~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 22, 2018

**S. 810**

Introduced by Senator Hembree

S. Printed 3/22/18--S.

Read the first time January 9, 2018.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (S. 810) to amend the Code of Laws of South Carolina, 1976, by adding Section 40‑39‑165 so as to provide counties or municipalities may enact ordinances requiring the payment, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, Section 40‑39‑40, as contained in SECTION 2, by deleting the SECTION in its entirety.

Amend the bill further, Section 40‑39‑70, as contained in SECTION 3, by deleting the SECTION in its entirety and inserting:

/ SECTION 3. Section 40‑39‑70 of the 1976 Code is amended to read:

“Section 40‑39‑70. (A) A pawnbroker shall keep a record, at the time of any loan or purchase, containing:

(1) an account ~~and~~, description, and digital photograph of the goods, articles, or things pawned, pledged, or purchased~~,~~;

(2) the amount of money loaned thereon~~,~~;

(3) the time of pledging them~~,~~;

(4) the charges~~,~~ or the rate of interest to be paid on the loan~~,~~; and

(5) the name and residence of the person selling, pawning, or pledging the goods, articles, or things.

(B) Before a pledge or purchase, the pawnbroker shall verify the identity of the pledgor or seller by reviewing a state‑issued or federally issued photographic identification card, including a United States military identification card, or a passport issued by the United States.

(C) A pawn or purchase transaction must be performed by the owner of the property, or his authorized agent, whose identity and agency relationship must be verified by the pawnbroker.” /

Amend the bill further, Section 40‑39‑90(B), as contained in SECTION 4, page 3, by deleting the subsection in its entirety and inserting:

/ (B) A municipality or county shall enact local regulations requiring pawnshops operating in the municipality or county to provide or transfer pawn records by electronic data transfer to a law enforcement database. The pawnbrokers shall transfer pawn records by electronic data transfer to the sheriff of the county in which the business is located. The sheriff shall transmit all electronic data when received to the database.” /

Amend the bill further, Section 40‑39‑145, as contained in SECTION 5, by deleting the SECTION in its entirety and inserting:

/ SECTION 5. Section 40‑39‑145 of the 1976 Code is amended to read:

“Section 40‑39‑145. (A)~~(1)~~ When an appropriate law enforcement official has probable cause to believe that property in the possession of a pawnbroker is misappropriated or stolen, ~~he may place a written hold order on the property. The written hold order must impose a holding period not to exceed ninety days unless extended by court order. The appropriate law enforcement official may rescind, in writing, any hold order. An appropriate law enforcement official may place only one hold order on the property at any given time.~~

~~(2)~~ ~~A hold order must specify:~~

~~(a)~~ ~~the name and address of the pawnbroker;~~

~~(b)~~ ~~the name, title, and identification number of the representative of the appropriate law enforcement official or the court placing the hold order;~~

~~(c)~~ ~~the name and address of the appropriate law enforcement official or court to which such representative is attached and the number, if any, assigned to the claim regarding the property;~~

~~(d)~~ ~~a complete description of the property to be held, including model number and serial number if applicable;~~

~~(e)~~ ~~the name of the person reporting the property to be misappropriated or stolen, unless otherwise prohibited by law;~~

~~(f)~~ ~~the mailing address of the pawnbroker where the property is held; and~~

~~(g)~~ ~~the expiration date of the holding period.~~

~~(3)~~ ~~The pawnbroker or his representative must sign and date a copy of the hold order as evidence of receipt of the hold order and the beginning of the ninety‑day holding period.~~

~~(4)(a)~~ ~~Except as provided in subitem (b), a pawnbroker may not release or dispose of property subject to a hold order except pursuant to a court order, a written release from the appropriate law enforcement official, or the expiration of the holding period of the hold order.~~

