STATE OF NEW YORK

454

2019-2020 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2019

Introduced by M. of A. BRAUNSTEIN, SIMOTAS -- Multi-Sponsored by -- M. of A. MONTESANO, RODRIGUEZ -- read once and referred to the Committee on Economic Development

AN ACT to amend the general business law, in relation to recordkeeping requirements for second-hand dealers and pawnbrokers

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The general business law is amended by adding a new article 5-B to read as follows:

ARTICLE 5-B

RECORDKEEPING REQUIREMENTS FOR SECOND-HAND DEALERS AND PAWNBROKERS

Section 57. Reports to the secretary of state.

57-a. Record of purchases and sales.

57-b. Electronic reporting to the secretary of state.

57-c. Penalties.

§ 57. Reports to the secretary of state. Every dealer in second-hand articles who deals in the purchase or sale of any second-hand manufactured article comprised wholly or in part of gold, silver, platinum, or other precious metals, or deals in the purchase or sale of any old gold, silver, platinum or other precious metals, or deals in the purchase of articles or things comprised of gold, silver, platinum or other precious metals for the purpose of melting or refining, or deals in the purchase or sale of used electrical appliances excluding kitchen appliances, or deals in the purchase or sale of any used electronic equipment, computers or component parts of electronic equipment or computers, shall make available to the secretary of state the records required to be kept pursuant to subdivisions one and two of section fifty-seven-a of this article with respect to such transactions in a manner specified by the secretary of state for the New York state department of state by rule

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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and regulation, which may include the real-time sharing or accessing of such records in an electronic format and/or through use of an internet website designated by the secretary of state.

§ 57-a. Record of purchases and sales. 1. Every dealer in second-hand articles who deals in the purchase or sale of any second-hand manufactured article composed wholly or in part of gold, silver, platinum, or other precious metals, or deals in the purchase or sale of any old gold, silver, platinum or other precious metals, or deals in the purchase of articles or things comprised of gold, silver, platinum or other precious metals for the purpose of melting or refining, or deals in the purchase or sale of used electrical appliances excluding kitchen appliances, or deals in the purchase or sale of any used electronic equipment, computers or component parts of electronic equipment or computers, shall with respect to such transactions create an electronic record in English, in a manner to be specified by the secretary of state for the New York state department of state by rule or regulation. Such electronic record may include the real-time sharing or accessing of such records in an electronic format and/or through use of an internet website designated by the secretary of state for the New York state department of state. Such electronic record shall be retained for a minimum period of six years from the date of purchase or sale. Such electronic record may, in the discretion of the secretary of state and in furtherance of the purposes of this article and any other applicable law or rules regulating the activities of dealers in second-hand articles, include but shall not be limited to the following information, provided in a format or in accordance with specifications as provided by rule or regulation of the secretary of state:

a. The date, time, location and type of transaction;

b. The name of the individual conducting the transaction for the dealer;

c. Identifying information regarding the person who is present to offer property purchased by the dealer, including name, address, phone number, type of identification utilized, identification number, expiration date of identification, date of birth, sex, height, weight, eye color, hair color, race or ethnicity, distinguishing marks, digital photograph of owner, and digital photograph or scanned copy of identification utilized;

d. Identifying information regarding the person who is present to purchase property sold by the dealer, including name, address, phone number, and physical description as apparent, including sex, age, height, weight, eye color, hair color, race or ethnicity, and distinguishing marks; and

e. An accurate description of each article purchased or sold, including type of article, manufacturer, make, model number, serial number, international mobile equipment identifier, electronic serial number, mobile equipment identifier, inscriptions or distinguishing marks, and one or more digital photographs reasonably capturing the likeness of the article.

2. Every dealer in second-hand articles who deals in the purchase or sale of pawnbroker tickets or other evidence of pledged articles or the redemption or sale of pledged articles and who is not subject to the provisions of section fifty-seven-b of this article shall, in addition to recording information pursuant to subdivision one of this section, create an electronic record of the following information at the time of such purchase, sale or redemption in a manner to be specified by the secretary of state for the New York state department of state by rule or

regulation, which may include the real-time sharing or accessing of such records in an electronic format and/or through use of an internet website designated by the secretary of state. Such electronic record shall be retained for a minimum period of six years from the date of purchase or sale. Such electronic record may, in the discretion of the secretary and in furtherance of the purposes of this article and any other applicable law or rules regulating the activities of dealers in second-hand articles and pawnbrokers, include but shall not be limited to the following information, provided in a format or in accordance with specifications as provided by rule of the secretary of state:

a. The name and address of the person who issued such ticket or other evidence;

b. The pledge number of such pawn ticket or other evidence;

c. The name and address of the pledgor as it appears upon such pawn ticket or other evidence;

d. The amount loaned or advanced as it appears on such pawn ticket or other evidence;

e. The sum paid or received for such pawn ticket or other evidence, or the sum paid or received for the redeemed article or pledge; and

f. Such description of a pledged article as appears on such pawn ticket or other evidence and an accurate description of every redeemed pledged article, including type of article, manufacturer, make, model number, serial number, international mobile equipment identifier, electronic serial number, mobile equipment identifier, inscriptions or distinguishing marks, and one or more digital photographs reasonably capturing the likeness of the article.

