

FIRST READING DATE: 7/16/2012
APPROVAL DATE: 8/20/2012

**HABERSHAM COUNTY
STATE OF GEORGIA**

AN ORDINANCE OF THE HABERSHAM COUNTY BOARD OF COMMISSIONERS, HABERSHAM COUNTY, GEORGIA, TO PROVIDE FOR THE REGULATION AND LICENSING OF PAWN SHOPS AND PAWNBROKERS WITHIN HABERSHAM COUNTY; TO PROVIDE FOR DEFINITIONS, REGULATIONS AND PERMITTING; TO PROVIDE FOR REVOCATION OF PERMITS AND APPEAL THEREOF, TO PROVIDE FOR PERMIT FEES; TO PROVIDE FOR VIOLATIONS HEREOF; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR AN EFFECTIVE DATE AND FOR OTHER PURPOSES

WHEREAS, the duly elected governing authority of Habersham County, Georgia, is authorized under Article IX, Section II, Paragraph III of the Constitution of the State of Georgia to adopt reasonable ordinances to protect the public health, safety, and welfare of the citizens of Habersham County, Georgia; and

WHEREAS, the duly elected governing authority of Habersham County, Georgia is the Board of Commissioners therefore; and

WHEREAS, the governing authority desires to adopt certain regulatory provisions in regard to pawn shops and pawnbrokers in Habersham County, Georgia.

NOW, THEREFORE, THE HABERSHAM COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AND IT IS HEREBY ORDAINED BY THE AUTHORITY OF THE SAME as follows:

Sec. 1 – Purpose; authority

- (a) This article is enacted for the purposes, among others, of promoting the health and general welfare of the community, and establishing reasonable and ascertainable standards for the regulation and control of pawnbrokers or similar places where money is advanced on goods or other effects, or merchandise of any kind is taken in pawn.
- (b) This article is enacted pursuant to the authority of O.C.G.A. § 44-12-135. The requirements of this article shall be cumulative to the requirements of Title 44, Chapter 12, Article 3, Part 5 of the Official Code of Georgia

Sec. 2 – Compliance with article required.

All persons, before beginning the business of operation as a pawnbroker, as herein defined, shall first file an application with the county permitting office for a permit to conduct such business, shall receive such permit, and shall comply with all requirements of this article.

Sec. 3 – Territorial applicability of article.

The terms and provisions of this article shall apply to all unincorporated portions of Habersham County, except as provided for in section 24 below.

Sec. 4 – Definitions.

The following words and terms shall have the following meanings for the purposes of this article.

Pawnbroker means any person engaged, in whole or in part, in the business of lending money on the security of pledged goods. Or engaged in the business of purchasing tangible personal property on 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 person or sources other than manufacturers or licensed dealers as a part of or in conjunction with the business activities described in this definition.

Person means an individual, partnership, limited partnership, Limited Liability Company, corporation, joint venture, trust, association, or any other legal entity however organized.

Pledged goods means tangible personal property (other than choses in action, securities, or printed evidences of indebtedness), 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 article, possession of any motor vehicle certificate of title which has come into the possession of a pawn broker through a pawn transaction made in accordance with the 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.

Sec. 5 – Application.

All persons 21 years of age or older desiring to obtain a permit required under this article shall make written application to the county permitting office upon forms to be prepared by the county permitting office. Such application shall state the name and the address of the applicant, the place where the proposed business is to be located, the nature and character of the business to

be carried on, if a corporation, the names of the officers and stockholders, if a partnership, the names of the partners, if a limited liability company, the names of the members, and such other information as may be required by the county permitting office, all sworn to by the applicant or agent thereof. Permitted businesses will be required to also comply with the occupation tax requirements of the county code. Applicants may appeal the denial of a permit within 30 days in writing to the county permitting office, and such appeals shall be heard pursuant to the hearing procedures set forth in section below.

Sec. 6 –Background investigation.

All person filing an application for an initial permit or the renewal of a permit, as well as all proposed employees at the time of such application of any pawnbroker, shall complete a waiver in order to be checked by the state crime information center or by other criminal background verification methods to determine their record of any arrests and/or convictions on an annual basis.

Sec. 7 – Citizenship

- (a) No permit shall be granted hereunder to any applicant who is not a citizen of the United States.
- (b) Where the applicant is a corporation, the majority stockholder must meet the citizenship requirements of subsection (a) above.
- (c) If the applicant is a partnership, at least one general partner must meet the citizenship requirements of subsection (a) above
- (d) If the applicant is a limited liability company, at least one member must meet the citizenship requirements of subsection (a) above.

