

DRAFT OF PROPOSED UNIFORM PAWNBROKING BILL



DIVISION OF REMEDIAL LOANS
RUSSELL SAGE FOUNDATION
130 EAST 22ND STREET, NEW YORK

DRAFT OF PROPOSED UNIFORM PAWNBROKING BILL

A Bill Entitled

AN ACT TO LICENSE PAWNBROKERS AND REGULATE THEIR BUSINESS AS SUCH

Be it enacted by the of the State of as follows [or other enacting clause]:

ARTICLE I

SHORT TITLE AND DEFINITIONS

SECTION 1.—*Short Title.* This act shall be known as the "Pawnbroking Law."

SECTION 2.—*Definitions.*¹ In this act, unless the context otherwise requires:

"Pawnbroker" means any person, partnership, association or corporation (1) lending money on the deposit or pledge of personal property, other than choses in action, securities, or printed evidences of indebtedness; or (2) purchasing personal property on condition of selling it back at a stipulated price; or (3) doing business as furniture storage warehouseman and lending money upon goods, wares or merchandise pledged or deposited as collateral security.

"Pledge" means an article or articles deposited with a pawnbroker in the course of his business as defined in the preceding paragraph.

"Pledger" means the person who delivers a pledge into the possession of a pawnbroker, unless such person discloses that he is or was acting for another; and in such event "pledger" means the disclosed principal.

ARTICLE II

LICENSING AND SUPERVISION OF PAWNBROKERS

SECTION 3.—*License.* No person, partnership, association or corporation shall engage or continue in business as a pawnbroker except as authorized by

¹ The definition of the term "pawnbroker" has been borrowed from the New York law. The reason for this definition of the term "pledger" is that so many pledges are made by agents who do not disclose their agency, and the pawnbroker should be protected in dealing with them as principals. Thus, where a pledge is made by John Smith acting for an undisclosed principal, James Brown, the pawnbroker is warranted in dealing with John Smith, in case the latter should represent to him that the ticket has been lost. The facts in such a case might be that Brown, the owner of the collateral, sent Smith to pledge; that Smith delivered the ticket to Brown, who continued to hold it until he was prepared to redeem, and then learned that Smith had already done so on his fraudulent affidavit.

this act and without first obtaining a license from the.....
....., hereinafter called the licensing official.

SECTION 4.—*Application.* Application for such license shall be in writing and shall state the full name and place of residence of the applicant, or, if the applicant be a partnership, of each member thereof, or, if a corporation or association, of each officer thereof, together with the place or places where the business is to be conducted.

SECTION 5.—*License Fee.*¹ If such application be approved by the licensing official, he shall issue a license to the applicant upon payment of the license fee and the filing of a bond as hereinafter provided. Such license shall not be assignable. It shall run from the date of its issuance to the end of the calendar year, and shall be renewed each year thereafter. The fee for such license shall be one hundred dollars (\$100) per annum, or a proportionate amount for a period of less than one year, for each place of business conducted by the licensee as such; which fee shall be in full payment of all expenses of examination under, and administration of, this act. *Provided, however,* that any pawnbroker who, at the time this act becomes effective, is duly licensed as a pawnbroker under the provisions of Chapter, Laws of..... [any prior state law] or under authority of any local ordinance or regulation, shall not be required to procure a license or furnish a bond under this act until the expiration of such existing license, but shall nevertheless be subject to all the other provisions of this act.

SECTION 6.—*Disposition of License Fees.* All license fees received by the licensing official shall promptly be remitted to the State Treasurer, who shall apply the same to the payment of expenses incurred in the administration and enforcement of this act, upon vouchers approved by the licensing official.

SECTION 7.—*License Bond.*² The licensee shall file with the licensing official a bond in the sum of one thousand dollars (\$1,000), as principal, with one or more sureties to be approved by the licensing official. The aggregate liability of such sureties shall not exceed the amount stated in the bond. Such bond shall run to the State of for the use of the state and of any person or persons who may have a cause of action against the principal as licensee under the provisions of this act. The condition of such bond shall be, that the principal will comply with and abide by all the provisions of this act, and will pay to the state or to any person or

¹ It will be noted that this section confers upon the licensing official a discretionary power in the matter of approving licenses, which is not the case with the Uniform Small Loan Law.