~~(b)~~ ~~While a hold order is in effect, the pawnbroker shall, upon request, release the property subject to the hold order to the custody of the appropriate law enforcement official for use in a criminal investigation. The release of the property to the custody of the appropriate law enforcement official is not considered a waiver or release of the pawnbroker’s property rights or interest in the property. Upon completion of the criminal proceeding, the property must be returned to the pawnbroker unless the court orders another disposition, in which case the court additionally shall order the conveying customer to pay restitution to the pawnbroker in the amount received by the conveying customer for the property together with reasonable attorney’s fees and costs~~ the pawnbroker shall release the property to the appropriate law enforcement agency for use in a criminal investigation or return the property to the identified innocent owner. A pawnbroker who releases the property to law enforcement must be listed as a statutory victim on all transmitted reports and case files. If at the conclusion of the criminal investigation no identifiable innocent owner is found, the property must be returned to the pawnbroker by the appropriate law enforcement agency.

(B) ~~Upon the expiration of the holding period, the pawnbroker shall notify, in writing, the appropriate law enforcement official by certified mail, return receipt requested, that the holding period has expired. If, on the tenth day after the written notice has been received by the appropriate law enforcement official, the pawnbroker has not received from a court an extension of the hold order on the property and the property is not the subject of a proceeding under this subsection, title to the property shall vest in and be deemed conveyed by operation of law to the pawnbroker, free of any liability for claims but subject to any restrictions contained in the pawn transaction contract and subject to this chapter~~ The release of the property to the custody of the appropriate law enforcement official is not considered a waiver or release of the pawnbroker’s property rights or interest in the property. Upon completion of the criminal proceeding involving the property identified as stolen, the court additionally shall order the conveying customer to pay restitution to the pawnbroker in the amount received by the conveying customer for the property.

(C) When law enforcement seizes property pursuant to subsection (A), they shall hold the seized property for ten business days before releasing it to an innocent owner. During this ten business day period, a pawnbroker may file an action for claim and delivery of the seized property, provided it also shall serve notice of this action to the law enforcement agency. If no notice is received within this ten business day period, the law enforcement agency may release the property to an identified innocent owner. A law enforcement agency that receives notice shall hold the property during the pendency of the action.” /

Renumber sections to conform.

Amend title to conform.

THOMAS C. ALEXANDER for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Introduced on January 9, 2018**

**State Expenditure**

This bill amends current law by removing the ban that no pawnbroker may charge or collect any fees, costs, or assessments of any kind or nature other than those specifically allowed under §40-39-40. This bill requires a pawnbroker to keep a record of each item being pawned using a digital photograph of the item as part of the item’s account. In addition, pawnbrokers who receive an item from a pledger must take digital scans of the pledger’s thumbprint, identification, and photograph. The pawnbroker must hold a pledged item for twenty-one days. The records kept by pawnbrokers pursuant to this bill must be open to the inspection by court officials, law enforcement officers, the administrator of the Department of Consumer Affairs, and their designees at a reasonable time.

In addition, this bill removes requirements that a pawnbroker must put a hold order on property that is misappropriated or stolen and replaces those requirements by permitting South Carolina law enforcement officials to seize misappropriated or stolen property with probable cause and return it to the rightful owner. The release of the property to the custody of the appropriate law enforcement officials is not considered a waiver or release of the pawnbroker's property rights or interest in the property. Upon completion of the criminal proceeding involving the property identified as stolen, the court additionally will order the conveying customer to pay restitution to the pawnbroker in the amount received by the conveying customer for the property.

**Department of Consumer Affairs.** The department indicates that this bill does not fiscally or materially impact the activities of the office. As such, the bill does not impact the general fund, other funds, or federal funds.

**Judicial Department.** The expenditure impact of this bill is pending, contingent upon a response from the Judicial Department.

**Local Expenditure**

Section 4 of this bill allows a municipality or county to enact local regulations requiring pawnshops operating in the municipality or county to provide or transfer pawn records by electronic data transfer to a law enforcement database. Further, if a pawnbroker violates existing pawnbroker statutes, the pledger of an item has cause to recover damages in magistrate or municipal courts as appropriate.