3. A dealer in second-hand articles subject to the provisions of this subdivision and subdivision one of this section shall acquire and maintain in good working order the electronic equipment necessary to create and maintain the electronic records required by this section, including but not limited to a computer with internet connection, an electronic signature pad and a digital camera utilizing a file format designated by the secretary of state.

4. The books and records required by this section, including any electronic records required by this subdivision and subdivision one of this section, shall be open to the inspection of any police officer, the secretary of state for the New York state department of state or any departmental inspector, any judge of the criminal court, or any person duly authorized in writing for such purposes by the secretary of state or by any judge of the criminal court, who shall exhibit such written authority to the dealer. Such records shall also be open to the inspection of any official or other person identified in, or duly authorized in writing pursuant to, any other applicable state or local law.

5. Nothing in this section shall be construed to affect or supersede any recordkeeping requirement imposed by or pursuant to any other applicable state or local law.

§ 57-b. Electronic reporting to the secretary of state. 1. Every pawnbroker, shall make available to the secretary of state for the New York state department of state the records required to be kept pursuant to subdivision two of this section, in a manner to be specified by the secretary of state by rule or regulation, which may include the real-time sharing or accessing of such records in an electronic format and/or through use of an internet website designated by the secretary of state for the New York state department of state.

2. Every pawnbroker shall create at the time of transaction an electronic record in English, in a manner to be specified by the secretary of state by rule or regulation, which may include the use of an internet website designated by the secretary of state, of every transaction in which goods, articles or things, or any part thereof, are pawned, pledged or redeemed in the course of business of such pawnbroker. Such electronic record shall be retained for a minimum period of six years from the date of the transaction. Such electronic record may, in the discretion of the secretary of state and in furtherance of the purposes of this article and any other applicable law or rules regulating the activities of pawnbrokers, include but shall not be limited to the following information, provided in a format or in accordance with specifications as provided by rule or regulation of the secretary of state:

a. The date, time, location and type of transaction;

b. The name of the individual conducting the transaction for the pawnbroker;

c. Identifying information regarding the pledgor, including name, address, phone number, type of identification utilized, identification number, expiration date of identification, date of birth, sex, height, weight, eye color, hair color, race or ethnicity, distinguishing marks, digital photograph of owner, digital photograph or scanned copy of identification utilized, and whether the pledgor is the owner, consignee or agent of the owner;

d. An accurate description of each article pawned or pledged, including type of article, manufacturer, make, model number, serial number, international mobile equipment identifier, electronic serial number, mobile equipment identifier, inscriptions or distinguishing marks, and one or more digital photographs reasonably capturing the likeness of the article;

e. The pledge number of the pawn ticket;

f. The amount loaned or advanced thereon and the rate of interest to be paid on such loan or advance;

g. Identifying information regarding the person redeeming the article pawned or pledged, including name, address, phone number, type of identification utilized, identification number, expiration date of identification, date of birth, sex, height, weight, eye color, hair color, race or ethnicity, distinguishing marks, digital photograph of owner, and digital photograph or scanned copy of identification utilized; and

h. An accurate description of each article purchased or sold, including type of article, manufacturer, make, model number, serial number, international mobile equipment identifier, electronic serial number, mobile equipment identifier, inscriptions or distinguishing marks, and one or more digital photographs reasonably capturing the likeness of the article.

Notwithstanding any inconsistent provision of this subdivision, such electronic record shall in any event contain the information specified in section forty-three of this chapter.

3. The pawnbroker shall acquire and maintain in good working order the electronic equipment necessary to create and maintain the electronic records required by this section, including but not limited to a computer with internet connection, an electronic signature pad and a digital camera utilizing a file format designated by the secretary of state.

4. The electronic records required by this section shall be open to the inspection of the state attorney general, the state comptroller, any police officer, the secretary of state, any departmental inspector, any judge of the criminal court, any person duly authorized in writing for

such purposes by the secretary of state or by any judge of the criminal court, who shall exhibit such written authority to the pawnbroker or any other governmental officer or employee authorized by state or local law. Such records shall also be open to the inspection of any official or other person identified in, or duly authorized in writing pursuant to section forty-five of this chapter or any other applicable state or local law.

5. Nothing in this section shall be construed to affect or supersede any recordkeeping requirement imposed by or pursuant to any other applicable state or local law.

6. In addition to any other applicable penalty or sanction, any person who violates any of the provisions of this section or rules promulgated thereunder shall be subject to the penalties set forth in section fifty-seven-c of this article.

§ 57-c. Penalties. 1. Except as otherwise specifically provided any person who violates any provision of this article or any regulation or rule promulgated under it shall, upon conviction thereof, be punished for each violation by a fine of not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment not exceeding fifteen days, or both; and any such person shall be subject also to a civil penalty in the sum of one hundred dollars for each violation, to be recovered in a civil action.

2. The attorney general is authorized to bring an injunction proceeding to restrain or enjoin any violation of this article.

§ 2. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that the secretary of state shall take such measures as are necessary for its implementation, including the promulgation of any rules, or regulations prior to such effective date.