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## **OLR Bill Analysis**

### **sHB 5328**

#### ***AN ACT ESTABLISHING A FINE ART SECURED LENDING LICENSE.***

#### **SUMMARY:**

This bill creates a new fine art secured lending license with provisions and requirements similar to those for pawnbrokers. These include the same penalties and requirements for licensing, identifying sellers, recording, reporting, and payments.

The bill requires anyone (including existing pawnbrokers) who is in the business of loaning money on the deposit or pledge of fine art to obtain the new license. Under the bill, "fine art" means any:

1. drawing;
2. painting;
3. sculpture;
4. mosaic;
5. photograph;
6. work of calligraphy;
7. work of graphic art, including any etching, lithograph, offset print, or silkscreen;
8. craft work in clay, textile, fiber, metal, plastic, or other material;
9. art work in mixed media, including any collage, assemblage, or other work combining any of the previously mentioned art; or
10. a master from which copies of an artistic work can be made, such as a mold or a photographic negative, with a market value

of at least \$2,500.

The bill does not apply to loans made on stock, bonds, notes, or other written or printed evidence of fine art ownership or on indebtedness to the holder or owner of such securities.

EFFECTIVE DATE: October 1, 2012

## **§ 2 — LICENSING**

### ***Licensing Authority***

The bill makes a city or town's police chief or, for any city or town that does not have an organized local police department, the emergency services and public protection commissioner, the licensing authority.

The licensing authority may grant licenses to any suitable person and suspend or revoke a license for cause, which includes failing to comply with any specified licensing requirements imposed at the time of issuance.

### ***License Fees and Bond Requirements***

The bill allows the licensing authority to collect and use for either the town, city, or department's benefit a \$50 licensing fee and an annual \$25 renewal fee.

It requires a licensee to file with the licensing authority a \$2,000 surety bond. The bond is conditioned on the faithful performance of the duties and obligations of the business. The bill exempts licensees who are also secondhand dealers from the renewal fees and bond requirement.

### ***License Display Requirements***

The bill requires licensees to display their licenses in a conspicuous location on their premises. It also requires them to disclose (1) their business location for the next year and (2) all the places they use or intend to use to buy, receive, store, or sell fine art. During the term of the license, the licensee must notify the licensing authority in advance of any additional business locations.

### ***Applications***

The bill requires license applications to be in writing, signed under oath, and contain:

1. the type of business to be engaged in;
2. the applicant's full name, age, and date and place of birth;
3. the applicant's home addresses and places of employment for the preceding five years;
4. the applicant's present occupation;
5. any criminal conviction, including the date and place; and
6. any additional information the licensing authority needs to investigate the applicant's qualifications, character, competency, and integrity.

The application of a corporation, limited liability company, partnership, or association must contain the information required for each individual who is or will be an officer; shareholder; financial backer; or creditor, other than a financial institution; as well as any other individual with a similar relationship to the entity.

The application and any renewal application must also include information on any Internet website or account used to conduct business. The licensee, during the license term, must give the licensing authority written notice when it adds or discontinues any Internet website or account.

### ***Background Check***

The bill prohibits anyone with a felony conviction from being issued a license. It allows the licensing authority to require any applicant, employee, or person with an ownership interest in the business to submit to a state and national criminal history check. In that case, the bill requires the subject to submit two sets of fingerprints. It also allows the licensing authority to charge the subject a fee equal to the fees the FBI and the State Police Bureau of Identification charge for

performing the background checks.

### ***Administrative License Procedures***

The bill requires the licensing authority to grant or deny an application within 90 days after it is filed. The licensee must file for renewal at least 60 days before the license expires, and the licensing authority must grant or deny it within 30 days after the filing. The licensing authority's failure to act within the specified time is considered a denial of the license or renewal application.

The licensing authority may suspend, revoke, or modify any license at any time during the license period for good cause, after notice and a hearing. The licensing authority must hold a hearing within five days after it issues the notice and render a decision within 14 days after the hearing. The applicant or licensee may appeal the licensing authority's decision to the Superior Court.

### **FINE ART SECURED LENDER**

#### ***§ 3 — Identification/Sale to Minor***

The bill requires a licensed fine art secured lender (lender) to obtain proof of identity from a person depositing, pledging, or selling the fine art. The identification must include a photograph; an address, if available on the identification; and an identifying number, including date of birth. Lenders are prohibited from transacting business with a minor, unless he or she is accompanied by a parent or guardian.

#### ***Record-Keeping System***

The bill requires lenders to maintain a computerized record-keeping system that the licensing authority deems appropriate. The entries must be entered in English at the time of purchase and consecutively numbered. The system must also include a description of each article; the name, home address, proof of identity, and general description of the person selling the property; and the date and hour when the property was received, with a digital photograph for any item without any identifiable numbers or markings.

