COUNTY AGENDA REQUEST

Department:	Planning and Zoning	Presenter(s):	Pete Frisina
Meeting Date:	Thursday, March 8, 2012	Type of Request:	New Business

Wording for the Agenda:

Discussion of proposed amendments to the Fayette County Code of Ordinances, Chapter 13. Pawnbrokers, Dealers in Precious Metals and Gems, and Flea Market Operators.

Background/History/Details:

The County's original ordinance regulating these uses was adopted in 1983, and needs to be updated. Names and responsibilities of some of the departments and officials referenced in the original Code have changed over time and those changes need to be reflected in the ordinance. Also, staff would like review and coordinate these regulations with current State laws that regulate this type of activities.

If the Board concurs, staff will prepare amendments for the Board's consideration at a future meeting.

What action are you seeking from the Board of Commissioners?

Staff is seeking permission from the Board of Commissioners for the various departments (Planning and Zoning, Marshal's Office, Sheriff's Office, etc.) to review and propose amendments to the Code.

If this item requires funding, please describe:

Funds are not needed at this time, but will be part of an overall cost to update the Fayette County Code.

Has this request been considered within the past two years?	No	If so, when?	
Is Audio-Visual Equipment Required for this Request?*	No	Backup Provided with Request?	Yes

**** All audio-visual material must be submitted to the County Clerk's Office no later than 48 hours prior to the meeting. It is also your department's responsibility to ensure all third-party audio-visual material is submitted at least 48 hours in advance.***

Approved by Finance	Not Applicable	Reviewed by Legal	Yes
Approved by Purchasing	Not Applicable	County Clerk's Approval	Yes
Administrator's Approval	Yes		

Staff Notes:

To: Board of Commissioners

From: Pete Frisina

Date: February 17, 2012

Subject: County Code, Chapter 13 - Pawnbrokers, Dealers in Precious Metals and Gems, and Flea Market Operators

The ordinance was adopted in 1983 and needs to be updated. Some of the departments and officials referenced in the Code have changed overtime, the regulations for aforementioned uses need to be addressed separately and staff would also review and coordinate the County Code with State Code (see attached Fayette County Code and applicable State Code). Many of the trends in thrift stores, consignment shops, antique malls, used book stores, etc. are considered flea markets under this code, although they haven't been treated as such. It would be better to redefine a flea market as it was intended to address the event type flea markets that are held periodically where venders come and set up for the short period of time such as a weekend. It terms of pawn shops, the Sheriff's Office has some amendments they would recommend such as requiring electronic record keeping and registry of pawned items.

ARTICLE I. - IN GENERAL

Sec. 13-1. - Definitions.
Sec. 13-2. - Exclusions/exceptions.
Sec. 13-3. - Location of businesses.
Sec. 13-4. - Records to be kept.
Sec. 13-5. - Standard forms required as of July 1, 1981.
Sec. 13-6. - Daily report to sheriff's department.
Sec. 13-7. - Identification required.
Sec. 13-8. - Fingerprint required.
Sec. 13-9. - Retention of purchased articles.
Sec. 13-10. - Retention of articles.
Sec. 13-11. - Display of goods pledged or purchased.
Sec. 13-12. - Alteration.
Sec. 13-13. - Erasures, obliterations, write-overs or type-overs prohibited.
Sec. 13-14. - Retention of records.
Sec. 13-15. - Hours of operation.
Sec. 13-16. - Dealing with minors.
Sec. 13-17. - Locus of business transactions restricted.
Sec. 13-18. - Preservation of serial numbers.
Sec. 13-19. - Use of books, forms required.
Sec. 13-20. - Penalties.
Sec. 13-21. - Nonformed precious metals.
Sec. 13-22. - Stolen items.
Sec. 13-23. - Separate business establishment.
Sec. 13-24. - Relationship to state law.
Secs. 13-25—13-40. - Reserved.

Sec. 13-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Antique dealer means any person who engages in the business or occupation which derives seventy-five (75) percent of its gross receipts by the selling, bartering or exchanging of any painting, furniture, china or other object painted or made more than fifty (50) years prior to the date of sale which is valuable primarily by reasons of age, scarcity or the skill and craftsmanship of the artist or artisan.

Dealer in precious metals and gems means a person, whether known as a redemption center, gold and silver dealer, pawn shop, or any other name, who is either owner or manager whose business involves receiving by buying or trading precious metals such as gold, silver or platinum, including coins, and the receiving by buying or trading jewelry, gems, or precious or semiprecious stones; however, it shall not include purchases from licensed wholesalers in the normal course of business, nor shall it include pawnbrokers who only take precious metals or gems on pawn or pledge.

Employee means any person employed or allowed to perform duties, whether or not such person receives a salary, wages or other compensation or consideration, but not including the person covered on the license or renewal application.

Flea market means any business which derives twenty-five (25) percent or more of its gross receipts from the sale, trade or barter of used or previously owned personal property, other than operable motor vehicles.

Flea market operator means any person who owns, maintains or operates a flea market or who leases or rents premises or space to three (3) or more individuals for the operation of a flea market at any one (1) location. All persons who meet the definition contained herein shall be subject to the provisions of the following sections dealing with flea market operators, whether the same be generally known as jewelry stores, coin shops, salvage operations, clothing stores or by any other names.

Goods shall have its normal meaning and, further, should be construed in the broadest sense allowable and should include all forms of personal property.

Itinerant dealer means any person who is engaged in any temporary or transient business conducted in a shop, room, or other premises rented for any duration less than thirty (30) consecutive days or used on a temporary basis. Any person who is both a pawnbroker or dealer in precious metals or gems and an itinerant dealer shall pay the fee and abide by the regulations imposed upon either pawnbrokers or dealers in precious metals and gems as the case may be.

Owner means any person or partner or stockholder owning twenty-five (25) percent or more of a business.

