

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:

1 Section 1. Section 41 of the general business law, as amended by chap-
2 ter 669 of the laws of 2022, is amended to read as follows:
3 § 41. Licenses, how obtained; penalty for carrying on business without
4 license. The mayor or such local licensing authority may from time to
5 time grant, under his or her hand and the official seal of his or her
6 office, to such citizens, or noncitizens lawfully admitted for permanent
7 residence in the United States, as he or she shall deem proper and who
8 shall produce to him or her satisfactory evidence of their good charac-
9 ter, a license authorizing such person to carry on the business of a
10 collateral loan broker, which license shall designate the house in which
11 such person shall carry on said business, and no person, corporation,
12 partnership or firm shall carry on the business of a collateral loan
13 broker without being duly licensed, nor in any other house than the one
14 designated in said license, under a penalty of one hundred dollars for
15 each day he, she or they shall exercise or carry on said business with-
16 out such license or at any other house than the one so designated. A
17 collateral loan broker may conduct business via the internet provided
18 the requirements of this chapter are satisfied. Any person receiving
19 such license shall pay therefor the sum of five hundred dollars for the
20 use of the city yearly where such business is to be conducted in a city
21 with a population of more than one million persons, and where the busi-
22 ness is to be conducted elsewhere the fee for such license shall not
23 exceed two hundred fifty dollars yearly, and every such license shall
24 expire one year from the date thereof, and may be renewed on application
25 to the mayor or local licensing authority each and every year on payment
26 of the same sum and upon performance of the other conditions herein
27 contained. Every person so licensed shall, at the time of receiving such
28 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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1 the same a bond to the local authorities, to be executed by the person
2 so licensed and by two responsible sureties, in the penal sum of ten
3 thousand dollars, to be approved by such mayor or local licensing
4 authority, which bond shall be conditioned for the faithful performance
5 of the duties and obligations pertaining to the business so licensed,
6 and the mayor or such local licensing authority shall have full power
7 and authority to revoke such license for cause.

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

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

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

21 § 45. [~~Book~~] Records to be open to inspection. The said [~~book~~] elec-
22 tronic record and any and all other [~~books and~~] records regularly kept
23 by such collateral loan broker shall at all reasonable times be open to
24 the inspection of the attorney general, the state comptroller, the mayor
25 or local licensing authority, all judges of the criminal courts, the
26 superintendent of police, police inspectors, captains of police and
27 police justices of such cities, or any or either of them, or of any
28 person who shall be duly authorized in writing for that purpose by any
29 or either of them, and who shall exhibit such written authority to such
30 collateral loan broker. Such power of inspection shall be exercised by
31 the aforementioned authorized parties, or their authorized agents, for
32 the sole purpose of verification of compliance with state and local
33 statutory and regulatory requirements, inclusive of the completeness and
34 accuracy of the licensee's records including timeliness of entry. Said
35 verification may include an examination of not more than the last twenty
36 items pledged and may include the physical examination of each such
37 pledge and the corresponding record, including photographic record, if
38 any. The mayor or the licensing authority of any local governing body,
39 the state comptroller, the attorney general and any person duly author-
40 ized by them shall have the power to administer oaths and to examine
41 under oath any such collateral loan broker or any officer, or agent, of
42 such collateral loan broker and any other person having custody or
43 control of such [~~books and~~] records. Such [~~books and~~] records shall be
44 retained in the possession of the collateral loan broker, in good condi-
45 tion and in an orderly fashion for at least a period of six years.
46 Nothing herein shall be construed to impede the use of warrants, subpoe-
47 nas or other lawful process respecting items pledged and records
48 pertaining thereto, provided that said warrants, subpoenas or other
49 lawful process are predicated upon reasonable suspicion of unlawful
50 conduct.

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

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

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

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

10 ARTICLE 5-B

11 RECORDKEEPING REQUIREMENTS FOR SECOND-HAND DEALERS AND PAWNBROKERS

12 Section 57. Reports to the secretary of state.

13 57-a. Record of purchases and sales.

