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McKINLEY COUNTY ORDINANCE NO. 05-93-050

RELATING TO THE REGULATION OF PAWNBROKERS AND PAWN TRANSACTIONS.

1. SHORT TITLE

This Ordinance may be cited as the "Pawnbrokers Ordinance".

2. DEFINITIONS

A. "Pawnbroker" means a person engaged in the business of making any pawn transaction;

B. "Pawn service charge" means the sum of all charges, payable directly or indirectly by the pledgor and imposed directly or indirectly by the pawnbroker as an incident to the pawn transaction;

C. "Pawnshop" means the location or premises at which a pawnbroker regularly conducts his business;

D. "Pawn transaction" means either the act between a pawnbroker and a person pledging a good of lending money or extending credit on the security of pledged goods or of purchasing tangible personal property with an express or implied agreement or understanding that it may be redeemed or repurchased by the seller at a stipulated price;

E. "Person" means an individual, partnership, corporation, joint venture, trust, association or any other legal entity however organized;

F. "Pledged goods" means tangible personal property other than choses in action, securities or printed evidences of indebtedness, which property is deposited with or otherwise actually delivered into the possession of a pawnbroker in the course of his business in connection with the pawn transaction;

G. "Local law enforcement agency" means the McKinley County Sheriff or his designee.

H. "Local government" means the County of McKinley.

3. PURPOSE

The purpose of the Pawnbrokers Ordinance is to:

A. prevent frauds, unfair practices, discriminations against, impositions on or abuses of the citizens of McKinley County:

B. exercise the police power of McKinley County to insure a sound system of making pawn transactions and acquiring and disposing of tangible personal property by and through pawnshops and to prevent unlawful pawn transactions, particularly in stolen property, through regulating pawnbrokers and certain persons employed by or in pawnshops;

C. ensure financial responsibility to the state and to the public;

D. ensure compliance with federal, state and local laws, rules, regulations and ordinances;

E. assist local governments in the exercise of their police power;

F. to adopt regulations to implement the provisions of the Pawnbroker's Act, §§ 56-12-1-16, N.M.S.A. 1978 (Supp. 1985).

G. to protect from exploitation, abuse or its own improvidence that segment of society in this state which relies from time to time for its need upon money or credit extended by pawnbrokers and given upon the security of native art, handicraft or movable personal possessions.

4. ADMINISTRATION--APPLICABILITY OF OTHER LAWS

The term "Pawnbrokers Act" as referred to in this Ordinance means §§ 56-12-1-16, N.M.S.A. 1978 (Supp. 1985). Rules and Regulations adopted by

the Board of Commissioners of McKinley County for the equitable administration of the Pawnbrokers Act and this Ordinance shall be consistent with the Act.

5. PERMITS REQUIRED--PERMIT FEE-PENALTY

A. In addition to any occupational or other license required by the local government, every pawnbroker shall obtain a pawnbroker permit issued by the County Clerk of McKinley County. A pawnbroker who has a pawnbroker permit from the City of Gallup shall not be required to have a McKinley County permit. Such permit shall be conspicuously displayed in the pawnbroker's place of business, together with the following notice:

If you pawn, New Mexico has laws to protect you and your property. For example, if you do not pay the amount due on your pawn by the due date, you have the right to have a written notice sent to you of what you need to do, and when, to keep your property from being sold or retained by the pawnbroker. It cannot be sold or retained for at least 90 days from the due date.

If the pawnbroker notifies you that he wants to retain your pawn without selling it and giving you the surplus, you can object within 30 days of his notice to you, and he will have to sell it. If your property is sold, you have right to the surplus if there is one. You may want to see a lawyer to find out more about your rights.

If you have a complaint concerning this permit holder, you may file it with the McKinley County Manager. Details about how complaints are handled are available at the Manager's Office.

B. Permits to engage in the business of a pawnbroker shall be issued by the County Clerk of McKinley County.

C. Said permit shall be conspicuously displayed in the pawnbroker's place of business.

D. Said permit will expire on July 1 of each year and must be renewed by that date.

E. Upon obtaining the permit, every pawnbroker shall register with the local law enforcement agency.

F. Doing business as a Pawnbroker without a permit constitutes a violation of this section and is subject to the general penalty provisions of this Ordinance and the Pawnbrokers Act.