Pawnbroker means any person who shall in any manner lend or advance money or other things for profit on the pledge or possession of personal property, or other valuable things other than securities or written evidences of indebtedness, or who deals in the purchasing of personal property or other valuable things on condition of selling the same back to the seller at a stipulated price

(Code 1983, § 13-1)

Cross reference— Definitions and rules of construction generally, § 1-2

Sec. 13-2. - Exclusions/exceptions.

Businesses which limit the purchase of used valuables to the acceptance of trade-ins for credit for new goods or the dispensing of refunds in regard to valuables previously purchased from such business shall not be regulated or covered under this chapter.

(Code 1983, § 13-4)

State law reference— Exemptions from law regulating dealers in precious metals and gems, OCGA § 43-37-7

Sec. 13-3. - Location of businesses.

All businesses licensed under this chapter shall be located in strict compliance with the county zoning ordinance and at a location with an identifiable street address, which shall be stated on the license or renewal application along with other required information. No business licensed hereunder shall change its address without giving advance notice to the business license department, the county building inspector and the county sheriff's department, and receiving of an approval of the change, such approval being granted if the new location complies with this chapter and the county zoning ordinance. No business licensed hereunder shall be operated in or from a motel or hotel.

(Code 1983, § 13-8)

Sec. 13-4. - Records to be kept.

All pawnbrokers, dealers in precious metals and gems and flea market operators shall, in addition to other records, keep books wherein shall be entered an accurate description of all property received by or pledged or sold to them. Such description shall include the brand name of the article, any identifying mark, number,

initial, social security number or name of any person or company, and a statement of the kind of material of which it is made. In such books there shall be entered also the name, age, address, signature and identification number from a driver's license or similar identification of the person by whom same was delivered, deposited or sold, the name of the broker, agent or employee receiving the item, the time when such transaction occurred, the price paid for the goods purchased and the check number issued if applicable. These entries shall be made no later than one (1) hour after the transaction. A permanent bound set of the pawn ticket shall constitute the book required by this section. All books and records required by this section, and articles pledged or sold hereunder, shall at all times be subject to inspection and examination by any law enforcement officer of the county, any incorporated municipality or the state. Any person engaged in any business licensed hereunder who shall fail or refuse to keep the records as provided in this section, or who shall make false entries concerning the transaction, or who shall fail or refuse to permit an inspection by any law enforcement officer of the county, any incorporated municipality or the state of such records and of the property pledged with or sold to them shall be guilty of a violation of this chapter.

(Code 1983, § 13-9)

State law reference— Records kept by dealers in precious metals and gems, OCGA § 43-37-3; records kept by pawnbrokers, OCGA § 44-12-132 et seq.

Sec. 13-5. - Standard forms required as of July 1, 1981.

As of July 1, 1981, all businesses licensed under this chapter, except flea market operators and itinerant dealers, shall use a standard form for pawn and a standard form for purchase, and no ticket may be used for a dual purpose. Standard forms may differ only by the name of the business and business address. The design of this form shall be provided by the county sheriff's department and the forms shall be numbered and chronologically used and sent to the county sheriff's department. Each number missing from the chronological sequence shall be considered a separate violation of this chapter.

(Code 1983, § 13-10)

Sec. 13-6. - Daily report to sheriff's department.

Every business licensed under this chapter, except flea market operators and itinerant dealers, shall make a daily report in writing to the county sheriff's department of all property pledged or purchased during the twenty-four-hour period ending at 10:00 p.m. on the date of the report. Such reports shall be legibly written or typed in English and shall show: the name and address of the business; time of transaction; sequel number of the pawn or purchase tickets; amount paid or advanced; full description of articles, including kind, style, material, color, design kind and number of stones in jewelry and all identifying names, marks, numbers, initials, or social security numbers; and a description of the person selling or pawning such item, including name, address, color, weight and height

(Code 1983, § 13-11)

State law reference— Reports of purchases made by dealers in precious metals and gems, OCGA § 43-37-4

Sec. 13-7. - Identification required.

All businesses licensed under this chapter shall, when receiving in pawn or in purchasing goods, require a proper identification, driver's license, military I.D. card, state approved I.D. card or company employee I.D. card containing a picture showing positive identification of the person who is pawning, selling or bartering, and shall verify the identification.

(Code 1983, § 13-12)

Sec. 13-8. - Fingerprint required.

All businesses licensed under this chapter, except flea market operators and itinerant dealers, shall require every person from whom it accepts goods on pawn or purchase to place the fingerprint of his right index finger (if right index finger is missing, the next finger in line will be used) in ink on the front of the copy of the pawn or purchase ticket which is to be sent to the county sheriff's department.

(Code 1983, § 13-13)

Sec. 13-9. - Retention of purchased articles.

Every business licensed under this chapter shall hold, on the premises designated in the license for doing business, every item required to be listed under section 13-4 for at least fifteen (15) days before disposing of same by sale, transfer or shipment. The provisions of this section shall not apply to purchases from licensed wholesalers in the normal course of business.

(Code 1983, § 13-14)

Sec. 13-10. - Retention of articles.

Every business licensed under this chapter which takes goods on pawn shall hold such goods for at least thirty (30) days, unless redeemed by the owner or on authority of the owner, before disposing of same by sale, transfer, shipment or otherwise.

(Code 1983, § 13-15)

Sec. 13-11. - Display of goods pledged or purchased.

For a period of fifteen (15) days from the date of purchase and thirty (30) days from the date of pledge (unless redeemed by or by authority of the person who pledged the goods and excepting itinerant dealers herefrom) all goods purchased or pawned and required to be listed under section 13-4 shall be kept on the premises designated in the license for doing business. Every item required to be kept on the premises hereunder shall have attached to it either a copy of the form required in section 13-5 or the number of such form. Any person desiring to examine any merchandise shall first obtain a copy of a sheriff's department incident or stolen property report. Upon presentation of a copy of such report to any licensed dealer or employee and upon giving in writing to such dealer a full description of the stolen items sought, including all identifying characteristics, his name, address, signature, identification, and incident or stolen property report number and issuing department, such individual shall be allowed to examine any merchandise of the type described on the premises. Such written information shall be kept in sequential dated order in a permanent file or book. This record shall be kept in addition to all other records required herein.