14 57-b. Electronic reporting to the secretary of state.

15 57-c. Penalties.

16 § 57. Reports to the secretary of state. Every dealer in second-hand
17 articles who deals in the purchase or sale of any second-hand manufac-
18 tured article comprised wholly or in part of gold, silver, platinum, or
19 other precious metals, or deals in the purchase or sale of any old gold,
20 silver, platinum or other precious metals, or deals in the purchase of
21 articles or things comprised of gold, silver, platinum or other precious
22 metals for the purpose of melting or refining, or deals in the purchase
23 or sale of used electrical appliances excluding kitchen appliances, or
24 deals in the purchase or sale of any used electronic equipment, comput-
25 ers or component parts of electronic equipment or computers, shall make
26 available to the secretary of state the records required to be kept
27 pursuant to paragraphs (a) and (d) of subdivision one of section fifty-
28 seven-a of this article with respect to such transactions in a manner
29 specified by the secretary of state for the New York state department of
30 state by rule and regulation, which may include the real-time sharing or
31 accessing of such records in an electronic format and/or through use of
32 an internet website designated by the secretary of state. Sharing,
33 accessing and reporting provisions set forth in this section shall not
34 be required in the absence of a local law requiring the same. Nothing
35 herein shall be construed to impede the use of warrants, subpoenas or
36 other lawful process respecting items purchased and records pertaining
37 thereto, provided that said warrants, subpoenas or other lawful process
38 are predicated upon reasonable suspicion of unlawful conduct. A second
39 hand dealer may conduct business via the internet provided the require-
40 ments of this chapter are satisfied.

41 § 57-a. Record of purchases and sales. 1. Every dealer in second-hand
42 articles who deals in the purchase of any second-hand manufactured arti-
43 cle composed wholly or in part of gold, silver, platinum, or other
44 precious metals, or deals in the purchase or sale of any old gold,
45 silver, platinum or other precious metals, or deals in the purchase of
46 articles or things comprised of gold, silver, platinum or other precious
47 metals for the purpose of melting or refining, or deals in the purchase
48 or sale of used electrical appliances excluding kitchen appliances, or
49 deals in the purchase or sale of any used electronic equipment, comput-
50 ers, or mobile phones, or component parts of electronic equipment or
51 computers, shall with respect to such transactions create an electronic
52 record in English, in a manner to be specified by the secretary of state
53 by rule or regulation. Such electronic record may include the real-time
54 sharing or accessing of the information specified in paragraphs (a) and
55 (d) of this subdivision in an electronic format and/or through use of an
56 internet website designated by the secretary of state. Such electronic

1 record shall be retained for a minimum period of six years from the date
2 of purchase. Such electronic record shall be limited to the following
3 information, provided in a format or in accordance with specifications
4 as provided by rule or regulation of the secretary of state:

5 (a) The date, time, location and type of transaction;

6 (b) The name of the individual conducting the transaction for the
7 dealer;

8 (c) Identifying information regarding the person offering property
9 purchased by the dealer, including name, address, phone number, type of
10 identification utilized, identification number, expiration date of iden-
11 tification, date of birth, sex, race or ethnicity, distinguishing marks,
12 and a digital photograph or scanned copy of identification utilized and
13 a signature;

14 (d) An accurate description of each article purchased, including type
15 of article, manufacturer, make, model number, serial number, interna-
16 tional mobile equipment identifier, electronic serial number, mobile
17 equipment identifier, inscriptions or distinguishing marks, and one or
18 more digital photographs reasonably capturing the likeness of the arti-
19 cle, provided however that no photographs shall be required for fungible
20 items.

