

OFFICE OF THE SECRETARY OF STATE
BEV CLARNO
SECRETARY OF STATE

A. RICHARD VIAL
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 441
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
FINANCE AND SECURITIES REGULATION

FILED
10/24/2019 10:59 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Pawnbroker renewal due date and using a second location for storing large pawned items

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/29/2019 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Karen Winkel
503-947-7694
karen.j.winkel@oregon.gov

350 Winter Street NE
Salem, OR 97301

Filed By:
Karen Winkel
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/22/2019

TIME: 10:00 AM

OFFICER: Sophia Parra

ADDRESS: Labor & Industries Building

350 Winter Street NE

Conference Room E

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Conference phone information:

Call 888-808-6929

Access code 4969117

NEED FOR THE RULE(S):

In 2019, HB 2463 gave pawnbrokers the ability to store large items in a secondary, off-site location as long as the consumer agrees in writing. Under the bill, pawnbrokers have two business days to return an off-site pledged item once it is redeemed.

HB 2463 specifically gave the Department of Consumer and Business Services authority to define "large items." These proposed rules are needed to define and clarify requirements for storing large pledged items off-site.

As part of this rulemaking, the department is proposing to change the license renewal period from December 15th of the year of the current license to January 15th, when the annual report is due. To accommodate this change the licenses issued for 2020 would expire on January 15, 2021. These changes apply to secondary locations in use and items pawned

or redeemed on or after January 1, 2020.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Draft rules are available from Karen Winkel located at 350 Winter St. NE, Salem, OR 97301 and are available on the division's website at:

<https://dfr.oregon.gov/laws-rules/Pages/proposed-rules.aspx>.

FISCAL AND ECONOMIC IMPACT:

HB 2043 allows pawnbrokers to have one off-site storage location for large items. The proposed rulemaking provides requirements and expectations for pawnbrokers who choose to have an off-site storage location. A pawnbroker choosing to use the off-site location will need to file a form notifying the department at least 30 days before they start using the off-site storage. Pawnbrokers choosing to use off-site storage will need to provide notice to consumers and provide for a way for the customer to agree to off-site storage in writing. The requirements in these proposed rules may result in a nominal additional cost for the pawnbrokers that decide to use an off-site storage location. The exact impact is unknown at this time because the department has no way of determining the number of pawnbrokers that may wish to use an off-site storage location.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) When examining or inspecting licensees with an off-site storage location, the department may incur additional time to inspect both the place of business and the off-site storage location. The exact impact is impossible to determine at this time because the department has no way of determining the number of pawnbrokers that may wish to use an off-site storage location.

(2)(a) There are currently 82 licensed pawnbroker locations. Seven of the licensed locations are owned by a large, nationwide business. The department has no way of determining which of the remaining licensees are small business, because we do not collect information related to the number of employees. The department assumes, however, that most pawnbroker licensees are small business. The exact economic impact to small business is unknown at this time, because the department cannot determine how many small businesses may want to use an off-site storage location. Changes to the renewal period is administrative only and should not fiscally impact licensees.

(2)(b) A pawnbroker choosing to use an off-site storage location may incur a small fiscal impact due to the requirement to file a form notifying the department of the off-site storage location. Additionally, pawnbrokers choosing to use off-site storage will likely incur some fiscal impact in developing a customer acknowledgement form. The exact impact is impossible to determine at this time because the department has no way of determining the number of pawnbrokers that may wish to use an off-site storage location or how they will choose to develop the acknowledgement form.

(2)(c) Pawnbrokers choosing to use off-site storage will need to develop a means of documenting customer agreement to having their pledge stored off-site and a way for the customer to acknowledge that the pawnbroker may take up to two business days to return the item once redeemed. The exact impact is impossible to determine at this time because

the department has no way of determining the number of pawnbrokers that may wish to use an off-site storage location or what they will develop as a means of documenting customer agreement.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were a part of the rule advisory committee.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

441-740-0000, 441-740-0010, 441-740-0020, 441-740-0025, 441-740-0029, 441-740-0035

AMEND: 441-740-0000

RULE SUMMARY: Amended to add definition for "large items" that can be stored in an off-site location and add the definition of "reasonable care" that is currently in 441-740-0020.