(Code 1983, § 13-16)

Sec. 13-12. - Alteration.

Any item required to be kept or displayed under the provisions of section 13-9, 13-10 or 13-11 shall be so kept in their original form as they existed when first purchased and their physical characteristics shall not be altered in any material or immaterial manner.

(Code 1983, § 13-17)

Sec. 13-13. - Erasures, obliterations, write-overs or type-overs prohibited.

No person licensed under this article shall erase, obliterate, type over, write over or in any way cause the original entry on the records required hereunder to become illegible. All pawn or purchase tickets filled out in error shall be sent to the county sheriff's department in their numbered order along with daily reports and shall have the word "VOID" typed or written across the front. Such entry shall not be used to cause the original entry to be illegible. If an error is made and the ticket is still to be used, then a single line shall be drawn through the incorrect entry. This line shall not cause the original entry to be illegible and the correct information entry shall be made on the next available area.

(Code 1983, § 13-18)

Sec. 13-14. - Retention of records.

(a) The record of each pawn or purchase transaction regulated by this chapter shall be maintained for a period of not less than four (4) years from the date of transaction.

(b) Notwithstanding the provisions of paragraph (a), dealers in precious metals and gems shall maintain permanent records as provided in OCGA § 43-37-3.

(Code 1983, § 13-19)

Sec. 13-15. - Hours of operation.

All businesses licensed under this chapter shall close their establishment and cease transacting any business no later than 10:00 p.m. each day and begin their operation and commence transacting business at no time before 7:00 a.m. each day.

(Code 1983, § 13-20)

Sec. 13-16. - Dealing with minors.

It shall be unlawful for any person licensed under this chapter to receive in pawn or in purchase any goods of any character or of any description from any person who has not attained the age of seventeen (17) years.

(Code 1983, § 13-21)

Sec. 13-17. - Locus of business transactions restricted.

No business transactions by any business licensed under this chapter shall be conducted outside the building designated as the normal place to conduct transactions unless the business does not have a building. "Business transaction" means any part of business, including inspection or appraisal of any goods, when it is possible for such goods to be taken inside the building where transactions normally are made ("possible" being here used in the broadest sense). No person other than those possessing a license or employee permit shall be allowed to conduct any form of business transactions either inside the establishment or on any part of outside land area covered under address of the license.

(Code 1983, § 13-22)

Sec. 13-18. - Preservation of serial numbers.

No business licensed under this chapter shall accept any articles which have had the serial number altered, obliterated or removed from such article on which the person who is making the business transaction knows should have a serial number upon it, unless such person immediately notifies the sheriff's department.

(Code 1983, § 13-23)

Sec. 13-19. - Use of books, forms required.

No business licensed under this chapter shall take any item in pawn or purchase, taking full or possession title thereto, without entering each transaction of such goods on his books and on the standard forms as provided for herein in sections 13-4 and 13-5.

(Code 1983, § 13-24)

Sec. 13-20. - Penalties.

(a) Any person licensed under this chapter who shall:

(1) Fail to make any entry of any required item in the permanent record book;

(2) Make any false entry therein;

(3) Falsify, obliterate, record so that information is illegible, destroy or remove from his place of business such permanent record book,

(4) Refuse to allow any duly authorized law enforcement officer to inspect such permanent record book or any goods in his possession during the ordinary hours of business or any reasonable time, or refuse to allow any member of the general public to inspect goods in his possession being held under pawn or purchase (within the fifteen-day purchase and thirty-day pawn dates), pursuant to section 13-11, during ordinary hours of business;

(5) Fail to maintain a record of each pawn or purchase transaction for at least four (4) years;

(6) Violate any other provisions of this chapter;

shall be guilty of a misdemeanor as defined by state law.

(b) Operation of any business hereunder in violation of any provision of this chapter shall constitute a separate offense for each day of operation.

(Code 1983, § 13-25)

State law reference— Unlawful acts by dealers in precious metals and gems, OCGA § 43-37-6; unlawful acts by pawnbrokers, OCGA § 44-12-137

Sec. 13-21. - Nonformed precious metals.

It shall be unlawful for any person licensed under this chapter to purchase precious metals in a melted, smelted or nonformed state unless the purchase is from a registered dealer in precious metals.

(Code 1983, § 13-28)

Sec. 13-22. - Stolen items.

Every person licensed under this chapter shall, immediately upon request, turn over to the county sheriff's department every item believed by the sheriff's department to be a stolen item. The sheriff's department shall furnish a property receipt, including a case number of recovery, to the dealer surrendering such item. Such item shall be returned to the licensee only after it has been determined that such item is not stolen. If it is determined that such item is stolen, it shall be returned to its lawful owner.

(Code 1983, § 13-29)

Sec. 13-23. - Separate business establishment.

No business licensed under this chapter shall be designed or operated so as to allow access to such business immediately from any other business without first exiting the other business into a common or open area to which the public at large has access.

(Code 1983, § 13-30)

Sec. 13-24. - Relationship to state law.

This chapter is to be construed as consistent with state law. However, these provisions are to be applied in lieu of state law and state fee and registration requirements whenever they are consistent with the minimum requirements of state law. It is the intent of the board of commissioners that all duties delegated to the chief law enforcement officer of this county shall be exercised as provided herein.

(Code 1983, § 13-32)

State law reference— Local requirements for dealers in precious metals and gems, OCGA § 43-37-5; effect of pawnbroker law on local laws, OCGA § 44-12-135.

Secs. 13-25—13-40. - Reserved.