The Revenue and Fiscal Affairs Office contacted twenty-three counties and the Municipal Association of South Carolina (MASC) regarding the expenditure impact of this bill. Charleston County indicates there would be a minimal cost to receive pawn records electronically if they opted into receiving records in that manner. Lancaster County indicates there would be no cost to receiving pawn records electronically. The MASC indicated there would be no expenditure impact. Based on the responses received, there would be a minimal expenditure impact to counties and municipalities to receive electronic record transfers for a law enforcement database. The localities anticipate this can be managed within existing resources.

**Municipal Courts.** The expenditure impact of this bill is pending, contingent upon a response from the municipal courts.

**Local Revenue**

Section 1 of this bill allows a county or municipality to enact ordinances that require the payment of a fee or tax related to a pawn transaction or purchase. The provisions of this section do not affect the authority of a county or municipality to establish land use controls or require a pawnbroker to obtain a local occupational license.

The Revenue and Fiscal Affairs Office contacted twenty-three counties and the Municipal Association of South Carolina (MASC) regarding the expenditure impact of this bill. Charleston County indicated that the city council is responsible for setting fees and it is unknown what fee amount the council will assign to pawn transactions if the ordinance is adopted. Lancaster County does not anticipate charging a tax or fee for pawn transactions and they do not have business license fees for pawnbrokers. The MASC indicated there would be an unknown local revenue impact. Based on responses received, the local revenue impact is undetermined since it depends on which localities would charge a tax or fee for pawn transactions.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 40‑39‑165 SO AS TO PROVIDE COUNTIES OR MUNICIPALITIES MAY ENACT ORDINANCES REQUIRING THE PAYMENT OF FEES OR TAXES RELATED TO PAWN TRANSACTIONS OR PURCHASES, AND TO PROVIDE THE PROVISIONS OF CHAPTER 39, TITLE 40 DO NOT AFFECT THE AUTHORITY OF A COUNTY OR MUNICIPALITY TO ESTABLISH LAND USE CONTROLS OR REQUIRE A PAWNBROKER TO OBTAIN A LOCAL OCCUPATIONAL LICENSE; TO AMEND SECTION 40‑39‑40, AS AMENDED, RELATING TO THE PROHIBITION ON AUTHORIZED PAWNBROKER FEES, SO AS TO REMOVE THE PROHIBITION; TO AMEND SECTION 40‑39‑70, AS AMENDED, RELATING TO RECORDKEEPING AND MISCELLANEOUS REQUIREMENTS OF PAWNBROKERS, SO AS TO REQUIRE CERTAIN DIGITAL RECORDS AND TO PROVIDE ALL PLEDGED ITEMS MUST BE HELD FOR TWENTY‑ONE DAYS; TO AMEND SECTION 40‑39‑90, RELATING TO RECORDS PAWNBROKERS SHALL MAINTAIN FOR INSPECTION BY CERTAIN PUBLIC OFFICIALS, SO AS TO PROVIDE MUNICIPALITIES OR COUNTY GOVERNMENTS MAY ENACT LOCAL REGULATIONS REQUIRING THE PAWNSHOPS TO PROVIDE OR TRANSFER THE PAWN RECORDS BY ELECTRONIC DATA TRANSFER TO A LAW ENFORCEMENT DATABASE; TO AMEND SECTION 40‑39‑145, AS AMENDED, RELATING TO HOLD ORDERS, SO AS TO REMOVE THE EXISTING PROVISIONS AND PROVIDE LAW ENFORCEMENT SHALL SEIZE SUSPECTED STOLEN OR MISAPPROPRIATED PROPERTY IN THE POSSESSION OF A PAWN SHOP, TO PROVIDE A PAWNBROKER’S RELEASE OF SUCH PROPERTY TO LAW ENFORCEMENT DOES NOT CONSTITUTE WAIVER OF THE PAWNBROKER’S INTEREST IN THE PROPERTY, AND TO PROVIDE PLEDGORS SHALL PAY RESTITUTION FOR STOLEN GOODS PLEDGED TO PAWNBROKERS UPON THE COMPLETION OF RELATED CRIMINAL PROCEEDINGS INVOLVING THE STOLEN PLEDGED PROPERTY; TO AMEND SECTION 40‑39‑160, RELATING TO PENALTIES FOR VIOLATIONS, SO AS TO PROVIDE CRIMINAL PENALTIES FOR CERTAIN VIOLATIONS CONCERNING PAWN TICKETS; AND TO REPEAL SECTION 15 OF ACT 262 OF 2016 RELATING TO CERTAIN AUTHORITY OF COUNTIES AND MUNICIPALITIES REGARDING PAWNBROKERS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 9, Title 40 of the 1976 Code is amended by adding:

