STATE OF NEW YORK

8130

IN SENATE

January 8, 2024

Introduced by Sen. HARCKHAM -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

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. Section 41 of the general business law, as amended by chapter 669 of the laws of 2022, is amended to read as follows:

§ 41. Licenses, how obtained; penalty for carrying on business without license. The mayor or such local licensing authority may from time to time grant, under his or her hand and the official seal of his or her office, to such citizens, or noncitizens lawfully admitted for permanent residence in the United States, as he or she shall deem proper and who shall produce to him **or her** satisfactory evidence of their good character, a license authorizing such person to carry on the business of a collateral loan broker, which license shall designate the house in which such person shall carry on said business, and no person, corporation, partnership or firm shall carry on the business of a collateral loan broker without being duly licensed, nor in any other house than the one designated in said license, under a penalty of one hundred dollars for each day he, she or they shall exercise or carry on said business without such license or at any other house than the one so designated. **A collateral loan broker may conduct business via the internet provided the requirements of this chapter are satisfied.** Any person receiving such license shall pay therefor the sum of five hundred dollars for the use of the city yearly where such business is to be conducted in a city with a population of more than one million persons, and where the business is to be conducted elsewhere the fee for such license shall not exceed two hundred fifty dollars yearly, and every such license shall expire one year from the date thereof, and may be renewed on application to the mayor or local licensing authority each and every year on payment of the same sum and upon performance of the other conditions herein contained. Every person so licensed shall, at the time of receiving such license, file with the mayor or such local licensing authority granting

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

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the same a bond to the local authorities, to be executed by the person so licensed and by two responsible sureties, in the penal sum of ten thousand dollars, to be approved by such mayor or local licensing authority, which bond shall be conditioned for the faithful performance of the duties and obligations pertaining to the business so licensed, and the mayor or such local licensing authority shall have full power and authority to revoke such license for cause.

§ 2. Section 43 of the general business law, as amended by chapter 867 of the laws of 1986, is amended to read as follows:

§ 43. Certain entries to be made [~~in book~~]; electronic record. Every such collateral loan broker shall keep [~~a book in which shall be fairly written, at the time of such loan, an account and description of the goods, articles or things pawned or pledged, the amount of money loaned thereon, the time of pledging the same, the rate of interest to be paid on such loan, the name and residence of the person pawning or pledging the said goods, articles or things and a notation of whether the pledgor claims to be the owner, consignee or agent of the owner~~] an electronic record pursuant to the provisions of article five-B of this chapter.

§ 3. Section 45 of the general business law, as amended by chapter 321 of the laws of 1983, is amended to read as follows:

§ 45. [~~Book~~] Records to be open to inspection. The said [~~book~~] electronic record and any and all other [~~books and~~] records regularly kept by such collateral loan broker shall at all reasonable times be open to the inspection of the attorney general, the state comptroller, the mayor or local licensing authority, all judges of the criminal courts, the superintendent of police, police inspectors, captains of police and police justices of such cities, or any or either of them, or of any person who shall be duly authorized in writing for that purpose by any or either of them, and who shall exhibit such written authority to such collateral loan broker. Such power of inspection shall be exercised by the aforementioned authorized parties, or their authorized agents, for the sole purpose of verification of compliance with state and local statutory and regulatory requirements, inclusive of the completeness and accuracy of the licensee's records including timeliness of entry. Said verification may include an examination of not more than the last twenty items pledged and may include the physical examination of each such pledge and the corresponding record, including photographic record, if any. The mayor or the licensing authority of any local governing body, the state comptroller, the attorney general and any person duly authorized by them shall have the power to administer oaths and to examine under oath any such collateral loan broker or any officer, or agent, of such collateral loan broker and any other person having custody or control of such [~~books and~~] records. Such [~~books and~~] records shall be retained in the possession of the collateral loan broker, in good condition and in an orderly fashion for at least a period of six years. Nothing herein shall be construed to impede the use of warrants, subpoenas or other lawful process respecting items pledged and records pertaining thereto, provided that said warrants, subpoenas or other lawful process are predicated upon reasonable suspicion of unlawful conduct.