Sec. 8 – Issuance of permits to persons with prior convictions prohibited; exceptions.

No permit hereunder shall be issued to any person convicted of a felony, which includes, but is not limited to, burglary, theft by receiving stolen property, or any crime involving moral turpitude, unless said person has had their rights restored, in which event they must provide to the county permitting office documentations confirming the restoration of their rights. The term “conviction” shall include and adjudication of guilt by admission, conviction or otherwise, a plea of “nolo contendere” or the forfeiture of a bond when charged with a crime.

Sec. 9 – General information; application restrictions.

No application for any permit hereunder shall be granted where the application shows or the county permitting office finds any of the following conditions to exist:

- (1) The applicant has previously had any pawnbroker permit issued by any county, municipality, or other governmental subdivision suspended or revoked for cause after a hearing.

- (2) The applicant, as the previous holder of a permit to operate as a pawnbroker, has been convicted of violation any law, regulation, or ordinance relating to such business within a one-year period immediately preceding the date of application.
- (3) The applicant has supplied false information upon his application.
- (4) The applicant has failed to pay any fee or tax owed to the county.

The permit shall be issued: if an individual or sole proprietorship, to the individual; if a corporation, to the corporation and the majority stockholder; if a partnership, to the partnership and all partners; if a limited liability company, to the limited liability company and all members.

Sec. 10 – Transfers.

No permit granted hereunder shall be transferable, except upon application to the county permitting office in the same form, manner and subject to the same requirements with respect to the transferee as are applicable in an original application. When permission for transfer has been granted, either the original permittee or the transferee shall cause the permit to be delivered to the county permitting office, who shall record such transfer and provide the permit to the transferee, and the transferee shall pay the fee required for an original permit as a condition precedent to engaging in operations under the permit. Applicants may appeal the denial of a permit transfer within 30 days in writing to the county permitting office, and such appeals shall be heard pursuant to the hearing procedure set forth in section 12 below.

Sec. 11 - Revocation and suspension of permit.

Subject to the provisions of the following section 12, the board of commissioners may suspend, revoke, or place on probation (either with or without conditions), any permit issued under this article.

Sec. 12 - Notice and Hearing

- (a) No permit issued under this article shall be suspended (except as provided for in subsection (b)), revoked, or placed on probation, except for due cause as defined in subsection (c) hereof, and after a hearing before the board of commissioners upon reasonable notice to the permittee of the time, place, and purpose of such hearing and of the reason why the permit should be suspended or revoked. At least seven days written notice shall be deemed reasonable.
- (b) The chairman of the board of commissioners may suspend a permit immediately or given seven days written notice that such permit is subject to suspension when there is caused to believe that grounds exist for suspending the permit prior to the conduct of a hearing before the board of commissioners. This action shall be reviewed by the board of commissioners at its next regular meeting, or, at the request of the permittee, a special meeting of the board of commissioners may be called within seven days after such

request is filed with the county permitting office, and the board of commissioners may either affirm or overturn the suspension after the hearing of evidence. A permit shall not be revoked or placed on probation, except upon action by the board of commissioners.

- (c) "Due cause" for the suspension, revocation, or placement on probation of any permit shall consist of any of the following:
 - (1) Violation of any law, regulation, ordinance, or resolution regulation the permittee.
 - (2) The permittee's provision of false information to the county permitting office, regardless of when the county permitting office shall have become aware of the falsity of such information.
 - (3) the permittee has failed to obtain, or has suffered suspension or revocation of , any paper, permit or other document necessary in pursuance of its business, as may be required by any officer, agency, authority, or department of the county, state or the United States under authority of any law, ordinance, or resolution of the county, state or United States.
- (d) The board of commissioners may specify conditions of operation of the permit holder during any period of probation. Such conditions shall be on file with the county permitting office. No probation shall extend over a period of more than 12 consecutive calendar months.

Sec. 13 – Permit fees to be set by board of commissioners; refund.

- (a) The original permit fee and annual renewal permit fee for a permit issued hereunder shall be set by the board of commissioners.
- (b) No permit shall be issued for less than a calendar year period and in cases of the revocation, suspension or surrender of such permit before the expiration of such calendar year period, the holder thereof shall not be entitled to receive any refund whatsoever of all or any portion of the permit fee.
- (c) All permits shall be issued for the calendar year beginning January 1, and the fee prescribed by the board of commissioners shall be paid in full by each person prior to issuance of a permit.
- (d) Any permit issued under this article shall expire on December 31 of the calendar year for which it was issued.
- (e) No permit fee shall be prorated for any business commenced after January 1 of any calendar year, and the full amount of the annual permit fee as prescribed by the board of commissioners shall be payable for any business, whether commenced on or after January 1 of any calendar year.

