

**An Analysis of Pawn Shops:
Legislation Series: Overview of Article 5 of the General Business Law**



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INTRODUCTION

In the last paper of our pawn shop analysis series we departed from the descriptive overview of transactions and focused instead on the extent to which pawn/collateral loan broking legislation exists in New York State and what jurisdiction types have such legislation.

We identified thirty-eight jurisdictions to operate under some form of collateral loan ordinance – this figure represents less than 8% of all our examined jurisdictions; however, all jurisdictions within New York are subject to a statewide law.

Of all jurisdictional types, we found that cities were most likely to have collateral loan broking ordinances: 50% of all cities had these laws; by way of comparison, only 5% of villages and 2% of towns had collateral loan broking ordinances. None of the fifty-three counties we examined had ordinances relating to collateral loan broking.

As we have provided a basic overview of the extent to which ordinances exist within New York State, we now turn our attention towards the contents of these ordinances and how they compare to state law. We review Article 5 of the General Business Law - a statewide law providing rules for the operation of collateral loan broking businesses. For each section of the law we provide a brief overview of its contents and examine how they comport with municipal codes for the thirty-eight jurisdictions previously identified. Following the overview of state legislation we describe two rules found in jurisdictional codes – one common, one new – that were not included in the state article.

Article 5 of the General Business Law provides a statewide set of rules for the operation collateral loan broking businesses. The sections of the article are as follows:

40. Licenses
41. Licenses, how obtained; penalty for carrying on business without license
- 41-A. Continuing education requirement
42. Action on bond
43. Certain entries to be made in book
44. Memorandum to be given
45. Book to be open to inspection
46. Rate of interest
47. Second-hand businesses
- 47-A. Collateral loan broker dealing with a child
48. Sale of unclaimed pledge by collateral loan broker
49. Notice of such sale; report
50. Disposition of proceeds
51. Violation of this article
52. Term “collateral loan broker”, how to be construed
53. Registration statements
54. Violation of article
55. Rules and regulations

All 493 jurisdictions examined in our study are subject to state legislation; thirty-eight jurisdictions, however, had pawning or collateral loan broking ordinances that expanded upon state law. As you will see, there is great variability among the thirty-eight ordinances; indeed, only half even make a direct reference to Article 5 or the General Business Law.

§ 40: Licenses

Article 5 begins with the statement that no collateral loan broker – pawnbroker – may operate without first obtaining a proper license from the jurisdiction his shop is located in. This was the only universal portion of Article 5; all thirty-eight jurisdictions contained some variation of the aforementioned section.

§ 41: Licenses, how obtained; penalty for carrying on business without license

Article 5 allows for licenses to be granted by the mayor – or a similar licensing authority – to any lawful citizen of “good” character. All thirty-eight ordinances list an appropriate licensing authority. Just over half of all municipalities listed the village, town, or city clerk as the licensing agent. Other commonly mentioned authorities included the mayor, police chief, and the city manager. Article 5 does not provide any information within § 41 as to what should be included within a license, yet there is basic uniformity among the jurisdictions to list this information.

Licenses may be renewed annually for a fee of up to \$250 for jurisdictions with less than one million residents and up to \$500 for jurisdictions with a population of over one million residents. Of the twenty-one locations to list the annual licensing fee, eight (21%) provide an annual fee of \$250; ten locations provided an amount less than \$250, which ranged from \$25 to \$200. Three locations provided yearly fees greater than \$250; these fees were \$350, \$500, and \$2,500 for Mount Vernon, Yonkers, and Babylon, respectively.

§ 41 also requires a bond of \$10,000 to be executed by the prospective pawnbroker to ensure the faithful performance of his duties. Over 80% of locations explicitly listed the bond as a requirement to obtain a license. The price of bonds ranged from \$1,000 to \$20,000, with the most commonly listed amount was \$10,000 – nearly 60% of locations listing bond amounts had the bond price set at \$10,000.