ARTICLE II. - LICENSE; EMPLOYEE PERMIT

(54)

Sec. 13-41. - License required.
Sec. 13-42. - Application for license.
Sec. 13-43. - Employee permit.
Sec. 13-44. - Business license and permit fee.
Sec. 13-45. - Character qualifications.
Sec. 13-46. - Inspection.
Sec. 13-47. - Revocation of license.

Sec. 13-41. - License required.

Every person doing business in any unincorporated area of the county as a pawnbroker, dealer in precious metals or gems, itinerant dealer or flea market operator shall, prior to commencing business, make proper application for and receive the appropriate business license or licenses as set forth in section 13-44.

(Code 1983, § 13-2)

Sec. 13-42. - Application for license.

(a) Applicants for a license under this chapter, whether a person, firm or corporation, shall file a written, sworn application on a form provided by the business license department, signed by the applicant if an individual, by all partners if a partnership and by the president if a corporation, with the business license department showing:

(1) The name or names of the principals, agents and employees of the applicant's business during the time that it is proposed that it will be carried on in the county; the local address or addresses of such person or persons while engaged in such business; the permanent address or addresses of such person or persons; the capacity in which such person or persons will act (as proprietor, agent, employee or otherwise); the name and the address of the person for whose account the business will be carried on, if any; and, if a corporation, under the laws of what state it is incorporated.

(2) The fingerprints of the principals, agents or employees of the applicant's business and other evidence which establishes to the satisfaction of the business license official the good character of such persons to carry on the business.

(3) The place or places in the county where it is proposed to carry on the applicant's business, the zoning district at such place or places, and the length of time during which it is proposed that such business shall be conducted.

(4) The place or places, other than the permanent place of business of the applicant, where the applicant within the six (6) months next preceding the date of the application conducted an itinerant business, stating the nature thereof and giving the post office and street address or any building or office in which such business was conducted.

(5) A brief statement of the nature and the character of the advertising done or proposed to be done in order to attract customers.

(6) Whether or not the person or persons having the management or supervision of the applicant's business have been convicted of a crime, misdemeanor or the violation of any municipal ordinance, the nature of such offense and the punishment assessed therefor.

(7) Credentials from the person for which the applicant proposes to do business authorizing the applicant to act as such representative.

(8) Such other information as to the identity or character of the person or persons having the management or supervision of the applicant's business or the method or plan of doing such business as the business license official may deem proper to fulfill the purpose of this chapter in the protection of the public good.

(b) Every applicant for a license except itinerant dealers shall post with the business license department a surety bond in favor of the board of commissioners in the amount of eight thousand dollars ($8,000.00), which bond shall not be accepted unless it be with a corporate surety licensed to do business in the state and unless it is conditioned that the applicant shall comply fully with all applicable provisions of federal, state and local laws, rules and regulations concerning the activity for which the applicant is to be licensed, and that the property purchased is guaranteed to be in accordance with the specifications, standards and conditions represented to the purchaser by the applicant. A blanket bond otherwise meeting the requirements of this section shall be accepted.

(c) If any person shall be aggrieved by the conduct of any such licensee, and shall recover judgment against him therefor, such person may, after the return unsatisfied, either in whole or in part, of any execution issued upon such judgment, maintain an action in his own name upon the bond or letter of credit of the licensee in any court having jurisdiction of the amount of such judgment remaining unsatisfied.

(d) In lieu of posting such bond, the licensee may post cash or a letter of credit from a recognized state financial institution, the terms of which are satisfactory to the board of commissioners.

(e) The application shall state thereon that "It is unlawful for any person to make a false statement on this application." Any false statement made on the application form will be cause to revoke the license issued thereunder and also shall constitute a violation of state law.

(Code 1983, § 13-3)

Sec. 13-43. - Employee permit.

Each person authorized or allowed to conduct any phase of business covered under this chapter shall be considered an employee, and must have an approved employee permit. This permit must be displayed along with the business license in accordance with license display requirements.

(Code 1983, § 13-5)

Sec. 13-44. - Business license and permit fee.

(a) All businesses licensed under this article shall pay the following designated license and permit fee:

(1) *Pawn shops.* Three hundred dollars ($300.00) per calendar year. This fee shall include the initial registration of named applicant.

(2) *Dealers in precious metals or gems.* Three hundred dollars ($300.00) per calendar year. This fee shall include the initial registration of named applicant.

(3) *Joint pawn shop and dealer in precious metals.* Five hundred fifty dollars ($550.00) per calendar year. This fee shall include the initial registration of named applicant.

(4) *Flea market operators.* One hundred dollars ($100.00) per calendar year. This fee shall include the initial registration of named applicant.

(5) *Employee permits.* Fifty dollars ($50.00) per calendar year per application.

(6) *Itinerant dealer.* Fifteen dollars ($15.00) for each thirty-day period.

(b) Any co-owner, agent, employee or any other persons authorized to transact business other than the licensee shall be required to have the above employee permit for each license he operates or transacts business under. There shall be no proration or refund of any license fee. The license and permit issued hereunder shall be a personal privilege and shall not be transferable, except that employee permits may be transferred from one (1) licensed business to another.

(Code 1983, § 13-6)

Sec. 13-45. - Character qualifications.

No license or employee permit shall be issued to or renewed for any person who conducts or is employed in a business in which such owner or employee has, within five (5) years of issuance or renewal, been convicted of, or pled guilty or nolo contendere to, any felony involving any federal or state offense or any federal or state misdemeanor involving theft-related offenses. The licensee will submit the identity of all owners and employees to the business license department on a continuing

basis as changes occur. This information is to be forwarded to the county sheriff's department for the purpose of allowing a complete check in order that these character qualifications be fulfilled prior to the issuance of or renewal of any license or permit issued hereunder.

(Code 1983, § 13-7)

Sec. 13-46. - Inspection.