Sec. 14 – Permit to authorize conduct of one place of business.

Each permit issued hereunder shall authorize the conduct of business at one location only, and persons doing business at more than one location within the county shall obtain a separate permit, requiring a separate fee, for each such location.

Sec. 15 - Change of location.

Any person moving a business permitted hereunder from one location to another shall notify the permitting office of such move and of the new address in writing, on a form provided by the county permitting office, no later than within one day of moving. A new permit shall be issued upon payment of a reasonable fee if the new location conforms to all applicable ordinances, resolutions, and the county's zoning and other applicable regulations.

Sec. 16 – Permit to be displayed.

All permits issued under this article shall be posted conspicuously in the place of business for which the permit is issued.

Sec. 17 – Time limit for commencement of business in permitted establishment; forfeiture for nonuse.

- (a) All holders of permits hereunder must, within three months after approval of the permit, open for business the establishment referred to in the permit; unless a time extension is granted by the board of commissioners. Failure to open the permitted establishment within such three-month period shall serve as an automatic forfeiture and cancellation of the unused permit, and no refund of permit fees shall be made to the permit holder.
- (b) Any holder of a permit hereunder who shall begin the operation of the business as authorized in the permit, but who shall for a period of three consecutive months thereafter cease to operate the business as authorized in the permit, shall upon completion of such three-month period automatically forfeit the permit, which permit shall, by virtue of such failure to operate, be cancelled without the necessity of any action of the board of commissioners.

Sec. 18 – Renewal.

Any pawnbroker permitted under this article shall register with the county permitting office, apply for renewal of the existing permit, and pay the annual permit renewal fee no later than February 15 of each calendar year in which it does business.

Sec. 19 – Records to be kept; information to be shown; inspection authorized.

- (a) All pawnbrokers shall keep books in compliance with state law, wherein there shall be entered an accurate description of all articles pledged or sold to them. Such description shall include:
 - (1) The name of the manufacturer of the article; and
 - (2) Any identifying marks or numbers on the article; and
 - (3) A statement of the kind of material of which the article is made.
- (b) In such books there shall be entered also:
 - (1) The name of the person by whom the article was deposited or sold; and

- (2) The time when the transaction was accomplished.
- (c) These entries shall be made immediately upon the completion of each transaction.
- (d) Such books, and the articles themselves so pledged or sold, shall at all times be subject to inspection and examination by any duly authorized law enforcement officer.
- (e) Any person engaged in business as a pawnbroker who shall fail or refuse to keep books as provided in this section, or who shall make false entries in such books, or who shall fail or refuse to permit an inspection and examination by any duly authorized law enforcement officer of the books and of the articles pledged with or sold to them shall be in violation of this article.

Sec. 20 – Consignment sale prohibited.

Under no circumstances will any pawnbroker receive articles from another individual for the purpose of selling the article for the individual and remitting a portion of the sale prices to said individual.

Sec. 21 – Pawn tickets and daily reports.

- (a) Pawnbrokers will make daily reports to the sheriff's office in the manner prescribed by the sheriff or his designee.
- (b) Pawnbrokers shall capture an image, with a digital camera, of the person pledging, trading, pawning, exchanging, or selling the article. The image shall clearly show a frontal view of the subject's face along with the pawnbroker's ticket transaction number. Digital images shall be labeled and stored in such a manner that they are safe from corruption, readily identifiable, and readily available for review.
- (c) The pawnbroker shall obtain from each person pledging, trading, pawning, exchanging, or selling any article, the fingerprint (using an electronic digital fingerprint scanner) of the right index finger, unless such finger is missing, in which event the print of the next finger in existence on the right hand shall be obtained with a notation as to the exact finger printed.

The fingerprint shall be imprinted onto the pawn transaction form in the designated area along with the signature of the person pawning, trading, pledging, exchanging, or selling the article.

The fingerprint must be clear and legible. In the event that more than one transaction form is required, a fingerprint and signature shall be obtained for each form. Fingerprints and the information required herein shall be obtained each time such person pledges, trades, pawns, exchanges, or sells any article.

- (d) A digital image shall be made, with a digital camera, at the time of acquisition of any article and of the article's serial number, which number shall be clearly visible and readable in the images if imprinted on the article.