CHANGES TO RULE:

441-740-0000

Definitions ¶¶

(1) "Advertising" includes signs, inside or outside of a business premise, advertising in newspapers and print media, on radio, television, and electronic media by the licensee or on the licensee's behalf.¶¶

(2) "Large item" means:¶¶

(a) A boat as defined in ORS 830.005, a snowmobile as defined in ORS 801.490, a trailer as described in ORS 726.010(2)(a)(D), or an all-terrain vehicle as described in ORS 726.380; and ¶¶

(b) An item that a pawnshop in the usual course of business would prefer to place in off-site storage due to its size, shape, or weight. ¶¶

(3) "Reasonable care" means:¶¶

(a) Having a method or system of promptly notifying the police or a security company when a burglary or theft occurs or is in progress; and ¶¶

(b) Having a structure or enclosure in which the business is conducted and at any off-site storage location that is designed, constructed, furnished and maintained to create physical deterrents to unauthorized entry or unauthorized removal of pledged goods, giving special consideration to security of high value items and weapons.

Statutory/Other Authority: ORS 726.260

Statutes/Other Implemented: ~~ORS 726.010,380~~, ORS 726.010, ORS 726.040

AMEND: 441-740-0010

RULE SUMMARY: Amended to indicate that fees and license renewals after January 1, 2020, are due with the filing of the annual report.

CHANGES TO RULE:

441-740-0010

Fees Payable by Pawnbrokers to the Director ¶

(1) The annual fees paid pursuant to ORS 726.125 (2) shall be \$350. For license renewals after January 1, 2020, the renewal and fee are due with the filing of the annual report. ¶

(2) Whenever the Director provides extra services to a pawnbroker under ORS 726.125(3) or conducts an examination of a licensed pawnbroker under 726.250, the Director will collect the cost to the Division for the Director and the examiners and other Division employees used in providing the extra services or conducting the examination. The rate of charge is \$75 an hour per person. ¶

(3) In addition to the charges fixed by section (2) of this rule, the Director will collect any additional costs directly attributable to extra services provided under ORS 726.125(3) or an examination made under 726.250. ¶

(4) The director may, by order, reduce the fees assessed for any specific year.

Statutory/Other Authority: ORS 726.125, 726.250

Statutes/Other Implemented: ORS 726.125, 726.250

AMEND: 441-740-0020

RULE SUMMARY: Renamed and amended to clarify that reasonable care applies to all locations where pledges are stored and moved the definition of "reasonable care" to OAR 441-740-0000 with other definitions.

CHANGES TO RULE:

441-740-0020

Pawnbrokers Required to Use Reasonable Care in Caring for Pledges; ~~Reasonable Care Defined~~ ¶

(1) A pawnbroker shall exercise reasonable care to protect pledges from ~~theft and burglary.~~¶

~~(2) As used in this rule unless otherwise required, "reasonable care" means:~~¶

~~(a) Having a method or system of promptly notifying the police or a security company when a burglary or theft occurs or is in progress; and~~¶

~~(b) Having a structure or enclosure in which the business is conducted that is designed, constructed, furnished and maintained so as to create physical deterrents to unauthorized entry or unauthorized removal of pledged goods, giving special consideration to security of high value items and weapons~~damage, theft, and burglary while storing or transporting pledged items.¶

~~(3) In complying with section (2) of this rule, a pawnbroker shall give serious consideration to:~~¶

~~(a) An alarm system with a direct connection to an off-site security company or a police agency;~~¶

~~(b) Bars on the windows, extra thick doors, vaults of heavy metal and similar structural deterrents to unauthorized entry;~~¶

~~(c) Safes for jewelry, gems and coins and storage areas for guns, all of which are so constructed and located as to deter and delay unauthorized entry and to provide time for a police agency or other security company to respond to a call in the event of a burglary or theft;~~¶

~~(d) The suggestions and recommendations of the local law enforcement agency or agencies; and~~¶

~~(e) Other or similar security precautions and systems.~~

Statutory/Other Authority: ORS 726.260

Statutes/Other Implemented: ORS 726.380

AMEND: 441-740-0025

RULE SUMMARY: Amended descriptions of pledged items in the register to include if an item is stored off-site along with other updates and clarify that the off-site location must be provided to department staff or police when requested.