As a condition of the granting of the license under this division every licensee agrees to allow any duly authorized law enforcement officer, pursuant to his official duties, to be and remain on or about his premises without the formality of a warrant, provided such officer does not unduly interfere in the licensee's operation.

(Code 1983, § 13-27)

Sec. 13-47. - Revocation of license.

Any business license or employee permit issued under this division shall be subject to suspension or revocation pursuant to section 11-8.

(Code 1983, § 13-26)

FOOTNOTE(S):

(54) **State Law reference—** Registration of dealers in precious metals and gems, OCGA § 43-37-2. (Back)

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O.C.G.A. § 10-1-360 (Copy w/ Cite) Pages:4

O.C.G.A. § 10-1-360

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*** Current Through the 2011 Extraordinary Session ***

TITLE 10. COMMERCE AND TRADE
CHAPTER 1. SELLING AND OTHER TRADE PRACTICES
ARTICLE 14A. FLEA MARKET VENDORS' RECORD KEEPING

O.C.G.A. § 10-1-360 (2011)

§ 10-1-360. Definitions; records; penalties; applicability

(a) As used in this Code section, the term:

(1) (A) "Flea market" means any event:

(i) At which two or more persons offer personal property for sale or exchange; and

(ii) At which a fee is charged for the privilege of offering or displaying personal property for sale or exchange; or

(iii) At which a fee is charged to prospective buyers for admission to the area where personal property is offered or displayed for sale or exchange; or

(iv) Regardless of the number of persons offering or displaying personal property or the absence of fees, at which used personal property is offered or displayed for sale or exchange if the event is held more than six times in any 12 month period.

(B) The term "flea market" is interchangeable with and applicable to "swap meet," "indoor swap meet," or other similar terms regardless of whether these events are held inside a building or outside in the open. The primary characteristic is that these activities involve a series of sales sufficient in number, scope, and character to constitute a regular course of business.

(C) The term "flea market" shall not mean and shall not apply to:

(i) An event which is organized for the exclusive benefit of any community chest, fund, foundation, association, or corporation organized and operated for religious, educational, or charitable purposes, provided that no part of any admission fee or parking fee charged vendors or prospective purchasers or the gross receipts or net earnings from the sale or exchange of personal property, whether in the form of a percentage of the receipts or earnings, as salary, or otherwise, inures to the benefit of any private shareholder or person participating in the organization or conduct of the event; or

(ii) Any event at which all of the personal property offered for sale or displayed is new, and all persons selling, exchanging, or offering or displaying personal property for sale or exchange are manufacturers or licensed retail or wholesale merchants.

(2) "Nonregistered vendor" means a person who, without a certificate of registration issued by the state revenue commissioner pursuant to Chapter 8 of Title 48, engages in the retail sale of personal property to the general public.

(3) "Used personal property" includes personal property which has previously been sold or delivered to a retailer prior to being acquired by a vendor when the vendor's cost exceeds $50.00 per item.

(4) "Vendor" means a person who engages in the retail sale of personal property at a flea market.

(b) Every nonregistered vendor and vendor shall maintain a permanent record book in which shall be entered in ink and in legible English at the time any property is acquired for the purpose of retail sale:

(1) The date of the transaction;

(2) The name, age, and address of the person, corporation, or entity from whom the property was acquired, a description of the general appearance of any such person, and the distinctive number from such person's driver's license or other similar identification card;

(3) An identification and description of the property acquired including, if reasonably available, the serial, model, or other number and all identifying marks inscribed thereon;

(4) The price paid for such property; and

(5) The signature of the seller.

All entries shall appear in ink and shall be in chronological order. No blank lines may be left between entries. No obliterations, alterations, or erasures may be made. Corrections shall be made by drawing a line of ink through the entry without destroying the legibility. Such record book shall be open to the inspection of any law enforcement officer during the ordinary hours of business or at any reasonable time.

(c) The record of each purchase transaction provided for in this Code section shall be maintained for a period of not less than two years and shall be kept by the nonregistered vendor or vendor and made available during any period at which such person is open for business or is offering property for sale.

(d) Any nonregistered vendor or vendor required to maintain a record book under the provisions of this Code section who shall:

(1) Fail to make an entry of any material matter in his or her permanent record book;

(2) Make any false entry therein;

(3) Falsify, obliterate, destroy, or remove such record book from his or her place of business during any time such record book is required to be present;

(4) Refuse to allow any law enforcement officer to inspect his or her permanent record book or any goods or property in his or her possession during the ordinary hours of business or at any reasonable time; or

(5) Fail to maintain the records required by this Code section for at least two years

shall be guilty of a misdemeanor.

(e) This Code section shall apply to property purchased or acquired on or after July 1, 1994.

HISTORY: Code 1981, § 10-1-360, enacted by Ga. L. 1994, p. 1915, § 1; Ga. L. 2000, p. 136, § 10.
Title Note
Chapter Note

In

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O.C.G.A. § 10-1-361

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*** Current Through the 2011 Extraordinary Session ***

TITLE 10. COMMERCE AND TRADE
CHAPTER 1. SELLING AND OTHER TRADE PRACTICES
ARTICLE 14A. FLEA MARKET VENDORS' RECORD KEEPING

O.C.G.A. § 10-1-361 (2011)

§ 10-1-361. Exemptions from article

This article shall not apply to the following:

(1) The sale of a motor vehicle or trailer required to be registered or subject to a certificate of title law of this state;

(2) The sale of food products, agricultural products, or forestry products;

(3) Business conducted at any industry or association trade show;

(4) The sale of arts or crafts by the person who produced such arts or crafts.

HISTORY: Code 1981, § 10-1-361, enacted by Ga. L. 1994, p. 1915, § 1.
Title Note
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TITLE 10. COMMERCE AND TRADE
CHAPTER 1. SELLING AND OTHER TRADE PRACTICES
ARTICLE 14A. FLEA MARKET VENDORS' RECORD KEEPING

O.C.G.A. § 10-1-362 (2011)

§ 10-1-362. Local ordinances or regulations

Nothing in this article shall prohibit ordinances or resolutions by counties and municipal corporations which provide regulations that are as stringent or more stringent than the requirements of this article.