6. APPLICATION FOR PERMIT — REQUIREMENTS

A. Applications for original or renewal pawnbroker permits shall be received by the McKinley County Clerk. Each application shall contain the following:

(1) A two hundred (\$200.00) dollar application fee; and

(2) Proof of execution and delivery of a bond by a bonding company authorized to do business in the State of New Mexico in the amount of \$5,000 conditioned upon the conduct of the pawnbroker's business according to the provisions of the Pawnbrokers Act and this Ordinance.

(3) The bond shall be of the same duration as the pawnbroker's permit applied for.

(4) Every pawnbroker shall provide the Board of Commissioners of McKinley County with 30 days' notice in writing of the cancellation of the bond.

(5) The name, social security number, address and date of birth of the applicant and name of each partner, agent, servant and employee of the applicant engaged in the business of pawn transactions. In the event that the applicant is a corporation, the Articles of Incorporation and name and address of the current agent for service of process shall be provided.

(6) Changes in the information required in subsection (5) above

must be indicated on each renewal application.

B. Applications for pawnbroker permits shall be approved or disapproved by the McKinley County Clerk within ten (10) business days after filing.

C. Applications may be denied only on the following grounds:

(1) Current suspension or revocation of a prior permit issued to the applicant.

(2) Previous conviction of a felony by applicant.

(3) Omission of items required to be submitted with the application.

7. SUSPENSION OR REVOCATION OF PERMITS

A. A pawnbroker's permit may be suspended or revoked upon occurrence of any or all of the following:

(1) Criminal conviction of the permittee of a felony.

(2) Violation of any provision of this Ordinance or the Pawnbroker's Act.

B. Any person who has a complaint concerning a pawnbroker licensed under this Ordinance may file a written complaint with the McKinley County Manager, who shall maintain forms for that purpose. A sample is attached to this Ordinance as Exhibit A. The complaint should include the address and telephone number of the complaining party, the name and address of the pawnbroker complained of, the date(s) of the acts giving rise to the complaint, and a brief description of the nature of the complaint, and should be dated and signed by the complainant. The Board of Commissioners of McKinley County, or someone appointed by the Board, shall review each complaint within fifteen (15) days of the date of filing to determine what action, if any, should be taken on the complaint, including a hearing as described in Section 8

below. The complainant shall be notified by mail of the Board's decision. The pawnbroker involved shall also be notified of the complaint and the proposed disposition of it, within the review period. This complaint procedure shall not affect the complainant's other rights under law, nor is it a prerequisite to enforcing those rights.

C. Notwithstanding the foregoing, either the complaining party or the pawnbroker named in the complaint may invoke an arbitration proceeding prior to the review of the complaint by the Board of County Commissioners of McKinley County. This arbitration procedure must be invoked within ten (10) days of notice of filing of the complaint. The person invoking the procedure shall notify the Board and the other party in writing, naming the arbitrator of his choice. Within fifteen (15) days of such notice, the other party shall name an arbitrator of his choice and notify the other party and the Board in writing. Within fifteen (15) days of notice of appointment of the second arbitrator, both arbitrators shall agree upon a third arbitrator which shall constitute the arbitration panel. The panel shall review the complaint and may take written or oral testimony, and the rules of evidence shall not apply. The panel shall attempt to resolve the complaint to the mutual satisfaction of the parties. If the panel is unable to do so, the Commission may proceed to a hearing of the complaint as described in Paragraph B. This procedure shall not affect the complainant's other rights under law, nor is it a prerequisite to enforcing those rights.

D. The Board of Commissioners of McKinley County may initiate proceedings for the suspension or revocation of any permit issued pursuant to this

Ordinance upon the filing of a written complaint by the local law enforcement agency, the designated representative of that local law enforcement agency, the District Attorney, or a complainant under Section 7.B. above, charging the permit holder or an employee thereof with having violated any provision of the Pawnbrokers Act or this Ordinance.