CHANGES TO RULE:

441-740-0025

Description of Pledged Items ¶

(1) The description of items in the register maintained by the pawnbroker, to satisfy needs of local law enforcement, must include:¶

(a) Brand name;¶

(b) Model number, if evident;¶

(c) Serial number, ~~if evident;~~ and/or indicate that the item doesn't have one or that the serial number isn't legible due to normal wear; ¶

(d) Any other unique identifying marks, numbers, names, or letters; and¶

(e) A note that the item is stored off-site, if applicable.¶

(2) Notwithstanding section (1) of this rule, in the case of multiple similar items delivered in one transaction which do not bear model or serial numbers and which do not include precious metal or gemstones, the description of the items is adequate if it contains the quantity of items and a description of the type of items delivered. For example, if a tool box containing hand tools was pledged, it would be sufficient to identify the number of hand tools and the type of hand tools contained in the tool box.

Statutory/Other Authority: ORS 726.260

Statutes/Other Implemented: ORS 726.280

ADOPT: 441-740-0029

RULE SUMMARY: Created rule to describe requirements and expectations for a pawnbroker to store items in an off-site location indicating that they must notify us at least 30 days before they can start using the site.

CHANGES TO RULE:

441-740-0029

Pawnbrokers Requirements for Off-Site Storage

(1) The following requirements apply to the use off-site storage for large items:¶

(a) Reasonable care must be exercised to protect pledged items when transporting or storing a pledged item; ¶

(b) A pawnbroker must notify the department, in a form approved by the department, at least 30 days before using an off-site storage location to store large pledges and within 30 days after the pawnbroker stops using the location to store any large items; ¶

(c) The off-site storage location must be in Oregon;¶

(d) The pawn ticket must include a place where the pledgor can, in writing, agree to off-site storage of the pledged item. Signing the pawn ticket alone does not constitute agreement unless the pawn ticket is specific for off-site storage; ¶

(e) The pawn ticket must include a notice in legible writing, with the pledgor's acknowledgement, that either, the pawnbroker may take up to two days to return the item once it is redeemed, or the pawnbroker may require the pledgor to notify the pawnbroker two days before redemption. If a pledgor gives two days notice and redeems the pledge loan at a scheduled appointment, the pawnbroker will return the large item when the pledge loan is redeemed;¶

(f) Large items must be transported to the off-site storage as soon as reasonably possible; ¶

(g) A pawnbroker must provide the address of the off-site location to department staff or law enforcement when requested;¶

(h) Large pledge items stored at an off-site location alongside non-pledged items must be clearly marked as pledged items. If multiple licensees are storing pledged items in the same off-site storage, the licensee for each pledged item must be easily identifiable; ¶

(i) Customers are not permitted access to an off-site storage location; and ¶

(j) Pawnbrokers may not store more than 10 percent of the number of pledged items at the off-site storage location. The 10 percent is calculated at the time the pledge loan is made. If the number of pledged items off-site exceeds 10 percent, no additional pledged items can be stored off-site until the percentage is 10 percent or less. ¶

(2) By order, the director may prohibit a licensee from use of the off-site storage location if the director has determined that the licensee is not using the off-site storage in accordance with the purpose of ORS chapter 726 and related administrative rules. The director may prohibit future pledged items from being stored off-site and may require that pledged items currently stored off-site are transported back to the place of business. If the licensee is allowed to continue to keep some pledged items at the off-site storage location, the licensee must store the items using reasonable care.

Statutory/Other Authority: ORS 726.260

Statutes/Other Implemented: ORS 726.380

AMEND: 441-740-0035

RULE SUMMARY: Amended information to be submitted with the annual report to include any changes to any other location used for storing pledged items, details about any theft or damages since last report, and websites used by the licensee.

CHANGES TO RULE:

441-740-0035

Other Information to be Submitted with Annual Report ¶¶

At the same time the pawnbroker files an annual report, the pawnbroker must include with that annual report:¶¶

(1) A copy of the front and back of the pawn ticket currently used by the pawnbroker;¶¶

~~(2) Any change of its mailing address;¶¶~~

~~(3) plus any modifying language added to the ticket, especially that regarding off-site storage;¶¶~~

(2) Any change of its mailing address;¶¶

(3) Details about any change in or addition of locations used to store pledged items;¶¶

(4) Specific details about any change of ownership of the pawnbroker;¶¶

(45) Any change in the surety bond or issuer of the surety bond;¶¶

(56) The current rate of interest and schedule of fees being charged; and¶¶

(67) A copy of the declarations page of an insurance policy or policies showing current fire, theft and burglary coverage for place of business and storage locations; ¶¶

(8) Specific details about any insurance claims regarding theft or damage of items since the last annual report; and¶¶

(9) Websites and assumed business names used by the licensee.

Statutory/Other Authority: ORS 726.260

Statutes/Other Implemented: ORS 726.130