HISTORY: Code 1981, § 10-1-362, enacted by Ga. L. 1994, p. 1915, § 1.
Title Note
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O.C.G.A. § 44-12-130

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TITLE 44. PROPERTY
CHAPTER 12. RIGHTS IN PERSONALTY
ARTICLE 3. BAILMENTS
PART 5. PAWNBROKERS

O.C.G.A. § 44-12-130 (2011)

§ 44-12-130. Definitions

As used in this part, the term:

(1) "Month" means that period of time from one date in a calendar month to the corresponding date in the following calendar month, but if there is no such corresponding date, then the last day of such following month.

(2) "Pawnbroker" means any person engaged in whole or in part in the business of lending money on the security of pledged goods, or in the business of purchasing tangible personal property on the condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time, or in the business of purchasing tangible personal property from persons or sources other than manufacturers or licensed dealers as a part of or in conjunction with the business activities described in this paragraph.

(3) "Pawn transaction" means any loan on the security of pledged goods or any purchase of pledged goods on the condition that the pledged goods may be redeemed or repurchased by the pledgor or seller for a fixed price within a fixed period of time.

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

(5) "Pledged goods" means tangible personal property, including, without limitation, all types of motor vehicles or any motor vehicle certificate of title, which property is purchased by, deposited with, or otherwise actually delivered into the possession of a pawnbroker in connection with a pawn transaction. However, for purposes of this Code section, possession of any motor vehicle certificate of title which has come into the possession of a pawnbroker through a pawn transaction made in accordance with law shall be conclusively deemed to be possession of the motor vehicle, and the pawnbroker shall retain physical possession of the motor vehicle certificate of title for the entire length of the pawn transaction but shall not be required in any way to retain physical possession of the motor vehicle at any time. "Pledged goods" shall not include choses in action, securities, or printed evidences of indebtedness.

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TITLE 44. PROPERTY
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O.C.G.A. § 44-12-131 (2011)

§ 44-12-131. Duration of pawn transactions; lease-back of motor vehicles prohibited; taking possession of motor vehicles; restrictions on interest, fees, or charges; action to recover excessive or undisclosed charges; consequences of excessive charges

(a)(1) All pawn transactions shall be for 30 day periods but may be extended or continued for additional 30 day periods.

(2) A pawnbroker shall not lease back to the seller or pledgor any motor vehicle during a pawn transaction or during any extension or continuation of the pawn transaction.

(3) Unless otherwise agreed, a pawnbroker has upon default the right to take possession of the motor vehicle. In taking possession, the pawnbroker or his agent may proceed without judicial process if this can be done without breach of the peace or may proceed by action.

(4)(A) During the first 90 days of any pawn transaction or extension or continuation of the pawn transaction, a pawnbroker may charge for each 30 day period interest and pawnshop charges which together equal no more than 25 percent of the principal amount advanced, with a minimum charge of up to $10.00 per 30 day period.

(B) On any pawn transaction which is continued or extended beyond 90 days, a pawnbroker may charge for each 30 day period interest and pawnshop charges which together equal no more than 12.5 percent of the principal amount advanced, with a minimum charge of up to $5.00 per 30 day period.

(C) In addition to the charges provided for in subparagraphs (A) and (B) of this paragraph, in a pawn transaction or in any extension or continuation of a pawn transaction involving a motor vehicle or a motor vehicle certificate of title, a pawnbroker may charge the following:

(i) A fee equal to no more than any fee imposed by the appropriate state to register a lien upon a motor vehicle title, but only if the pawnbroker actually registers such a lien;

(ii) No more than $5.00 per day in storage fees, but only if an actual

repossession pursuant to a default takes place on a vehicle which was not already in the pawnbroker's possession and only for each day the pawnbroker must actually retain possession of the motor vehicle; and

(iii) A repossession fee of $50.00 within 50 miles of the office where the pawn originated, $100.00 within 51 to 100 miles, $150.00 within 101 to 300 miles and a fee of $250.00 beyond 300 miles, but only if an actual repossession pursuant to a default takes place on a vehicle which was not already in the pawnbroker's possession.

(D) If a pledgor or seller requests that the pawnbroker mail or ship the pledged item to the pledgor or seller, a pawnbroker may charge a fee for the actual shipping and mailing costs, plus a handling fee equal to not more than 50 percent of the actual shipping and mailing costs.

(E) In the event the pledgor or seller has lost or destroyed the original pawn ticket, a pawnbroker may, at the time of redemption, charge a fee equal to not more than $2.00.

(5) No other charge or fee of any kind by whatever name denominated, including but not limited to any other storage fee for a motor vehicle, shall be made by a pawnbroker except as set out in paragraph (4) of this subsection.

(6) No fee or charge provided for in this Code section may be imposed unless a disclosure regarding that fee or charge has been properly made as provided for in Code Section 44-12-138.

(7)(A) Any interest, fees, or charges collected which are undisclosed, improperly disclosed, or in excess of that allowed by this subsection may be recovered by the pledgor or seller in an action at law in any superior court of appropriate jurisdiction.

(B) In any such action in which the pledgor or seller prevails, the court shall also award reasonable attorneys' fees, court costs, and any expenses of litigation to the pledgor or seller.

(C) Before filing an action under this Code section, the pledgor or seller shall provide the pawnbroker with a written notice by certified mail or statutory overnight delivery, return receipt requested, that such an action is contemplated, identifying any fees or charges which the pledgor or seller contends are undisclosed, improperly disclosed, or in excess of the fees and charges allowed by this Code section. If the court finds that during the 30 days following receipt of this notice the pawnbroker made a good faith offer to return any excess, undisclosed, or improperly disclosed charges, the court shall award reasonable attorneys' fees, court costs, and expenses of litigation to the pawnbroker.