§ 41-A: Continuing education requirement

Article 5 includes a requirement for continuing education; specifically, the code requires no less than twelve hours of classes biannually in a course approved by the licensing agent to provide instruction for collateral loan brokers and their employees. Only Irondequoit and Wappinger mention § 41-A.

§ 42: Action on bond

Individuals aggrieved by the potential misconduct of a collateral loan broker are protected by § 42 of Article 5. This section states that the bond mentioned in § 41 is to ensure the adherence of collateral loan brokers’ to the law; the bond serves to ensure that any person aggrieved by the actions of a collateral loan broker will have means of payment for such aggrievement. Although 80% of jurisdictions reviewed made mention of a bond, only 14 (36.8%) made mention of an action on said bond.

§ 43: Certain entries to be made in book

Collateral loan brokers are required to maintain a book which contains an account of each loan transaction. The book must contain the following information:

- An account and description of the goods pawned or pledges,
- The amount of money loaned,
- The time of the transaction,
- The rate of interest,
- The name and resident of the person pawning or pledging these goods,

- And whether the pledger claims to be the owner, consignee, or agent of the owner.

Local jurisdictional codes provide for more detailed information including:

- The make, model, color, serial number, and any distinguishing features of the item,
- The signature of the pledger,
- An identification number from a valid identification card,
- A description of the pledger, including weight, height, sex, and race,
- And his or her place of employment and telephone number.

Over 60% of jurisdictions explicitly write that transactions should be written down in a book; however, the Village of Ossining writes that such entries can be recorded in either a book or via a computerized record – as does the City of Rochester. As jurisdictional codes are updated there may be a trend towards abandoning the bound book for computerized records.

§ 44: Memorandum to be given

Approximately 37% of the thirty-eight codes make reference to a memorandum or note provided to pledgers. During each transaction the collateral loan broker is required to provide the pledger a memorandum or note – signed by the broker – containing the substance of the transaction. The memorandum works as a receipt for the pledger and allows him to pick up his pawned or pledged item upon payment. This memorandum serves not only as a receipt for the pledger, but also informs him of his rights as a pledger and includes the following information:

- When he may redeem his pledge,
- When the pledge defaults,
- What happens if the pledged item is sold at auction,
- And what the pledger may do with his ticket.

§ 45: Book to be open to inspection

§ 45 makes reference to the book from § 43 and notes how it is 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, or any person duly authorized by any of them. Approximately 58% of the examined ordinances listed people who could view the book, all were persons mentioned above. This section also writes that these books must be maintained in good condition and in an orderly fashion for a period of at least six years.

§ 46: Rate of interest

Article 5 stipulates that – barring any general or special statutes, local laws, and ordinances to the contrary – no collateral loan broker may operate with a rate of interest greater than 4% per month. Brokers are expected to adhere to the “Truth in Lending Act” and conspicuously display within their shop both this act and their rate of interest. Less than half – 42% – of the codes gave any indication as to what the rates of interest are, either by providing them or referring to the General Business Law or Truth in Lending Act. Only 21% of jurisdictions noted that both the rates of interest and the Truth in Lending Act must be displayed within the pawn shop.

Other stipulations of § 46 include a minimum interest charge of 25¢ per month and no person may pay interest after a period of fifteen months without an agreed upon extension of the loan.

§ 47: Second-hand stores.

§ 47 gives notice that collateral loan brokers may operate as secondhand dealers by buying and selling used property in addition to providing loans. As such, they must post the rights of a pledger – mentioned in § 44 earlier – in a conspicuous location.

Collateral loan brokers who buy and sell secondhand goods are required to adhere to both state and local collateral loan broker and secondhand dealer ordinances. Only thirteen of the jurisdictions examined (34.2%) operate under both collateral loan broker and secondhand dealer ordinances.