If the article was never imprinted with any type of serial number, then the image shall show the entire article. All such digital images shall be labeled and stored in such a manner that they are safe from corruption, readily identifiable, and readily available for review.

- (e) All persons who enter a pawnbroker business and attempt to sell or pawn an article must provide proper photo identification. Identification which is acceptable will be in the form of a United States driver's license, a state I.D. card, or a government identification card (military I.D.). In the event one of the mentioned identifications cannot be produced, then the transaction is void.
- (f) Paper printouts of each transaction's documentation required by this section, which shall include any documentation or information provided by the person pawning the article to the pawnbroker, shall be made by the pawnbroker and stored on premises for inspection by the sheriff or his designee.
- (g) Daily reports shall also include any other information or documentation provided by the person pawning the article to the pawnbroker, as well as any documentation of the transaction in the pawnbroker's possession.
- (h) To the extent that the pawnbroker utilizes security cameras, video surveillance tapes shall be maintained for a minimum of 30 days and made available to the sheriff's office as requested.

Sec. 22 – Pawned merchandise not to be disposed of for forty days.

- (a) Regarding any and all articles not redeemed by the person who pawned the article by the maturity date (30 days), the pawnbroker must hold the pawned article for an additional ten-day grace period before disposing of the article or placing the article in public view for sale.
- (b) In the event the pawnbroker purchases the article instead of the pledge, then the pawnbroker is required to hold the article for 30 days before disposing of the article or placing the article in public view for sale.

Sec. 23 – Dealing with minors.

It shall be unlawful for any pawnbroker, his agents or employees, to receive in pawn, pledge or sale, goods of any character or description from a minor. For the purposes of this section, a minor is any individual 17 years of age or under.

Sec. 24 – Enforcement of article.

The article shall be enforced by the Habersham County Sheriff or his designee. This article shall not apply to incorporated portions of the county, unless it is expressly adopted by the applicable local municipal governing authority. Pursuant to O.C.G.A. § 16-11-173(b), firearms shall not be regulated pursuant to this article. However, pawnbrokers must comply with all requirements, including but not limited to record-keeping requirements for firearms

as specified in O.C.G.A. § 44-12-132, of title 44, Chapter 12, Article 3, Part 5 of the Official Code of Georgia Annotated, and shall be subject to all applicable criminal penalties under state law for any violation of same.

Sec. 25 -- Violation; penalty.

It shall be unlawful and a violation of this article for any person to fail to comply with any provision of this article. Any violation of any provision of this article shall subject the pawnbroker or person, as applicable, to citation returnable to the magistrate court of Habersham County, Georgia and shall be subject to fines and/or imprisonment as provided for in the Code of Ordinances, Habersham County, Georgia.

Sec. 26 -- Codification

This ordinance shall be codified in a manner consistent with the laws of the State of Georgia.

Sec. 27 -- Severability

- A. It is hereby declared to be the intention of the Habersham Board of Commissioners that all sections, paragraphs, sentences, clauses and phrases of this ordinance are upon their enactment, believed by the board of commissioners to be fully valid, enforceable and constitutional.
- B. It is hereby declared to be the intention of the Habersham Board of Commissioners that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this ordinance is severable from every other section, paragraph, sentence, clause or phrase of this ordinance. It is further declared to be the intention of the board of commissioners that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this ordinance.
- C. In the event that any section, paragraph, sentence, clause or phrase of this ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the board of commissioners that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining sections, paragraphs, sentences, clauses, or phrases of the ordinance and that, to the greatest extent allowed by law, all remaining sections, paragraphs, sentences, clauses, or phrases of the ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

Sec. 28 -- Repeal of Conflicting Provisions

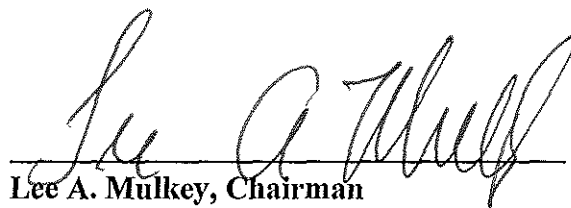
- A. Except as otherwise provided herein, all ordinance or parts of ordinances in conflict with this ordinance are hereby repealed.

Sec. 29 -- Effective Date

A. This ordinance shall become effective upon its adoption.


DULY ORDAINED AND ADOPTED this 20th August day of ~~July~~, 2012.

**HABERSHAM COUNTY BOARD
OF COMMISSIONERS**



Lee A. Mulkey, Chairman

Attest:



Lisa Ritchie, County Clerk