

SENATE BILL No. 46

By Committee on Judiciary

1-24

1 AN ACT concerning pawnbrokers and precious metal dealers; relating to
2 recovery of misappropriated property; procedures and remedies;
3 amending K.S.A. 16-706 and 16-720 and repealing the existing
4 sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 16-706 is hereby amended to read as follows: 16-
8 706. As used in ~~this act~~ K.S.A. 16-706 through 16-722, and amendments
9 thereto:

10 (a) "Act" means the provisions of K.S.A. 16-706 through 16-722, and
11 amendments thereto.

12 (b) "Claimant" means a person who claims that property in the
13 possession of a pawnbroker or precious metal dealer is misappropriated
14 from the claimant and wrongfully pledged or sold to the pawnbroker or
15 precious metal dealer.

16 (c) "Law enforcement officer" means an employee of a law
17 enforcement agency whose principal duties are engagement in the
18 enforcement of law and maintenance of order within this state and its
19 political subdivisions and who is certified pursuant to the provisions of the
20 Kansas law enforcement training act, K.S.A. 74-5601 et seq., and
21 amendments thereto.

22 (d) "Misappropriated" means stolen, converted, embezzled or
23 otherwise wrongfully appropriated or pledged against the will of the
24 rightful owner or party holding a perfected security interest.

25 ~~(a)~~(e) (1) "Pawnbroker" means any person who loans money on
26 deposit or pledge of personal property or other valuable thing, other than
27 intangible personal property, or who deals in the purchase of personal
28 property on the condition of selling the same back again at a stipulated
29 price.

30 (2) "Pawnbroker" does not include any person operating under the
31 supervision of the state banking commissioner, credit union administrator
32 or the consumer credit commissioner of this state.

33 ~~(b)~~(f) "Person" means any individual, firm, company, partnership,
34 corporation or association.

35 ~~(e)~~(g) "Precious metal" means gold, silver or platinum group metals
36 or any used articles or other used personal property containing such

1 metals, but shall not include coins purchased for their numismatic value
2 rather than their metal content or ingots or other industrial residue or by-
3 products composed of such metals purchased from manufacturing firms.

4 ~~(d)~~(h) "Precious metal dealer" means any person who engages in the
5 business of purchasing precious metal for the purpose of reselling such
6 metal in any form.

7 Sec. 2. K.S.A. 16-720 is hereby amended to read as follows: 16-720.

8 (a) (1) A precious metal dealer shall require of every person from whom
9 the dealer purchases precious metal for resale:

10 ~~(1)~~(A) Proof of identification; and

11 ~~(2)~~(B) a signed statement saying that the seller is the legal owner of
12 the precious metal or is an agent of the legal owner who is authorized to
13 sell such metal and stating when, where and in what manner such metal
14 was acquired by the seller.

15 (2) *A pawnbroker shall require of every person from whom the broker*
16 *purchases property or to whom the broker loans money:*

17 (A) *Proof of identification; and*

18 (B) *a signed statement saying that the pledgor or seller is the legal*
19 *owner of the property pledged or sold or is an agent of the legal owner*
20 *who is authorized to pledge or sell such property and stating when, where*
21 *and in what manner such property was acquired by the pledgor or seller.*

22 (b) ~~When converted or stolen property has been pawned or sold to a~~
23 ~~precious metal dealer and the pawnbroker or dealer refuses to redeliver~~
24 ~~such property to the rightful owner upon demand and presentation of a bill~~
25 ~~of sale or other proper evidence of ownership by the owner, and legal~~
26 ~~action by the rightful owner to recover the property becomes necessary,~~
27 ~~the court may assess the pawnbroker or dealer for reasonable attorneys'~~
28 ~~fees incurred by the rightful owner if the court finds that the pawnbroker~~
29 ~~or dealer wrongfully withheld the converted or stolen property. For a~~
30 ~~claimant to obtain possession of tangible personal property held by a~~
31 ~~pawnbroker or precious metal dealer that a claimant claims has been~~
32 ~~misappropriated, a claimant shall concurrently provide the pawnbroker or~~
33 ~~precious metal dealer:~~

34 (1) *A written demand for the return of such property;*

35 (2) *a copy of a police or sheriff's report where the claimant reported*
36 *the theft or misappropriation of the tangible personal property and that*
37 *contains a particularized description of the property or applicable serial*
38 *number; and*

39 (3) *a signed and sworn affidavit containing the following*
40 *information:*

41 (A) *That the claimant is the true owner of the property;*

42 (B) *the claimant's name and address;*

43 (C) *a description of the claimed property;*

1 (D) that the property was taken from the claimant without the
2 claimant's consent, permission or knowledge;

3 (E) the fact that the claimant has reported the theft to law
4 enforcement; and

5 (F) a promise that the claimant will assist in any criminal
6 prosecution relating to the property, including response to court process
7 relating to the property and truthful testimony to all facts within the
8 claimant's knowledge without claiming any testimonial privilege with
9 respect to such facts.

10 (c) (1) When a pawnbroker or precious metal dealer has been
11 provided a proper demand pursuant to subsection (b), the pawnbroker or
12 precious metal dealer shall return the property to the claimant, in the
13 presence of a law enforcement officer, within seven days, unless the
14 pawnbroker or precious metal dealer has a reasonable belief that any of
15 the information set forth in the claimant's affidavit is false or the
16 pawnbroker or precious metal dealer has received written notice from the
17 police chief or sheriff pursuant to K.S.A. 16-715, and amendments thereto.

18 (2) If a pawnbroker or precious metal dealer refuses to deliver
19 property to a claimant after receiving a proper demand pursuant to
20 subsection (b), a claimant may bring an action in any court of competent
21 jurisdiction seeking the return of such property. The prevailing party in
22 such action shall be entitled to reasonable attorney fees and costs.

23 (d) If a pawnbroker or precious metal dealer returns property to a
24 claimant relying on the information contained in a proper demand
25 pursuant to subsection (b) and later learns that the information set forth in
26 the claimant's affidavit is false or that the claimant has failed to assist in a
27 criminal prosecution relating to such property, the pawnbroker or precious
28 metal dealer may bring an action in a court of competent jurisdiction
29 against the claimant for the value of the property. The prevailing party in
30 such action shall be entitled to reasonable attorney fees and costs.

31 (e) Nothing contained in this section shall prohibit a pawnbroker or
32 precious metal dealer from bringing the pledgor or seller into a suit as a
33 third party, nor from bringing an action against a pledgor or seller in a
34 transaction involving misappropriated property to recover amounts paid
35 to the pledgor or seller, fees and interest charged, and reasonable attorney
36 fees and costs of the action.

37 Sec. 3. K.S.A. 16-706 and 16-720 are hereby repealed.

38 Sec. 4. This act shall take effect and be in force from and after its
39 publication in the statute book.