“Section 40‑39‑165. A county or municipality may enact ordinances that require the payment of a fee or tax related to a pawn transaction or purchase. The provisions of this chapter do not affect the authority of a county or municipality to establish land use controls or require a pawnbroker to obtain a local occupational license.”

SECTION 2. Section 40‑39‑40 of the 1976 Code, as last amended by Act 262 of 2016, is further amended to read:

“Section 40‑39‑40. ~~(A)~~ ~~No pawnbroker may charge or collect any fees, costs, or assessments of any kind or nature other than those specifically allowed under this chapter.~~

~~(B)~~ A person who makes a pawn transaction in violation of this chapter:

(1) may not collect, receive, or retain any interest or charges on the loan in violation of this chapter; and

(2) has no right to possess the pledged goods.”

SECTION 3. Section 40‑39‑70 of the 1976 Code, as last amended by Act 262 of 2016, is further amended to read:

“Section 40‑39‑70. (A) A pawnbroker shall keep a record, at the time of any loan or purchase, containing:

(1) an account ~~and~~, description, and digital photograph of the goods, articles, or things pawned, pledged, or purchased~~,~~;

(2) the amount of money loaned thereon~~,~~;

(3) the time of pledging them~~,~~;

(4) the charges~~,~~ or the rate of interest to be paid on the loan~~, and~~;

(5) the name and residence of the person selling, pawning, or pledging the goods, articles, or things; and

(6) digital scans of the pledgor’s thumbprint, identification, and photograph.

(B) Before a pledge or purchase, the pawnbroker shall verify the identity of the pledgor or seller by reviewing a state‑issued or federally issued photographic identification card, including a United States military identification card, or a passport issued by the United States.

(C) A pawn or purchase transaction must be performed by the owner of the property, or his authorized agent, whose identity and agency relationship must be verified by the pawnbroker.

(D) A pawnbroker shall hold a pledged item for twenty‑one days.”

SECTION 4. Section 40‑39‑90 of the 1976 Code is amended to read:

“Section 40‑39‑90. (A) Records kept by pawnbrokers pursuant to this chapter must at all reasonable times be open to the inspection by court officials, law enforcement officers, the administrator of the Department of Consumer Affairs, and their designees. Any loan records identifying any individual must be handled in a confidential manner at all times.

(B) A municipality or county may enact local regulations requiring pawnshops operating in the municipality or county to provide or transfer pawn records by electronic data transfer to a law enforcement database.”

SECTION 5. Section 40‑39‑145 of the 1976 Code, as last amended by Act 262 of 2016, is further amended to read:

“Section 40‑39‑145. (A)~~(1)~~ ~~When an appropriate law enforcement official has probable cause to believe that property in the possession of a pawnbroker is misappropriated or stolen, he may place a written hold order on the property. The written hold order must impose a holding period not to exceed ninety days unless extended by court order. The appropriate law enforcement official may rescind, in writing, any hold order. An appropriate law enforcement official may place only one hold order on the property at any given time.~~

~~(2) A hold order must specify:~~

~~(a)~~ ~~the name and address of the pawnbroker;~~

~~(b)~~ ~~the name, title, and identification number of the representative of the appropriate law enforcement official or the court placing the hold order;~~

~~(c)~~ ~~the name and address of the appropriate law enforcement official or court to which such representative is attached and the number, if any, assigned to the claim regarding the property;~~

~~(d)~~ ~~a complete description of the property to be held, including model number and serial number if applicable;~~

