property ordinarily wearable on the person and consisting in whole or in part of any metal, mineral or gem customarily regarded as precious or semiprecious.

(d) "Municipality" means a city or village.

(e) "Pawnbroker" means any person who engages in the business of lending money on the deposit or pledge of any article or jewelry, or purchasing any article or jewelry with an expressed or implied agreement or understanding to sell it back at a subsequent time at a stipulated price.

(f) "Secondhand" means owned by any person, except a wholesaler, retailer or secondhand article dealer or secondhand jewelry dealer licensed under this section, immediately before the transaction at hand.

(g) "Secondhand article dealer" means any person who primarily engages in the business of purchasing or selling secondhand articles, except when engaging in any of the following:

1. Any transaction at an occasional garage or yard sale, an estate sale, a gun, knife, gem or antique show, a convention or an auction.
2. Any transaction entered into by a person while engaged in a business for which the person is licensed

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under sub. (2) or (4) or while engaged in the business of junk collector, junk dealer, auctioneer or scrap processor as described in s. 70.995 (2) (x).

3. Any transaction while operating as a charitable organization or conducting a sale the proceeds of which are donated to a charitable organization.

4. Any transaction between a buyer of a new article and the person who sold the article when new which involves any of the following:

a. The return of the article.

b. The exchange of the article for a different, new article.

5. Any transaction as a purchaser of a secondhand article from a charitable organization if the secondhand article was a gift to the charitable organization.

6. Any transaction as a seller of a secondhand article which the person bought from a charitable organization if the secondhand article was a gift to the charitable organization.

(h) "Secondhand jewelry dealer" means any person who engages in the business of any transaction consisting of purchasing, selling, receiving or exchanging secondhand jewelry, except for the following:

1. Any transaction at an occasional garage or yard sale, an estate sale, a gun, knife, gem or antique show, a convention or an auction.

2. Any transaction with a licensed secondhand jewelry dealer.

3. Any transaction entered into by a person while engaged in a business of smelting, refining, assaying or manufacturing precious metals, gems or valuable articles if the person has no retail operation open to the public.

4. Any transaction between a buyer of new jewelry and the person who sold the jewelry when new which involves any of the following:

a. The return of the jewelry.

b. The exchange of the jewelry for different, new jewelry.

5. Any transaction as a purchaser of secondhand jewelry from a charitable organization if the secondhand jewelry was a gift to the charitable organization.

6. Any transaction as a seller of secondhand jewelry which the person bought from a charitable organization if the secondhand jewelry was a gift to the charitable organization.

(2) LICENSE FOR PAWNBROKER. No person may operate as a pawnbroker unless the person first obtains a pawnbroker's license under this section.

(3) LICENSE FOR SECONDHAND ARTICLE DEALER. (a) Except as provided in par. (b), no person may operate as a secondhand article dealer unless the person first obtains a secondhand article dealer's license under this section.

(b) A person who operates as a secondhand article dealer only on premises or land owned by a person having a secondhand dealer mall or flea market license under

sub. (9) need not obtain a secondhand article dealer's license.

(4) LICENSE FOR SECONDHAND JEWELRY DEALER. No person may operate as a secondhand jewelry dealer unless the person first obtains a secondhand jewelry dealer's license under this section.

(5) LICENSE APPLICATION. A person wishing to operate as a pawnbroker, secondhand article dealer or secondhand jewelry dealer in a municipality shall apply to the clerk of the municipality for a license. A person wishing to operate as a pawnbroker, secondhand article dealer or secondhand jewelry dealer in a town shall apply to the clerk of the county in which the town is located for a license. The clerk shall furnish application forms under sub. (12) which shall require the following:

(a) The applicant's name, place and date of birth and residence address.

(b) The names and addresses of the business and of the owner of the business premises.

(c) A statement as to whether the applicant has been convicted within the preceding 10 years of a felony or within the preceding 5 years of a misdemeanor, statutory violation punishable by forfeiture or county or municipal ordinance violation in which the circumstances of the felony, misdemeanor or other offense substantially relate to the circumstances of the licensed activity and, if so, the nature and date of the offense and the penalty assessed.

(d) Whether the applicant is a natural person, corporation or partnership, and:

1. If the applicant is a corporation, the state where incorporated and the names and addresses of all officers and directors.

2. If the applicant is a partnership, the names and addresses of all partners.

(e) The name of the manager or proprietor of the business.

(f) Any other information that the county or municipal clerk may reasonably require.