² The amount of the bond, as well as of the license fee, has been fixed at the same figure as in the Uniform Small Loan Law. Both of these amounts are lower than are required in most states at the present time. These moderate figures have been suggested so as to encourage competition by enabling men with small capital to enter the business, which would not be the case if the bond and license requirements were more drastic.

persons any and all moneys that may become due to the state or to any person or persons from the said principal under and by virtue of the provisions of this act. A separate bond shall be required for each place of business, if more than one, conducted by such licensee. If, in the opinion of the licensing official, the bond shall at any time appear to be insecure or insufficient, he may require either an additional bond in the sum of not more than one thousand dollars (\$1,000), or the cancellation of the existing bond and the execution of a new one, in the same amount. If any person shall be aggrieved by the misconduct of a pawnbroker, and shall recover judgment against him therefor, such person may, after the return unsatisfied, either in whole or in part, of any execution issued upon said judgment, maintain an action in the name of the state for his own use upon the bond of the pawnbroker in any court having jurisdiction of the amount claimed, provided the licensing official assents thereto.

SECTION 8.—*Revocation of License.* The licensing official may, upon notice to the licensee and reasonable opportunity to be heard, revoke such license for a violation by the licensee of any provision of this act, or of any regulation promulgated by the licensing official.

SECTION 9.—*Posting License.* Such license shall be kept conspicuously posted in the licensee's place of business.

SECTION 10.—*Removal.* Whenever the licensee shall change his place of business he shall at once give written notice thereof to the licensing official, who shall indicate on the license his approval in writing of the change of location.

SECTION 11.—*Examinations.* The licensing official may at any time, and shall at least once a year, investigate the business of all licensees, either personally or by any person designated by him. For the purpose of such investigation the licensing official or the person designated to act for him shall have free access, during usual business hours, to the licensee's place of business and to the books, papers, records, safes and vaults of such licensee, wherever located within the state, and shall also have authority to examine, under oath, any person whose testimony he may require relative to such business.

SECTION 12.—*Regulations.* Subject to the provisions of this act, the licensing official may prescribe the form of books and records to be kept by licensees, which shall be preserved for at least two years from the date of making the loan and be available to parties in interest. He may adopt and promulgate such other rules and regulations, not inconsistent with the provisions of this act, as he may deem necessary for the proper conduct of his office and the enforcement of this act. In the exercise of such power, he shall co-operate with the police or other officials of municipalities for the discovery or restoration of stolen property.

SECTION 13.¹—*Annual Report.* Every pawnbroker shall, on or before the first day of February each year, submit to the licensing official in such form as may be prescribed by the latter, a report under oath, giving the number and amount of loans made during the preceding calendar year, the balance of loans outstanding at the close of the year, the maximum and minimum amounts loaned, and rates of interest charged.

ARTICLE III

PLEDGE CONTRACT AND RECORD

SECTION 50.²—*Original Record.* Every pawnbroker shall keep a book in which shall be recorded, in ink, at the time of making each loan, the name and address of the pledger, or, where the pledge is made by a person acting as agent for a disclosed principal, the names and addresses of principal and agent; the date of the transaction; amount of the loan; the article or articles pledged; and the serial number of the loan. There shall also be recorded in such book the date on which each loan was cancelled, and whether it was redeemed or renewed or whether the collateral was sold at auction. In a separate book the licensee shall record in ink all sales of unredeemed pledges, showing the number, date, amount, and duration of each loan, the date of the sale, the amount realized from the sale of the collateral, the amount charged to the pledger as interest, commission and expenses of sale, the amount of the surplus or deficit, as the case may be, the date on which, and the person to whom, the surplus, if any, was paid. All entries herein provided for shall be made in the English language.

SECTION 51.—*Signature of Pledger.* The pawnbroker shall at the time of making a loan require the pledger or his agent to write his signature and address on a card bearing the serial number of the loan corresponding to that recorded in the pawnbroker's book as provided in the last preceding section. If such person is unable to write he shall sign by mark, and in such event the pawnbroker shall record on the signature card such information as will enable him to identify the person in case of the loss of the ticket.

SECTION 52.—*Pawn Ticket.* The pawnbroker shall at such time deliver to the pledger or his agent a memorandum or ticket on which shall be legibly written or printed the name of the pledger; the name of the pawnbroker and the place where the pledge is made; the article or articles

¹ Sections 8 to 13, inclusive, relating to the visitation of pawnbrokers by the state licensing official and, to a limited extent, by the local police authorities, should insure a thorough supervision of the business without entailing any hardship on licensees or antagonizing them in any way. The provisions for periodical examination and annual reports should tend to vest the business with the dignity and standing of a bank and encourage the application, as far as practicable, of banking principles and methods.