~~(e)~~ ~~the name of the person reporting the property to be misappropriated or stolen, unless otherwise prohibited by law;~~

~~(f)~~ ~~the mailing address of the pawnbroker where the property is held; and~~

~~(g)~~ ~~the expiration date of the holding period.~~

~~(3)~~ ~~The pawnbroker or his representative must sign and date a copy of the hold order as evidence of receipt of the hold order and the beginning of the ninety‑day holding period.~~

~~(4)(a)~~ ~~Except as provided in subitem (b), a pawnbroker may not release or dispose of property subject to a hold order except pursuant to a court order, a written release from the appropriate law enforcement official, or the expiration of the holding period of the hold order.~~

~~(b)~~ ~~While a hold order is in effect, the pawnbroker shall, upon request, release the property subject to the hold order to the custody of the appropriate law enforcement official for use in a criminal investigation. The release of the property to the custody of the appropriate law enforcement official is not considered a waiver or release of the pawnbroker’s property rights or interest in the property. Upon completion of the criminal proceeding, the property must be returned to the pawnbroker unless the court orders another disposition, in which case the court additionally shall order the conveying customer to pay restitution to the pawnbroker in the amount received by the conveying customer for the property together with reasonable attorney’s fees and costs.~~

~~(B)~~ ~~Upon the expiration of the holding period, the pawnbroker shall notify, in writing, the appropriate law enforcement official by certified mail, return receipt requested, that the holding period has expired. If, on the tenth day after the written notice has been received by the appropriate law enforcement official, the pawnbroker has not received from a court an extension of the hold order on the property and the property is not the subject of a proceeding under this subsection, title to the property shall vest in and be deemed conveyed by operation of law to the pawnbroker, free of any liability for claims but subject to any restrictions contained in the pawn transaction contract and subject to this chapter.~~ When a certified South Carolina law enforcement official has probable cause to believe that property in the possession of a pawnbroker is misappropriated or stolen, law enforcement shall seize the stolen property and return to the rightful owner.

(B) The release of the property to the custody of the appropriate law enforcement official is not considered a waiver or release of the pawnbroker’s property rights or interest in the property. Upon completion of the criminal proceeding involving the property identified as stolen, the court additionally shall order the conveying customer to pay restitution to the pawnbroker in the amount received by the conveying customer for the property.”

SECTION 6. Section 40‑39‑160 of the 1976 Code is amended to read:

“Section 40‑39‑160. (1) If a pawnbroker violates Section 40‑39‑80, 40‑39‑100, 40‑39‑110, or 40‑39‑130, the pledgor has a cause of action to recover from the pawnbroker actual damages and the right in an action other than a class action to recover from the person violating these provisions a penalty in an amount to be determined by the court of not less than one hundred nor more than one thousand dollars. No action pursuant to this subsection may be brought more than one year after the scheduled or accelerated maturity of the debt.

(2) A pledgor is not obligated to pay a charge in excess of that allowed by this chapter, and has a right of refund of any excess charge paid within ten days of written demand. A refund may not be made by reducing the consumer’s obligation by the amount of the excess charge unless the pawnbroker has notified the pledgor that the pledgor may request a refund and the pledgor has not so requested within ten days thereafter.

(3) In an action in which it is found that a pawnbroker has violated this chapter, the court shall award to the pledgor the costs of the action and to the pledgor’s attorney reasonable fees. In determining attorney’s fees the amount of recovery on behalf of the consumer is not controlling.

(4) Liability to the pledgor for violation of Section 40‑39‑130 is in lieu of and not in addition to his liability under the Federal Truth in Lending Act. No action with respect to the same violation may be maintained pursuant to both subsection (1) of this section and the Federal Truth in Lending Act.

(5) A pawnbroker who violates the provisions of Section 40‑39‑80 or Section 40‑39‑90 is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both. A violation of the provisions of this section is triable in magistrates or municipal court, as appropriate.”

SECTION 7. SECTION 15 of Act 262 of 2016 is repealed.

SECTION 8. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