(D) No action shall be brought under this Code section more than two years after the pledgor or seller knew or should have known of the excess, undisclosed, or improperly disclosed charges.

(b) Any interest, charge, or fees contracted for or received, directly or indirectly, in excess of the amounts permitted under subsection (a) of this Code section shall be uncollectable and the pawn transaction shall be void. All interest and the pawnshop charge allowed under subsection (a) of this Code section shall be deemed earned, due, and owing as of the date of the pawn transaction and a like sum shall be deemed earned, due, and owing on the same day of the succeeding month.

HISTORY: Code 1933, § 12-612, enacted by Ga. L. 1945, p. 189, § 1; Ga. L. 1989, p. 819, § 2; Ga. L. 1992, p. 3245, § 3; Ga. L. 2000, p. 1589, § 3.

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TITLE 44. PROPERTY
CHAPTER 12. RIGHTS IN PERSONALTY
ARTICLE 3. BAILMENTS
PART 5. PAWNBROKERS

O.C.G.A. § 44-12-132 (2011)

§ 44-12-132. Permanent records -- Required; content

Every pawnbroker shall maintain a permanent record book in which shall be entered in legible English at the time of each loan, purchase, or sale:

(1) The date of the transaction;

(2) The name of the person conducting the transaction;

(3) The name, age, and address of the customer; a description of the general appearance of the customer; and the distinctive number from the customer's driver's license or other similar identification card;

(4) An identification and description of the pledged or purchased goods, including, if reasonably available, the serial, model, or other number, and all identifying marks inscribed thereon;

(5) The number of the receipt or pawn ticket;

(6) The price paid or the amount loaned;

(7) If payment is made by check, the number of the check issued for the purchase price or loan;

(8) The maturity date of the transaction; and

(9) The signature of the customer.

HISTORY: Ga. L. 1977, p. 1194, § 2.

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O.C.G.A. § 44-12-133 (2011)

§ 44-12-133. Permanent records -- Manner of recording entry; corrections; inspection

Entries shall appear in ink and shall be in chronological order. No blank lines may be left between entries. No obliterations, alterations, or erasures may be made. Corrections shall be made by drawing a line of ink through the entry without destroying its legibility. The book shall be open to the inspection of any duly authorized law enforcement officer during the ordinary hours of business or at any reasonable time.

HISTORY: Ga. L. 1977, p. 1194, § 3.

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O.C.G.A. § 44-12-134 (2011)

§ 44-12-134. Permanent records -- Maintained for four years

The record of each pawn or purchase transaction provided for in Code Sections 44-12-132 and 44-12-133 shall be maintained for a period of not less than four years.

HISTORY: Ga. L. 1977, p. 1194, § 5.

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O.C.G.A. § 44-12-135 (2011)

§ 44-12-135. Effect of part on local laws

Nothing in this part shall supersede existing local laws nor relieve a pawnbroker from the necessity of complying with them. The requirements of local laws shall be construed as cumulative to this part.

HISTORY: Ga. L. 1977, p. 1194, § 6.

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O.C.G.A. § 44-12-136 (2011)

§ 44-12-136. Supervision of pawnbrokers by municipalities

Municipal authorities may license pawnbrokers, define their powers and privileges by ordinance, impose taxes upon them, revoke their licenses, and exercise such general supervision as will ensure fair dealing between the pawnbroker and his customers.

HISTORY: Ga. L. 1868, p. 136, § 1; Code 1873, § 2137; Code 1882, § 2137; Civil Code 1895, §§ 755, 2955; Civil Code 1910, §§ 904, 3527; Code 1933, § 12-611.

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O.C.G.A. § 44-12-137 (2011)

§ 44-12-137. Prohibited acts; penalties; presumption as to pledgor; replacement of lost or damaged goods

(a) Any pawnbroker and any clerk, agent, or employee of such pawnbroker who shall:

(1) Fail to make an entry of any material matter in his permanent record book;

(2) Make any false entry therein;

(3) Falsify, obliterate, destroy, or remove from his place of business such permanent record book;

(4) Refuse to allow any duly authorized law enforcement officer who is certified by the Georgia Peace Officer Standards and Training Council or who is a federal officer to inspect his permanent record book or any goods in his possession during the ordinary hours of business or at any reasonable time;

(5) Fail to maintain a record of each pawn transaction for at least four years;

(6) Accept a pledge or purchase property from a person under the age of 18 years or who the pawnbroker knows is not the true owner of such property;

(7) Make any agreement requiring the personal liability of a pledgor or seller or waiving any of the provisions of this part or providing for a maturity date less than one month after the date of the pawn transaction; or

(8) Fail to return or replace pledged goods to a pledgor or seller upon payment of the full amount due the pawnbroker unless the pledged goods have been taken into custody by a court or a law enforcement officer or agency,

shall be guilty of a misdemeanor.

(b) Any person properly identifying himself and presenting a pawn ticket to the pawnbroker shall be presumed to be the pledgor or seller and shall be entitled

to redeem the pledged goods described in such ticket. In the event such pledged goods are lost or damaged while in the possession of the pawnbroker, it shall be the responsibility of the pawnbroker to replace the lost or damaged goods with like kinds of merchandise and proof of replacement shall be a defense to prosecution. For the purposes of this subsection, "lost" includes destroyed or having disappeared because of any cause, whether known or unknown, that results in the pledged goods being unavailable for return to the pledgor.

HISTORY: Ga. L. 1977, p. 1194, § 4; Ga. L. 1989, p. 819, § 3.

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O.C.G.A. § 44-12-138 (2011)

§ 44-12-138. Restrictions on advertising; disclosure tickets or statements

(a)(1) Any pawnbroker as defined in paragraph (2) of Code Section 44-12-130 shall include most prominently in any and all types of advertisements the word "pawn" or the words "pawn transaction." A pawnbroker shall not use the term "loan" in any advertisements or in connection with any advertising of the business of the pawnbroker; provided, however, that the provisions of this sentence shall not apply to a pawnbroker in business on March 1, 1992, which uses the term "loan" in connection with the name of the business or with advertising of the business.