(6) INVESTIGATION OF LICENSE APPLICANT. The law enforcement agency of the county or municipality shall investigate each applicant for a pawnbroker's, secondhand article dealer's or secondhand jewelry dealer's license to determine whether the applicant has been convicted within the preceding 10 years of a felony or within the preceding 5 years of a misdemeanor, statutory violation punishable by forfeiture or county or municipal ordinance violation described under sub. (5) (c) and, if so, the nature and date of the offense and the penalty assessed. The law enforcement agency shall furnish the information derived from that investigation in writing to the clerk of the municipality or county.

(7) LICENSE ISSUANCE. (a) The governing body of the county or municipality shall grant the license if all of the following apply:

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1. The applicant, including an individual, a partner or an officer, director or agent of any corporate applicant, has not been convicted within the preceding 10 years of a felony or within the preceding 5 years of a misdemeanor, statutory violation punishable by forfeiture or county or municipal ordinance violation in which the circumstances of the felony, misdemeanor or other offense substantially relate to the circumstances of being a pawnbroker, secondhand jewelry dealer, secondhand article dealer or secondhand article dealer mall or flea market owner.

2. With respect to an applicant for a pawnbroker's license, the applicant provides to the governing body a bond of \$500, with not less than 2 sureties, for the observation of all municipal ordinances relating to pawnbrokers.

(b) No license issued under this subsection may be transferred.

(c) 1. Each license for a pawnbroker, secondhand article dealer or secondhand jewelry dealer is valid from January 1 until the following December 31.

2. Each license for a secondhand article dealer mall or flea market is valid for 2 years, from May 1 of an odd-numbered year until April 30 of the next odd-numbered year.

(8) PAWNBROKER AND DEALER REQUIREMENTS. (a) *Identification.* No pawnbroker, secondhand article dealer or secondhand jewelry dealer may engage in a transaction of purchase, receipt or exchange of any secondhand article or secondhand jewelry from a customer without first securing adequate identification from the customer. At the time of the transaction, the pawnbroker, secondhand article dealer or secondhand jewelry dealer shall require the customer to present one of the following types of identification:

1. A county identification card.
2. A state identification card.
3. A valid Wisconsin motor vehicle operator's license.
4. A valid motor vehicle operator's license, containing a picture, issued by another state.
5. A military identification card.
6. A valid passport.
7. An alien registration card.
8. A senior citizen's identification card containing a photograph.
9. Any identification document issued by a state or federal government, whether or not containing a picture, if the pawnbroker, secondhand article dealer or secondhand jewelry dealer obtains a clear imprint of the customer's right index finger.

(b) *Transactions with minors.* 1. Except as provided in subd. 2, no pawnbroker, secondhand article dealer or secondhand jewelry dealer may engage in a transaction of purchase, receipt or exchange of any secondhand article or secondhand jewelry from any minor.

2. A pawnbroker, secondhand article dealer or secondhand jewelry dealer may engage in a transaction described under subd. 1 if the minor is accompanied by his or her parent or guardian at the time of the transaction or if the minor provides the pawnbroker, secondhand article dealer or secondhand jewelry dealer with the parent's or guardian's written consent to engage in the particular transaction.

(c) *Records.* 1. Except as provided in subd. 2, for each transaction of purchase, receipt or exchange of any secondhand article or secondhand jewelry from a customer, a pawnbroker, secondhand article dealer or secondhand jewelry dealer shall require the customer to complete and sign, in ink, the appropriate form provided under sub. (12). No entry on such a form may be erased, mutilated or changed. The pawnbroker, secondhand article dealer or secondhand jewelry dealer shall retain an original and a duplicate of each form for not less than one year after the date of the transaction except as provided in par. (e), and during that period shall make the duplicate available to any law enforcement officer for inspection at any reasonable time.

2. For every secondhand article purchased, received or exchanged by a secondhand article dealer from a customer off the secondhand article dealer's premises or consigned to the secondhand article dealer for sale on the secondhand article dealer's premises, the secondhand article dealer shall keep a written inventory. In this inventory the secondhand article dealer shall record the name and address of each customer, the date, time and place of the transaction and a detailed description of the article which is the subject of the transaction. The customer shall sign his or her name on a declaration of ownership of the secondhand article identified in the inventory and shall state that he or she owns the secondhand article. The secondhand article dealer shall retain an original and a duplicate of each entry and declaration of ownership relating to the purchase, receipt or exchange of any secondhand article for not less than one year after the date of the transaction except as provided in par. (e), and shall make duplicates of the inventory and declarations of ownership available to any law enforcement officer for inspection at any reasonable time.

(d) *Holding period.* 1. Except as provided in subd. 5, any secondhand article or secondhand jewelry purchased or received by a pawnbroker shall be kept on the pawnbroker's premises or other place for safekeeping for not less than 30 days after the date of purchase or receipt, unless the person known by the pawnbroker to be the lawful owner of the secondhand article or secondhand jewelry recovers it.