² The interruption of numerical sequence of sections is intentional, so as to permit the insertion of additional sections to the preceding article.

pledged; the amount of the loan; the date of the transaction; the serial number of the loan; the rate of interest; and a copy of Sections 59 and 61 of this Article. A pawnbroker may insert in such ticket any other terms and conditions not inconsistent with the provisions of this act; *provided*, however, that nothing appearing on a pawn ticket shall relieve the pawnbroker of the obligation to exercise reasonable care in the safe-keeping of articles pledged with him.

SECTION 53.¹—*Negotiability of Ticket.* Except as otherwise herein provided, the holder of such ticket shall be presumed to be the person entitled to redeem the pledge; and the pawnbroker shall deliver the pledge to the person presenting the ticket, upon payment of principal and interest.

SECTION 54.²—*Redemption by Mail.* When a ticket, instead of being presented in person, is sent to the pawnbroker by mail, accompanied with a money order or bank draft for the amount due, including the charges for shipment as desired, and twenty-five cents for packing, the pledge shall be securely packed and forwarded by the pawnbroker in accordance with the remitter's instructions, if any. If the remittance is insufficient to cover the amount due, the charges of shipment as desired, and packing, the pawnbroker shall either notify the remitter of the amount of the deficiency or send the pledge subject to the payment of shipping charges by the consignee. The pawnbroker's liability for the pledge shall cease upon delivery thereof to the carrier or his agent.

SECTION 55.—*Payment of Installments.* Upon the presentation of the ticket and the tender of not less than \$5.00 as an installment on the principal, together with accrued interest, the pawnbroker shall accept the same and issue a new ticket for the reduced amount.

SECTION 56.³—*Loss of Ticket.* If such ticket be lost, destroyed, or stolen, the pledger shall so notify the pawnbroker in writing. The receipt of such notice shall be treated by the pawnbroker as a stop against the loan, and thereafter the provisions of the three last preceding sections shall not apply to such loan. Before delivering the collateral or issuing a new ticket, in such event, the pawnbroker shall require the pledger to make affidavit of

¹ This provision has been borrowed from the New York law, and is found also in the British pawnbroking act. It is in keeping with long established usage, and justly relieves the pawnbroker of the responsibility of identifying the holder of a ticket which is presented for redemption.

² This section permits the only extra charge authorized by the bill in addition to interest. While extra charges of any kind are objectionable, a packing charge may be justified on the ground that packing and shipping the pledge is an extra service which is not contemplated at the time of making the loan, and for which the pawnbroker is entitled to compensation.

³ This provision is borrowed from the British pawnbroking act. It fills a very embarrassing gap in the existing New York law, which is silent as to the pawnbroker's liability to a bona fide holder of the ticket where delivery of the pledge has been made on the pledger's affidavit.

the alleged loss, destruction, or theft of the ticket. Upon receipt of such affidavit, the pawnbroker shall permit the pledger either to redeem the loan or to receive a new ticket upon the payment of accrued interest; and the pawnbroker shall incur no liability for so doing, unless he has previously received written notice of any adverse claim.

SECTION 57.—*Altered Tickets.* The alteration of a ticket shall not excuse the pawnbroker who issued it from liability to deliver the pledge according to the terms of the ticket as originally issued, but shall relieve him of any other liability to the pledger or holder of the ticket.

SECTION 58.—*Counterfeit Tickets.* If a ticket is presented to a pawnbroker which purports to be one issued by him, but which is found to be spurious, the pawnbroker may seize and retain the same without any liability whatsoever to the holder thereof. Any such ticket so seized shall be delivered to the licensing official.

SECTION 59.—*Rates of Interest.* A pawnbroker shall not charge or receive interest on loans in excess of 3 per cent a month, computed exactly on unpaid balances; *provided*, however, that on loans redeemed within the first month he may charge a month's interest, and *provided, further*, that he may charge a minimum of 15 cents where the interest herein allowed amounts to less. If a pawnbroker charges or receives interest in excess of that herein provided, or makes any charges not authorized by this act, he shall forfeit principal and interest and shall return the pledge upon demand of the pledger and surrender of the pawn ticket, without tender of principal or interest. If such excessive or unauthorized charges have been paid by the pledger, he may recover the same, including the principal, if paid, in a civil action against the pawnbroker.