§ 47-A: Collateral loan broker dealing with a child

§ 47-A of Article 5 prohibits the purchasing of any goods or providing loans to any child under the age of 18 for any reason. Under § 47-A, no child can act as an agent or representative to another, even an adult. Sixteen locations (42%) explicitly prohibit the buying of goods from minors.

70% of locations to refer to § 47-A provided additional parties prohibited from purchasing goods, including:

- Intoxicated persons,
- Habitual drunkards,
- Known thieves,
- Persons providing false information,
- And the mentally incompetent.

§ 48: Sale of unclaimed pledge by collateral loan broker

Under Article 5, collateral loan brokers must have unclaimed pledges for four months prior to being legally able to sell them. The average rate of time unclaimed pledges must be held within the jurisdictional codes was longer – 7½ months.

Of the seventeen jurisdictions – 44.7% of sample – to provide such information, five went with the General Business Law’s four months; another six write that unclaimed pledges should be held for six months, and six jurisdictions wrote that unclaimed pledges should be held for a period of one year prior to being legally able to sell them.

Unclaimed pledges may be sold through a private or public sale. A private sale involves the collateral loan broker selling the item at his or her own place of business – perhaps a form of selling most consistent with the image of a pawn or collateral loan broker. A public sale is conducted via public auction with a licensed auctioneer. Of the eighteen jurisdictions to reference § 48, only three made mention of both public and private auctions – the remaining fifteen jurisdictions only referenced the former. As § 48 covers the sale of private auctions, its near-complete absence from the jurisdictional codes is rather perplexing.

§ 49: Notice of such sale; report

§ 49 relates to the notice of the sale for defaulted goods. Under this section, the pledger must be informed that his pledge will be sold at least thirty days prior to the date of sale. Further, any collateral loan broker to sell a defaulted pledge at public auction must file with the jurisdictional office a verified report containing the pledge number and amount received for each pledge as well as information on the collateral loan broker, the public auction, and the auctioneer. Only 12 jurisdictions (31.6%) mention giving notice of the sale to the pledger.

§ 50: Disposition of proceeds

After an unclaimed pledge is sold via private sale or public auction the broker must contact the pledger if any surplus money was made in the sale after deducting:

- The amount of the loan,
- The interest due,
- The auctioneer's commission – if applicable,
- Lawful extra care charges,
- And the advertisement of the sale.

If the collateral loan broker is unable to contact the pledger within the period of one-year, the broker must pay over these surplus funds to the state comptroller in accordance with the abandoned property law. All told, 14 locations (36.8%) make reference to the disposition of proceeds.

§ 51: Violation of this article

Article 5 contains two sections regarding its violation. § 51 is the first of the two sections and § 54 is the second. § 51 writes that the mayor or local licensing authority has full power and authority to impose fines and penalties of between \$25-\$100 for violations of Article 5, save for §§ 40 and 41, where they may revoke the license of a collateral loan broker who willfully violates such provisions. However, §§ 40 and 41 deal solely for instances wherein an individual does not pay the licensing fee, bond, or when a collateral loan broker business is operated without a license – the effect of a revocation of a license in such an instances would be somewhat unnecessary as the former two steps are required to obtain a license and the latter would be somewhat redundant..

§ 52: Term “collateral loan broker”, how to be construed

§ 40 of the General Business Law writes that the title pawnbroker shall be used exclusively by collateral loan brokers; § 52 further elucidates the duties a collateral loan broker engages in. According to § 52, a collateral loan broker is any person, partnership, or corporation that loans or advances money in exchange for personal goods, wares, or merchandise pledged or deposited as collateral security. 21 of the thirty-eight (55.3%) locations provided a definition for collateral loan broking or pawn broking.

§ 53: Registration statements

§ 53 writes that collateral loan brokers must file with the state comptroller a “Collateral Loan Broker’s Registration Statement” containing – among other information – the name, date of birth, and home and business address of the collateral loan broker and any partners involved in his or her business.