2. Except as provided in subd. 5, any secondhand article purchased or received by a secondhand article dealer shall be kept on the secondhand article dealer's premises or other place for safekeeping for not less than 10 days after the date of purchase or receipt.

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3. Except as provided in subd. 5, any secondhand jewelry purchased or received by a secondhand jewelry dealer shall be kept on the secondhand jewelry dealer's premises or other place for safekeeping for not less than 15 days after the date of purchase or receipt.

4. During the period set forth in subd. 1, 2 or 3 the secondhand article or secondhand jewelry shall be held separate and apart and may not be altered in any manner. The pawnbroker, secondhand article dealer or secondhand jewelry dealer shall permit any law enforcement officer to inspect the secondhand article or secondhand jewelry during this period. Within 24 hours after a written request of a law enforcement officer during this period, a pawnbroker, secondhand article dealer or secondhand jewelry dealer shall make available for inspection any secondhand article or secondhand jewelry which is kept off the premises for safekeeping. Any law enforcement officer who has reason to believe any secondhand article or secondhand jewelry was not sold or exchanged by the lawful owner may direct a pawnbroker, secondhand article dealer or secondhand jewelry dealer to hold that secondhand article or secondhand jewelry for a reasonable length of time which the law enforcement officer considers necessary to identify it.

5. Subdivisions 1 to 4 do not apply to any of the following:

a. A coin of the United States, any gold or silver coin or gold or silver bullion.

b. A secondhand article or secondhand jewelry consigned to a pawnbroker, secondhand article dealer or secondhand jewelry dealer.

(e) *Report to law enforcement agency.* Within 24 hours after purchasing or receiving a secondhand article or secondhand jewelry, a pawnbroker, secondhand article dealer or secondhand jewelry dealer shall make available, for inspection by a law enforcement officer, the original form completed under par. (c) 1. or the inventory under par. (c) 2., whichever is appropriate. Notwithstanding s. 19.35 (1), a law enforcement agency receiving the original form or inventory or a declaration of ownership may disclose it only to another law enforcement agency.

(f) *Exception for customer return or exchange.* Nothing in this subsection applies to the return or exchange, from a customer to a secondhand article dealer or secondhand jewelry dealer, of any secondhand article or secondhand jewelry purchased from the secondhand article dealer or secondhand jewelry dealer.

(9) **SECONDHAND ARTICLE DEALER MALL OR FLEA MARKET.** (a) The owner of any premises or land upon which 2 or more persons operate as secondhand article dealers may obtain a secondhand article dealer mall or flea mar-

ket license for the premises or land if the following conditions are met:

1. Each secondhand article dealer occupies a separate sales location and identifies himself or herself to the public as a separate secondhand article dealer.

2. The secondhand article dealer mall or flea market is operated under one name and at one address, and is under the control of the secondhand article dealer mall or flea market license holder.

3. All sales are completed at a central location under the control of the secondhand article dealer mall or flea market license holder, who maintains a record of all sales.

(b) The secondhand article dealer license holder and each secondhand article dealer operating upon the premises or land shall comply with sub. (8).

(10) **LICENSE REVOCATION.** A governing body of a county or municipality may revoke any license issued by it under this section for fraud, misrepresentation or false statement contained in the application for a license or for any violation of this section or s. 943.34, 948.62 or 948.63.

(11) **FEES.** The license fees under this section are:

(a) For a pawnbroker's license, \$210.

(b) For a secondhand article dealer's license, \$27.50.

(c) For a secondhand jewelry dealer's license, \$30.

(d) For a secondhand article dealer mall or flea market license, \$165.

(12) **APPLICATIONS AND FORMS.** The department of justice shall develop applications and other forms required under subs. (5) (intro.) and (8) (c). The department of justice shall print a sufficient number of applications and forms to provide to counties and municipalities for distribution to pawnbrokers, secondhand article dealers and secondhand jewelry dealers at no cost.

(13) **PENALTY.** (a) Upon conviction for a first offense under this section, a person shall forfeit not less than \$50 nor more than \$1,000.

(b) Upon conviction for a 2nd or subsequent offense under this section, a person shall forfeit not less than \$500 nor more than \$2,000.

(14) **ORDINANCE.** A county or municipality may enact an ordinance governing pawnbrokers, secondhand article dealers or secondhand jewelry dealers if that ordinance is at least as stringent as this section.

SECTION 2. 138.10 (1) of the statutes is repealed.

SECTION 3. 948.63 (1) of the statutes, as affected by 1987 Wisconsin Act 332, is amended to read:

948.63 (1) As a dealer in secondhand articles or jewelry or junk, purchases any personal property, except old rags and waste paper, from any child, without the written consent of his or her parent or guardian; or