

Legislative Analysis



LAW ENFORCEMENT HOLD PROCESS FOR PAWNED GOODS; MONTHLY PAWNBROKER FEES

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House Bill 4887 as enacted
Public Act 345 of 2018
Sponsor: Rep. Peter J. Lucido
House Committee: Commerce and Trade
Senate Committee: Commerce
Complete to 10-18-18

BRIEF SUMMARY: House Bill 4887 amends 1917 PA 273 (“An act to regulate and license pawnbrokers...”) to allow a law enforcement official to place a written hold on property in the possession of a pawnbroker if the official has probable cause to believe the property was stolen or if a person files a police report alleging that the property was stolen. The bill also changes certain pawnbroker fees. The bill takes effect January 14, 2019.

FISCAL IMPACT: House Bill 4887 would have a minor fiscal impact on the Department of State Police and local law enforcement agencies. The requirements to process, store, and relinquish—when necessary—pawned items in question would impose minor administrative costs on law enforcement agencies, which would be similar to the costs of processing and storing other items obtained as evidence.

THE APPARENT PROBLEM:

Police routinely check pawn shop records to see, for instance, whether any pawned items might match descriptions of stolen goods in police reports. In many cases, it is a straightforward process to return to the rightful owner any property found to be stolen. Sometimes, though, ongoing investigations or court proceedings can mean that the property must be available to the police for a longer period of time. With no process in law to govern these situations, protocols for possession of the property, and for managing ownership or business interests in it, are unclear. Legislation has been offered to provide such a process.

THE CONTENT OF THE BILL:

Hold orders

House Bill 4887 allows an *appropriate law enforcement official* to place a written hold on property in the possession of a pawnbroker if the official has probable cause to believe the property was stolen or if a person files a police report alleging that the property was stolen.

Appropriate law enforcement official means any sheriff or sheriff’s deputy; village or township marshal; officer of any police department of any city, village, or township; or officer of the Michigan State Police.

All of the following apply to the written hold order:

- The law enforcement official must sign and date the hold order.

- The hold order must include a holding period of less than 90 days, unless extended by a court order.
- The law enforcement official who placed the hold order may rescind it.
- A law enforcement official may place only one hold on a particular item of property.

The hold order must include all of the following:

- Name and mailing address of the pawnbroker.
- Name, title, and identification number of the law enforcement official placing the hold and, if applicable, the claim or report number relating to the property.
- A description of the property, including model and serial number, if applicable.
- The name of the person that reported that the property was misappropriated, unless otherwise prohibited by law.

Ten days after a hold order expires, if the pawnbroker has not received notice that the hold order has been extended, title to the property vests in the pawnbroker. The title to property is free of liability for claims, but is still subject to the provisions of the act and any restrictions in the pawn transaction contract.

A court cannot grant an extension of a hold order unless the following are met:

- The person that claims an interest in the property that is adverse to the pawnbroker or pawner has filed a report with a law enforcement agency and provided a copy to the court.
- The report was included in the notice from the court to the pawnbroker that it has granted an extension.

A pawnbroker cannot 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 for the hold order.

While a hold order is in effect, the pawnbroker must release the property on request to the custody of the appropriate law enforcement official for use in a criminal investigation or proceeding related to the ownership claim. The release of the property to the law enforcement official is not considered a waiver or release of the pawnbroker's property rights in, interest in, or lien on the property.

A law enforcement official or any other person that obtains custody of property cannot deliver the property to a person claiming ownership unless the following are met:

- The property is delivered after a court hearing that determines the merits of the claims to the property.
- If the court finds against the pawnbroker, the court orders the pawner of the item to make restitution to the pawnbroker for all money that the pawnbroker advanced, and the interest and charges accrued, together with reasonable attorney fees and costs the pawnbroker incurred in defending the action related to the property.

If the court finds in favor of the pawnbroker, the property is returned to the pawnbroker.

Finally, a pawnbroker is not liable to any person for any property that is seized from the pawnbroker and unable to be returned.

Fees

The bill increases the monthly storage fee a pawnbroker may charge, from \$1 to \$3. The bill also eliminates a \$1 monthly usage fee that pawnbrokers could charge to pawners who keep possession and use of pawned property during the term of the pawn transaction. (The bill still allows this practice, but eliminates the fee.)

MCL 446.209, 446.210, and 446.211 and proposed MCL 446.212

ARGUMENTS:

For:

Supporters argue that the bill provides clarity for business owners in situations where law enforcement authorities might need access to, or possession of, property that has been pawned—particularly if the investigations or proceedings are to determine the rightful ownership of the property. Pawnbrokers need to know when they can sell goods without penalty and, if property cannot be sold due to a law enforcement hold, for how long they will be unable to sell it. The bill creates a procedure for a hold process that provides needed certainty.

Against:

No arguments against the bill were presented.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.