#### ***Digital Photographs and Tagging***

The bill requires tags be attached to the article in a visible and convenient place with a number corresponding to the entry number in the record-keeping system. The tag must remain attached to the article until it is sold or disposed of and be visible in the digital photograph. The licensing authority must establish procedures authorizing the removal of the tags, including for jewelry that is cleaned and repaired on the premises. The records must be maintained for at least two years.

***Police Examination***

A state or municipal police officer, the licensing authority, or a designee may, at any time, examine the records and place where business is carried on, including all articles on the property. They may also require any employee on the premises to provide proof of his or her identity.

***Record Description***

The record's property description must include:

1. all distinguishing marks;
2. names of any kind, including serial numbers;
3. engraving;
4. etchings;
5. affiliation with any institution or organization;
6. dates;
7. initials;
8. color;
9. vintage; and
10. image represented.

Any description of media must include the title and artist or other identifying information from its cover or external surface. The

licensing authority may exempt or establish additional or different description requirements depending on the nature of the property, transaction, or business, including articles sold in bulk lots or with minimal value.

#### **§ 4 — MEMORANDUM OR NOTE**

The bill requires lenders to give the person who deposits, pledges, or sells his or her property a memorandum or note containing the entry from his or her records. It requires that the memorandum or note also include a copy of a statement signed by the person stating he or she is the rightful owner of the fine art with the right to enter into the transaction, and that the fine art is not stolen and does not have any liens or encumbrances against it. The memorandum or note must also state that the person will indemnify and hold harmless the lender for any loss arising from the transaction because of someone else's superior right of possession. Lenders may charge customers a fee for costs associated with the memorandum, transaction, property storage, insurance, and appraisals.

#### ***Payment***

The bill requires lenders to make payments only by check, draft, or money order, rather than cash. However, a lender can cash a check, draft, or money order he or she issues to a person, but must require proof of his or her identity.

The bill requires any check, draft, or money order a lender uses to pay for property he or she receives to contain the same identification numbers the lender used in his or her record-keeping system. The lender must keep the electronic copy of any check or other record issued by the financial institution that processes it. The copy is subject to inspection as part of the lender's record-keeping system.

The bill prohibits a lender from cashing any check, draft, or money order it issues over \$1,000 and prohibits a person from structuring his or her transactions to avoid this limit. Any transaction between a lender and the same party within a 24-hour period is considered a single transaction for this purpose.

## **§ 5 — WEEKLY REPORT**

The bill requires lenders to submit electronic weekly sworn statements of their transactions to the licensing authority. The report is a sworn statement of transactions describing the property received, including the nature and terms of the transaction and the name, home address, and description of the person from whom the property was received. The bill allows the licensing authority to (1) require statements more frequently if the volume and nature of the business warrants it and (2) exempt a lender from the electronic reporting for good cause.

## **§ 6 — INTEREST RATES**

The bill prohibits a lenders from charging more than the following rates for loans of the following amounts: (1) for less than \$15, 5% per month; (2) between \$15 and \$50, 3% per month; and (3) more than \$50, 2% per month.

## **§ 7 — SALE OF PROPERTY**

The bill prohibits lenders from selling or otherwise disposing fine art left with them for less than 60 days, unless the customer is the person who deposited, pledged, or sold it. It also specifies that if the fine art is not redeemed within 60 days, the lender acquires the entire interest the customer had in the art without further notice. The lender may then sell or dispose of the fine art at his or her business place or through a public sale.

## **§ 8 — SEIZURE OF PROPERTY BY LAW ENFORCEMENT OFFICERS**

The bill requires a law enforcement officer, when seizing fine art from a lender, to give him or her a duly signed receipt for the seized fine art containing:

1. a case number,
2. a description of the fine art,
3. the reason for the seizure,

4. the officer's name and address,
5. the name and address of the person claiming a right to the fine art prior to the lender, and
6. the lender's name.

Under the bill, if a lender claims an ownership interest in the fine art, he or she may request its return by filing a request with the law enforcement agency in accordance with the seized property procedures established in law.

The bill allows the court to order restitution if the person who deposited, pledged, or sold the fine art is convicted of an offense arising out of the lender's acquisition of the property and the lender suffered an economic loss as a result.

#### **§ 9 — PENALTIES**

Anyone who willfully engages in the business of fine art secured lending without a license or after notice that his or her license has been suspended or revoked is guilty of a class D felony, which is punishable by one to five years imprisonment, a fine of up to \$ 5,000, or both.

Anyone who willfully violates any fine art secured lending provision for which there is no other penalty is guilty of a class A misdemeanor, which is punishable by up to one year imprisonment, a \$2,000 fine, or both

#### **COMMITTEE ACTION**

General Law Committee

Joint Favorable Substitute

Yea 17 Nay 0 (03/13/2012)