8. NOTICE--HEARING

A. The Board of Commissioners of McKinley County shall serve written notice upon the permit holder of the alleged violation. The notice requirement is satisfied if personal service of the notice is had upon the holder of the permit or is posted in a conspicuous place upon the permit holder's place of business.

B. The Board of Commissioners of McKinley County shall set a date for hearing on the complaint not more than ten (10) days, nor less than five (5) days, after the date of notice unless waived by all parties thereto. The notice provided for in Subsection A of this section shall specify the date and time of hearing, and a copy thereof shall be mailed to any complaining party.

C. The permit holder and any other interested person shall have the right to appear at this administrative hearing and to produce evidence. The Rules of Evidence shall not apply.

D. If, after holding this hearing, the Board of Commissioners determines that the permit holder is in violation of the provisions of this Ordinance or the Pawnbrokers Act as charged in the complaint, the Board of Commissioners shall issue a written order.

E. The order may suspend the permit for a stated period of time or

permanently revoke the permit. Reinstatement of a permit may be conditioned on the satisfaction of damages to a complaining party.

F. The Board of Commissioners shall cause such order to be served upon the permit holder and filed in the office of the clerk for public inspection within five business days after the hearing.

G. Service of the order on the permit holder shall be as specified in Subsection A of this section, and the official serving the order shall have the authority to remove the permit from the premises and deliver that permit to the Board of Commissioners of McKinley County.

H. This hearing shall be the final administrative remedy.

9. PAWNBROKER RECORDS

A. Every pawnbroker shall comply with the reporting requirements of the Pawnbrokers Act; provided that the use of photo identification and the delivery of reports to the McKinley County Sheriff as required in the Act shall not be required under this ordinance should such requirements be removed by subsequent amendment of the Pawnbrokers Act.

B. Either a driver's license or other photo identification card shall be required of each person entering a pawn transaction with a pawnbroker.

C. Notwithstanding the provisions of Subsection B above, a permit holder may enter a pawn transaction with any person who presents an appropriate driver's license or other photo identification; OR:

(1) The pawnor is personally known to the permit holder or an employee or agent of the permit holder; and,

(2) The pawnor has engaged in a pawn transaction with the permit holder or an employee or agent of the permit holder prior to the effective

date of the permit holder prior to the effective date of this ordinance.

Notwithstanding C1 and C2 above, the pawnbroker shall maintain some form of identification on file in the pawnbroker's place of business for all pledgors, including the person's name, address, including street address or map, and description, including sex, complexion, hair color, approximate height and weight, and date of birth.

D. Every Pawnbroker shall accurately complete a report of all used property of every kind received or purchased in a pawn transaction on a form and in a manner approved by the District Attorney.

E. Each item reported shall be listed on a report form. Said report shall include the following:

- (1) name of item;
- (2) description of the item including make and model number, if any;
- (3) serial number and other identifying marks; if any;
- (4) date, time and type of pawn transaction;
- (5) name and address of person offering the item;
- (6) description of the person offering the item, including sex, complexion, hair color, approximate height and weight, and date of birth; and
- (7) type of identification used by person offering item and identifying number of said identification. If the person presents a driver's license, the report shall also indicate the state of issuance.

F. Property purchased directly from another permit holder regulated by the Pawnbrokers Act who has already reported the item pursuant to this section is exempt from the requirements of this section.

G. Persistent or frequent erroneous or incomplete entries in or delays in submitting of the above required reports shall constitute a violation of this section and are subject to the general penalty provisions of the Pawnbrokers Act.

H. The reports and records of the permit holder required pursuant to this section and Section 12, as well as every item received in pawn, shall be available for inspection by the Board of Commissioners of McKinley County, the District Attorney, and the local law enforcement agency or any sworn member of that law enforcement agency and any person with authorization from any such agency or the County Manager (who shall not unreasonably withhold such authorization) at all reasonable times.

I. Each item pledged to or purchased by the permit holder for which a report is required shall have attached to it a tag with an alphabetic or numerical identification system matching that item with its corresponding report and record.