Although all collateral loan brokers must file a registration statement with the state comptroller only three jurisdictions (7.9%) – Buffalo, Islip, and Oyster Bay – directly refer to § 53 in their municipal codes.

§ 53 also appears as the basis for the application process mentioned in jurisdictional codes which include this section. Aside from the aforementioned information, the application process also includes whether the applicant has any prior experience as a collateral loan broker and whether he or she has a criminal record.

§ 54: Violation of article

Any willful violation of Article 5 is a misdemeanor punishable by a fine of up to \$500, imprisonment for no more than one-year, or both. These punishments appear lenient and are likely because Article 5 contains no mention of buying and selling of stolen property. The

punishment for violating jurisdictional codes varies greatly from one location to another. Common penalties include monetary fines from \$25 up to \$5,000, jail time, and the revocation of the collateral loan broker's license. All told, 27 locations (71.1%) make reference to some form of punishment

§ 55: Rules and regulations

Within § 55 it is written that the State Comptroller has authority to keep additional books, records, entries and reports as deemed necessary and to determine the amount of surplus payable as abandoned property in the event of non-compliance with Article 5. No examined municipal code referenced § 55.

RULES NOT INCLUDED IN ARTICLE 5 OF THE GENERAL BUSINESS LAW

Local jurisdictional codes are designed to address aspects of collateral loan broking not covered by the General Business Law. These codes can cover the licensing process, the precise rates of interest pawnbrokers may charge, daily – or weekly – reporting to the chief of police, and more. We provide two rules below that are not included in the General Business Law.

Hours of Operation

Article 5 provides no mention of hours of operation; however, this information is included within almost 30% of all examined collateral loan broker ordinances. Stores tend to open between seven and nine a.m. and close between six and ten p.m. on weekdays. On Saturdays several shops are open until midnight; many shops are closed on Sundays.

Reporting to the Police and Electronic Reporting

45% of examined codes require daily or weekly reports to the Police Chief of every purchased, pawned or pledged item. These reports include:

- The name, date of birth, and address of the pledger,
- An account and description of the item including its make, model, a serial number or any other identifying marks,
- The date and time of the transaction,
- And the amount of money the item was loaned for.

Most jurisdictions state that this information must be mailed or faxed over to local law enforcement within twenty-four hours of the preceding day.

The City of Rochester is the first within the State of New York to provide for the electronic reporting of transactions – this ordinance went into effect on June 1st, 2012. In May of 2012, the Albany County Legislature introduced a similar measure in their Local Law No. "F," which allows for the electronic reporting of transactions for precious metal exchange dealers and secondhand dealers within Albany County.

CONCLUSION

We have seen the extent and content of collateral loan broking ordinances within New York State and have compared these codes with their statewide counterpart, Article 5 of the General Business Law. In the upcoming, final working paper of this miniseries we take a reflexive approach to state and municipal codes. We provide our version of a comprehensive collateral loan broker code, which we hope addresses all aspects of Article 5 as well as the content of the thirty-eight municipal codes examined herein.

References

Article 5: Collateral Loan Brokers, GBS 5, New York General Business Law, 2012. Retrieved July 12, 2012, from: <http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=@PLGBS0A5+&LIST=LAW+&BROWSER=BROWSER+&TOKEN=49236242+&TARGET=VIEW>.

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Appendix A

Jurisdictions with pawnbroker/collateral loan broker codes

Cities: Albany, Amsterdam, Auburn, Buffalo, Canandaigua, Glen Clove, Gloversville, Kingston, Middletown, Mount Vernon, New Rochelle, Newburgh, North Tonawanda, Oneota, Port Jervis, Rochester, Saratoga Springs, Syracuse, Troy, Utica, Watertown, White Plains, Yonkers

Towns: Babylon, Irondequoit, Islip, Oyster Bay, Wappinger

Villages: East Rockaway, Freeport, Massapequa Park, Mastic Beach, Monticello, Ossining, Patchogue, Rockville Centre, Spring Valley, Tarryton

State of New York