SECTION 60.—*Care of the Pledge.* A pawnbroker shall be liable for the

¹ The provisions defining the pawnbroker's liability to the holder of an altered ticket have been adapted from the Uniform Warehouse Receipts Act. The authority to seize and retain a counterfeit ticket, that is, one which is spurious in its origin, as distinguished from an altered ticket, seems a desirable provision to make in the interest of public policy.

² After carefully weighing the arguments for and against a sliding rate of interest, regulated by the amount of the loan, as distinguished from a fixed rate which should be applicable to all loans, irrespective of the amount, it was decided to advocate the fixed rate, and to have that rate high enough, subject to the minimum charge of 15 cents, to make even the average small loan profitable. The sliding rate is well-founded and logical enough in principle, but it is open to the objection that some pawnbrokers will derive an unfair advantage from it by splitting a loan, where several articles are pledged, into two or more smaller loans to each of which the higher rate of interest will apply, although the borrower is lawfully entitled to the benefit of the lower rate.

³ This provision is adapted from a similar one found in the Uniform Warehouse Receipts Act. It embodies the common law principle that where a bailment is for the mutual benefit of the bailor and bailee, the bailee shall be held only to the exercise of due care and diligence in the safe-keeping of the goods placed in his custody.

loss of a pledge or part thereof, or for injury thereto, whether caused by fire, theft, burglary, or otherwise, resulting from his failure to exercise reasonable care in regard to it; but he shall not be liable, in the absence of an express agreement to the contrary, for the loss of a pledge or part thereof, or for injury thereto, which could not have been avoided by the exercise of such care. The burden of proof to establish due care shall be upon the pawnbroker.

SECTION 61.¹—*Sale of the Pledge.* All unredeemed pledges shall be sold at public auction, but not before the expiration of twelve months, nor later than the expiration of eighteen months, from the date of the loan, unless otherwise agreed in writing between the pawnbroker and the pledger, or authorized by the licensing official for due cause shown.

SECTION 62.²—*Notice of Sale.* No pledge shall be sold unless written or printed notice thereof has first been mailed to the last known address of the pledger at least twenty days prior to the date of sale. Notice of such sale shall also be published in three consecutive issues of a daily or weekly newspaper published in the city or county where the pawnbroker's business is conducted; such notice shall specify the time and place of the sale and the inclusive dates and numbers of the unredeemed loans, but shall not exceed 50 agate lines of space.

SECTION 63.³—*Disposition of Proceeds.* The proceeds of such sale shall be applied to the purposes, and in the order, here specified: Auctioneer's charges; principal and interest of the loan; and a proportionate share of the expense of publishing the notice of sale, determined by dividing the total expense of such publication by the number of loans sold. The surplus, if

¹ The requirement that pledges shall be kept for a stated period before they may be sold is found in many of the statutes, but it is not usually required that unredeemed pledges shall be sold within a certain time. The object of such a provision is to oblige the pawnbroker to foreclose his lien within a reasonable time after the expiration of the loan period, instead of continuing the loan on his books indefinitely until the equity is exhausted by the accrual of interest.

² It is not likely that such notices as this would actually apprise many of the borrowers concerned that their property would shortly be sold; but they should serve to awaken public interest in the sale, thereby insuring to the pledger a more active and open market for his property than if the sale were not so advertised. Some of the statutes require that the notice contain a description of the articles to be sold. If this were enforced literally, the cost of printing such notices would be a heavy charge against the borrower's equity. Such descriptions are of no service to the borrowers affected thereby, and they are not necessary for the information of the public, as it is a matter of common knowledge what kinds of goods are taken in pledge by pawnbrokers.

³ Some of these provisions have been borrowed from the New York law and some from the British act. The requirement of mailing notices of the surplus is new. The five-year limitation on the right to collect the surplus, after which it reverts to the pawnbroker, seems to be fair to all interests. The English law requires a pawnbroker to account for the surplus for only three years, but is silent as to the final disposition of a surplus which is not claimed within that time.

any, shall be paid to the pledger or any one else who would have been entitled to redeem the pledge if it had not been sold. Notice of such surplus, if any, shall be mailed to the last known address of the pledger.