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

28 3. The records required by this section, shall be open to the
29 inspection of any police officer, the secretary of state or any depart-
30 mental inspector, any judge of a criminal court, or any person duly
31 authorized in writing for such purposes by the secretary of state or by
32 any judge of a criminal court, who shall exhibit such written authority
33 to the dealer. Such records shall also be open to the inspection of any
34 official or other person identified in, or duly authorized in writing
35 pursuant to, any other applicable state or local law. Such power of
36 inspection shall be exercised by the aforementioned authorized parties,
37 or their authorized agents, for the sole purpose of verification of
38 compliance with state and local statutory and regulatory requirements,
39 inclusive of the completeness and accuracy of the licensee's records
40 including timeliness of entry. Said verification may include an exam-
41 ination of not more than the last twenty items purchased and may include
42 the physical examination of each such item and the corresponding record
43 including photographic record. Such records shall be retained in the
44 possession of the second-hand dealer, in good condition and in an order-
45 ly fashion for at least a period of six years. Nothing herein shall be
46 construed to impede the use of warrants, subpoenas or other lawful proc-
47 ess respecting items purchased and records pertaining thereto, provided
48 that said warrants, subpoenas or other lawful process are predicated
49 upon reasonable suspicion of unlawful conduct.

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

55 § 57-b. Electronic reporting to the secretary of state. 1. Every pawn-
56 broker, shall make available to the secretary of state the records

1 required to be kept pursuant to paragraphs (a), (d) and (e) of subdivi-
2 sion two of this section, in a manner to be specified by the secretary
3 of state by rule or regulation, which may include the real-time sharing
4 or accessing of such records in an electronic format and/or through use
5 of an internet website designated by the secretary of state.

6 2. Every pawnbroker shall create at the time of transaction an elec-
7 tronic record in English, in a manner to be specified by the secretary
8 of state by rule or regulation, which may include the use of an internet
9 website designated by the secretary of state, of every transaction in
10 which goods, articles or things, or any part thereof, are pawned,
11 pledged or redeemed in the course of business of such pawnbroker. Shar-
12 ing, accessing and reporting provisions specified herein shall not be
13 required in the absence of a local law requiring the same. In no event
14 shall information be subject to sharing, accessing or reporting except-
15 ing information required to be reported pursuant to paragraphs (a), (d)
16 and (e) of this subdivision. Such electronic record shall be retained
17 for a minimum period of six years from the date of the transaction. Such
18 electronic record shall be limited to the following information,
19 provided in a format or in accordance with specifications as provided by
20 rule or regulation of the secretary of state:

21 (a) The date, time, location and type of transaction;

22 (b) The name of the individual conducting the transaction for the
23 pawnbroker;

24 (c) Identifying information regarding the pledgor, including name,
25 address, phone number, type of identification utilized, identification
26 number, expiration date of identification, a signature, date of birth,
27 sex, height, weight, eye color, hair color, race or ethnicity, distin-
28 guishing marks, digital photograph or scanned copy of identification
29 utilized, and whether the pledgor is the owner, consignee or agent of
30 the owner;

31 (d) An accurate description of each article pawned or pledged, includ-
32 ing type of article, manufacturer, make, model number, serial number,
33 international mobile equipment identifier, electronic serial number,
34 mobile equipment identifier, inscriptions or distinguishing marks, and
35 one or more digital photographs reasonably capturing the likeness of the
36 article, provided however that no photographs shall be required for
37 fungible items;

38 (e) The pledge number of the pawn ticket;

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

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

46 4. The electronic records required by this section shall be open to
47 inspection pursuant to section forty-five of this chapter.

48 5. Notwithstanding any local law and ordinances to the contrary and
49 except as provided in this chapter, other state or federal law, collat-
50 eral loan brokers shall not be required to copy, create, maintain, tran-
51 smit or make available, electronically or otherwise, any records of
52 pledges, purchases, foreclosures or sale transactions.

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

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

9 2. The attorney general is authorized to bring an injunction proceed-
10 ing to restrain or enjoin any violation of this article.

11 § 6. This act shall take effect on the one hundred eightieth day after
12 it shall have become a law. Effective immediately, the addition, amend-
13 ment and/or repeal of any rule or regulation necessary for the imple-
14 mentation of this act on its effective date are authorized to be made
15 and completed on or before such effective date.