10. PAWN TICKET

A. Every pawnbroker shall at the time of each pawn transaction deliver to the person pawning any good, a ticket signed by the pawnbroker containing the substance of the entry required to be made in his report pursuant to Section 9 of the Pawnbrokers Act.

B. The holder of such ticket shall be presumed to be the person entitled to redeem the pledge and the pawnbroker shall deliver such article to the person so presenting such ticket on payment of principal and all lawful charges. The pawnbroker shall only release an item to one not holding the pawn ticket for that item after photo identification, or two forms of

non-photo identification, has been recorded by the pawnbroker.

C. The pawn ticket required by this section shall further contain all disclosures of credit terms required to be disclosed to the pledgor by the Federal Truth in Lending Act.

11. DEFAULT--DISPOSITION OF PLEDGED PROPERTY

A. Except as otherwise specified in this section, upon default by the pledgor, the pawnbroker shall comply with the requirements of §§ 55-9-501 through 55-9-507 N.M.S.A. 1978 in the disposition of the pledged goods.

B. Notwithstanding Subsection A of this section, the pawnbroker shall not dispose of the pledged property, except by redemption until at least ninety (90) days after the indebtedness has become due.

C. Notwithstanding Subsection A of this section, if the pawnbroker disposes of the pledged property by sale in the regular course of his business, such sale shall conform to the requirements of § 55-9-504 N.M.S.A. 1978.

D. If a surplus remains after sale of the pledged property, the pawnbroker must make a record of the sale, including the name and address of the purchaser, sale price, and the amount of the surplus and must notify the pledgor by first class mail sent to the pledgor's last known address of the amount of the surplus and the pledgor's right to claim it at a specified location within ninety (90) days of the date of mailing of the notice, if the surplus is One Hundred (\$100) Dollars or less, or within twelve (12) months of the date of mailing of the notice if the surplus is greater than One Hundred (\$100) Dollars.

E. In the event that the first class mail addressed to any person is

returned unclaimed to the pawnbroker, then the pawnbroker must post and maintain on a conspicuous public part of his premises an appropriately entitled list naming each such person.

F. Ninety (90) days or twelve (12) months, as applicable, after the date of such mailing or posting, whichever is later, the pawnbroker may retain any surplus remaining unclaimed by the pledgor as his own property.

12. RECORD OF DISPOSITION OF PLEDGED PROPERTY

Every pawnbroker shall keep a permanent record, fully itemized, of all pledged property disposed of following default by the pledgor. The record shall include the following:

- A. the number of the pawn transaction;
- B. the name and address of the pledgor;
- C. the date of the pawn transaction and the date of the last payment received as service charge or on principal;
- D. the date of disposition of the pledged property pursuant to Section 11 of the Pawnbrokers Act;
- E. the method of disposition of the pledged property;
- F. the amount and disposition of any surplus following disposition of the pledged property.

13. PAWN SERVICE CHARGE

A. For the first thirty-day (30) period of the pawn transaction, a pawnbroker may charge Seven and 50/100 (\$7.50) Dollars or ten (10%) percent of the amount loaned, whichever is greater, provided that such charge shall not be made on the refinancing of an existing loan or credit transaction. A loan or extension of credit shall be considered to be refinancing of an existing loan if any part of the proceeds of the subsequent loan is applied toward

the payment of a prior loan with the same pawnbroker.

B. For the remaining period of the pawn transaction, including any refinancing, no pawnbroker shall charge directly, indirectly or by any subterfuge a pawn service charge in connection with a pawn transaction at a rate in excess of four (4%) percent per month on the unpaid principal balance of the loan or extension of credit.

C. The foregoing pawn service charges are limiting maximums and nothing herein shall be construed to prohibit a pawnbroker from contracting for or receiving a lesser rate than here established.