SECTION 64.¹—*Reversion of Surplus.* If a surplus be not paid or claimed within five years from the date on which it accrued, it shall revert to the pawnbroker for his own use and benefit. Interest on unpaid surplus at the rate of 6 per cent per annum shall accrue only after the pawnbroker's refusal to pay the same upon lawful demand therefor.

ARTICLE IV

MISCELLANEOUS PROVISIONS

SECTION 100.²—*Pawnbroker's Lien on Pledge.* A pawnbroker shall have a first lien on all pledges for the amount of his loan and interest in all cases except where the pledging or possession thereof by the pledger constituted larceny at the common law, or except where a prior lien exists by virtue of any other statute.

SECTION 101.—*Ticket Must Be Surrendered or Impounded.* Except as otherwise provided in this act, a pawnbroker shall not be required, by legal process or otherwise, to deliver a pledge except upon surrender of the ticket, unless the ticket be impounded or its negotiation enjoined by a court of competent jurisdiction.

SECTION 102.³—*Adverse Claims.* If more than one person shall claim the right to redeem a pledge, the pawnbroker shall incur no liability for refusing to deliver the pledge until the respective rights of the claimants shall have

¹ Some of these provisions have been borrowed from the New York law and some from the British act. The requirement of mailing notices of the surplus is new. The five-year limitation on the right to collect the surplus, after which it reverts to the pawnbroker, seems to be fair to all interests. The English law requires a pawnbroker to account for the surplus for only three years, but is silent as to the final disposition of a surplus which is not claimed within that time.

² It happens so frequently that a pledge is made by a person entrusted with the possession of an article of jewelry, but having no authority to pledge it, that a provision of this kind is desirable to protect the pawnbroker against fantastic claims of every description by people who are negligent in the selection of their agents or who repose too much confidence in chance acquaintances. The Factors Act in New York State affords such protection in cases where articles have been entrusted to an agent for the purpose of sale, but the principle is the same in any case where the property of another is obtained by the pledger under circumstances not amounting to common law larceny. Only a felonious taking, which implied a deliberate intent to steal, constituted larceny at the common law; but in many states the definition of larceny is now made comprehensive enough by statute to include almost any unauthorized appropriation of property belonging to another.

³ This section and the preceding one are similar in substance and effect to corresponding provisions contained in the uniform acts relating to warehouse receipts, bills of lading, and other negotiable documents of title. Their purpose is to prevent the possible recovery of more than one judgment against the pawnbroker by rival claimants in connection with the same loan.

been adjudicated. In case of an action brought against the pawnbroker for recovery of the pledge, he may as a defense require all known claimants to interplead. If no action be brought against the pawnbroker by either party within the period for which he is required under Section 61 hereof to hold the pledge, or within thirty days after notice of an adverse claim, he may proceed to sell the pledge and hold the surplus, if any, subject to adjudication or other adjustment of the parties' rights.

SECTION 103.¹—*Prohibited Transactions.* A pawnbroker shall not:

1. Accept a pledge from any person who is under the age of sixteen years.
2. Transact any business on Sunday; nor between the hours of six o'clock in the evening and seven o'clock in the morning; provided, however, that on Saturday he may transact business up to the hour of ten o'clock P. M.

SECTION 104.—*Penalties.* Any person, partnership, association or corporation who or which violates either Section 3, Section 59, Section 61, or Section 63 of this act, or commits any wilful fraud in the course of his business, shall be guilty of a misdemeanor, punishable by a fine of not more than five hundred dollars (\$500) or by imprisonment for not more than six months, or by both fine and imprisonment, in the discretion of the court.

SECTION 105.—*Interpretation to Secure Uniformity.* This act shall be interpreted and construed so as to effectuate its general purpose to make uniform the law of those states which enact it.

SECTION 106.—*Constitutionality.* If any section or provision of this act be decided by the courts to be unconstitutional or invalid, such adjudication shall not affect the validity of the act as a whole or of any other portion thereof which can be given reasonable effect without the provision held to be unconstitutional or invalid.

SECTION 107.—*Repealer.* Chapter.....of the Laws of, and all other acts or parts of acts inconsistent herewith, are hereby repealed.

SECTION 108.—*Date Effective.* This act shall take effect on and after the first day ofnext following its passage and approval.

¹ This section is borrowed, with slight modification, from the New York law.