§ 4. The second undesignated paragraph of section 47 of the general business law, as added by chapter 534 of the laws of 2007, is amended to read as follows:

A collateral loan broker engaged in the purchase or sale of second-hand articles, other than pledges or pawn tickets, shall comply with state and local laws or regulations governing dealers in second-hand

articles. A collateral loan broker engaged in the purchase of second-hand articles shall provide the seller a receipt setting forth the item or items purchased and the purchase price for each item. Additionally, the receipt shall include a notice advising the seller of the option to cancel the transaction within five business days or convert the sale of jewelry, watches, precious stones, precious metals and coins to a loan within fourteen days of the sale in accordance with this section.

§ 5. 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 paragraphs (a) and (d) of subdivision one 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 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. Sharing, accessing and reporting provisions set forth in this section shall not be required in the absence of a local law requiring the same. Nothing herein shall be construed to impede the use of warrants, subpoenas or other lawful process respecting items purchased and records pertaining thereto, provided that said warrants, subpoenas or other lawful process are predicated upon reasonable suspicion of unlawful conduct. A second hand dealer may conduct business via the internet provided the requirements of this chapter are satisfied.

§ 57-a. Record of purchases and sales. 1. Every dealer in second-hand articles who deals in the purchase 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 mobile phones, 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 by rule or regulation. Such electronic record may include the real-time sharing or accessing of the information specified in paragraphs (a) and (d) of this subdivision 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. Such electronic record shall 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 offering property purchased by the dealer, including name, address, phone number, type of identification utilized, identification number, expiration date of identification, date of birth, sex, race or ethnicity, distinguishing marks, and a digital photograph or scanned copy of identification utilized and a signature;

(d) An accurate description of each article purchased, 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, provided however that no photographs shall be required for fungible items.

2. A dealer in second-hand articles subject to the provisions of 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.

3. The records required by this section, shall be open to the inspection of any police officer, the secretary of state or any departmental inspector, any judge of a criminal court, or any person duly authorized in writing for such purposes by the secretary of state or by any judge of a 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. Such power of inspection shall be exercised by the aforementioned authorized parties, or their authorized agents, for the sole purpose of verification of compliance with state and local statutory and regulatory requirements, inclusive of the completeness and accuracy of the licensee's records including timeliness of entry. Said verification may include an examination of not more than the last twenty items purchased and may include the physical examination of each such item and the corresponding record including photographic record. Such records shall be retained in the possession of the second-hand dealer, in good condition and in an orderly fashion for at least a period of six years. Nothing herein shall be construed to impede the use of warrants, subpoenas or other lawful process respecting items purchased and records pertaining thereto, provided that said warrants, subpoenas or other lawful process are predicated upon reasonable suspicion of unlawful conduct.

4. Notwithstanding any local law and ordinances to the contrary and except as otherwise provided in this chapter, other state or federal law, second-hand dealers shall not be required to copy, create, maintain, transmit or make available, electronically or otherwise, any records of purchases or sale transactions.

§ 57-b. Electronic reporting to the secretary of state. 1. Every pawnbroker, shall make available to the secretary of state the records

required to be kept pursuant to paragraphs (a), (d) and (e) of 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.

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. Sharing, accessing and reporting provisions specified herein shall not be required in the absence of a local law requiring the same. In no event shall information be subject to sharing, accessing or reporting excepting information required to be reported pursuant to paragraphs (a), (d) and (e) of this subdivision. Such electronic record shall be retained for a minimum period of six years from the date of the transaction. Such electronic record shall 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, a signature, date of birth, sex, height, weight, eye color, hair color, race or ethnicity, distinguishing marks, 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, provided however that no photographs shall be required for fungible items;

(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.

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 inspection pursuant to section forty-five of this chapter.

5. Notwithstanding any local law and ordinances to the contrary and except as provided in this chapter, other state or federal law, collateral loan brokers shall not be required to copy, create, maintain, transmit or make available, electronically or otherwise, any records of pledges, purchases, foreclosures or sale transactions.

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 thereunder 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.

§ 6. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.