(2) On any sign advertising a pawnbroker's business, the words on such sign shall be in at least 24 inch high letters. On any other sign on the property where the pawnbroker's business is located which advertises any other activities or business engaged in by the person who is a pawnbroker, the words on such sign shall be in 12 inch high letters or smaller; provided, however, that the provisions of this paragraph shall not apply to signs of pawnbrokers which signs are in existence on March 1, 1992.

(b) Every pawnbroker in every pawn transaction shall present the pledgor or seller with a written disclosure ticket or statement in at least nine-point type, appropriately completed, with no other written or pictorial matter except as provided in subsection (c) of this Code section, containing the following information:

(1) Information identifying the pawnbroker by name and address;

(2) A statement as follows:
"This is a pawn transaction. Failure to make your payments as described in this document can result in the loss of the pawned item. The pawnbroker can sell or keep the item if you have not made all payments by the specified maturity date.";

(3) If the pawned item is a motor vehicle or motor vehicle certificate of title, a statement as follows:
"Failure to make your payment as described in this document can result in the loss of your motor vehicle. The pawnbroker can also charge you certain

fees if he or she actually repossesses the motor vehicle.";

(4) A statement that the length of the pawn transaction is 30 days and that it can only be renewed with the agreement of both parties and only for 30 day incremental periods;

(5) The annual percentage rate, computed in accordance with the federal Truth in Lending Act and regulations under the federal Truth in Lending Act, for the first 30 days of the transaction, computed as if all interest and pawnshop charges were considered to be interest;

(6) The annual percentage rate, computed in accordance with the federal Truth in Lending Act and regulations under the federal Truth in Lending Act, for each 30 day period in which the pawn transaction might be continued or extended, computed as if all interest and pawnshop charges were considered to be interest. For purposes of identifying the annual percentage rate after the second continuation or extension, a single statement which identifies an annual percentage rate for each possible 30 day period thereafter shall meet the requirements of this Code section;

(7) A statement in dollar amounts of how much it will cost the seller or pledgor to redeem the merchandise in the first 30 day period of the transaction;

(8) A statement in dollar amounts of how much it will cost the seller or pledgor to redeem the merchandise in any 30 day period after the first 30 day period of the pawn transaction, provided that all fees and charges have been kept current;

(9) A statement of the specific maturity date of the pawn transaction;

(10) A statement of how long, the grace period, the pledged goods may be redeemed after the specific maturity date and the dollar amount which will be required to redeem the pledged goods after the specific maturity date;

(11) A statement that after the grace period the pledged goods become the property of the pawnbroker;

(12) If the pawn transaction involves a motor vehicle or motor vehicle certificate of title, a statement that the pawnbroker may not charge a storage fee for the motor vehicle unless the pawnbroker repossesses the motor vehicle pursuant to a default;

(13) If the pawn transaction involves a motor vehicle or motor vehicle certificate of title, a statement that the pawnbroker may charge a storage fee for a repossessed motor vehicle not to exceed $5.00 per day, but only if the pawnbroker actually repossesses and actually must store the motor vehicle;

(14) If the pawn transaction involves a motor vehicle or motor vehicle certificate of title, a statement that the pawnbroker may charge a repossession fee, not to exceed $50.00, but only if the pawnbroker actually repossesses the motor vehicle;

(15) If the pawn transaction involves a motor vehicle or motor vehicle certificate of title, a statement that the pawnbroker may charge a fee to register a lien upon the motor vehicle certificate of title, not to exceed any fee actually charged by the appropriate state to register a lien upon a motor vehicle certificate of title, but only if the pawnbroker actually places such a lien upon the motor vehicle certificate of title;

(16) A statement that any costs to ship the pledged items to the pledgor or seller can be charged to the pledgor or seller, along with a handling fee to equal no more than 50 percent of the actual costs to ship the pledged items; and

(17) A statement that a fee of up to $2.00 can be charged for each lost or destroyed pawn ticket.

(c) In addition to the information required by subsection (b) of this Code section, the pawnbroker may, but is not required to, include the following information on the same disclosure ticket or statement, provided that such information is not used to obscure or obfuscate the information required by subsection (b) of this Code section:

(1) Information identifying the pledgor or seller;

(2) Any logo which the pawnbroker may desire to use;

(3) Any numbers or characters necessary for the pawnbroker to identify the merchandise or goods associated with the pawn transaction;

(4) Any other information required to be disclosed to consumers by any other law, rule, or regulation of the United States or of the State of Georgia;

(5) Information identifying or describing the pledged item;

(6) Information which is only for the internal business use of the pawnbroker;

(7) The hours of operation of the pawnbroker;

(8) The time of day of the pawn transaction; and

(9) Any agreement between the pledgor or seller and the pawnbroker which does not controvert the provisions of this part, of Part 5 of Article 8 of Chapter 14 of this title, or of Part 2 of Article 15 of Chapter 1 of Title 10.

(d) The pawnbroker shall have the pledgor or seller sign the disclosure statement and shall furnish a completed copy to the pledgor or seller. The pawnbroker shall maintain a completed and signed copy of the disclosure statement on file for two years subsequent to the maturity date of the pawn transaction. Failure to maintain such a copy shall be conclusive proof that the pawnbroker did not furnish such a statement to the pledgor or seller.

(e) Notwithstanding anything to the contrary contained elsewhere in this Code section, no municipality or local government may impose any requirements upon a pawnbroker regarding the disclosures which must be made to a pledgor or seller or which must be made in the pawn ticket, other than those requirements contained in this Code section.

HISTORY: Code 1981, § 44-12-138, enacted by Ga. L. 1992, p. 3245, § 4.