14. PROHIBITED PRACTICES

A pawnbroker shall not:

- A. knowingly enter into a pawn transaction with a person under the age of eighteen (18) years or under the influence of alcohol, any narcotic, drug, stimulant or depressant;
- B. make any agreement requiring the personal liability of a pledgor in connection with the pawn transaction;
- C. accept any waiver, in writing or otherwise, of any right or protection accorded the pledgor under the Pawnbrokers Act or Ordinance;
- D. fail to exercise reasonable care to protect pledged goods from loss or damage;
- E. fail to return a pledged good to a pledgor upon payment of the full amount due to the pawnbroker on the pawn transaction. In the event a pledged good is lost or damaged while in the possession of the pawnbroker, the pawnbroker shall compensate the pledgor for the reasonable value of the lost or damaged good;

F. make any charge for insurance in connection with a pawn transaction.

G. purchase or otherwise receive any item of property from which the manufacturer's name plate, serial number or identification mark has been obviously defaced, altered, covered or destroyed;

H. purchase or otherwise receive any item of property which the permit holder knows is not lawfully owned by the person offering the same;

I. enter into a pawn transaction in which the unpaid principal balance exceeds Two Thousand (\$2,000) Dollars; or

J. require that any of the proceeds of any cash loan be spent at the pawnbroker's place of business or in any other manner directed by the pawnbroker.

15. GENERAL PENALTIES

Any permit holder who is found guilty of a violation of any provision of the Pawnbrokers Act or this Ordinance shall be guilty of a petty misdemeanor.

Any permit holder who violates any provision of the Pawnbrokers Act or this Ordinance shall be subject to having his permit revoked or suspended by the Board of Commissioners of McKinley County pursuant to the provisions of Sections 7 and 8 of this Ordinance.

Revocation or suspension of such permit will not bar prosecution of the permit holder under the penal provisions of the Pawnbrokers Act or this Ordinance.

Criminal prosecution will not bar proceedings to revoke or suspend the holder's permit.

16. FORFEITURE

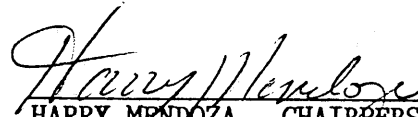
The violation of any provision of the Pawnbrokers Act or this Ordinance

in any covered transaction shall be deemed a forfeiture of the entire amount of the pawn service charge contracted for or allowable under the transaction.

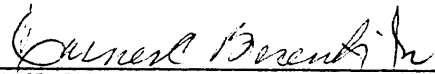
Notwithstanding the foregoing, any person entering into a transaction covered under this Ordinance without a license shall forfeit the entire amount of the loan and service charge for each such transaction.

In the event a pawn service charge in excess of the amounts allowable under the Pawnbrokers Act or this Ordinance has been paid in any covered transaction, the person by who it has been paid, or his legal representative may recover back by civil action triple the amount of service charge paid. Any civil action under this section shall be commenced with two (2) years from the date the usurious transaction was consummated.

Passed, adopted and ordained this 11th day of May 1993 .



HARRY MENDOZA - CHAIRPERSON
BOARD OF COMMISSIONERS

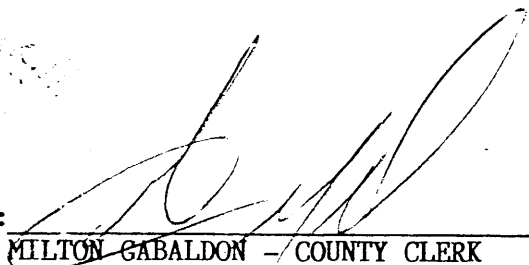


EARNEST C. BECENTI, SR. COMMISSIONER
BOARD OF COMMISSIONERS



KEITH ELKINS - COMMISSIONER
BOARD OF COMMISSIONERS

ATTEST:



MILTON GABALDON - COUNTY CLERK

mgb

MCKINLEY COUNTY PAWNBROKERS ORDINANCE

COMPLAINT

Your name and address: _____

Telephone: _____

Pawnbroker complained of: _____

Date(s) of the acts which resulted in your complaint: _____

Briefly describe your complaint: _____

Date: _____ Signed: _____

EXHIBIT "A"

254,564
STATE OF NEW MEXICO } ss.
COUNTY OF MCKINLEY }
Filed for record in the Clerk's office
the 10th day of May 1913 at 11:00 A.M.
and recorded in Book 6949-6957
of _____ pages
Melvin B. Bond - Deputy