

BANKING  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF BANKING

Pawnbrokering Law Regulations

Proposed Readoption with Amendments: N.J.A.C 3:16

Authorized By: Steven M. Goldman, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-15(e) and 45:22-11 et seq.

Calendar Reference: See Summary below for explanation of exemption to the calendar requirement.

Proposal Number: PRN 2006-210

Submit comments by September 1, 2006 to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to readopt N.J.A.C. 3:16, which is scheduled to expire on November 30, 2006 pursuant to N.J.S.A. 52:14B-5.1c.. N.J.A.C. 3:16-1 requires the licensing of pawnbrokers in New Jersey. N.J.A.C. 3:16-2 sets forth the rules regarding recordkeeping and the conduct of a pawnbroker business. The rules proposed for readoption at N.J.A.C. 3:16-3 require licensees to notify the Commissioner of legal actions involving a licensee's pawnbroker business. Finally, the rules proposed for readoption at N.J.A.C. 3:16-4 provide the procedures for notice and hearing regarding possible violations of the rules and provide for penalties for violations of N.J.S.A. 45:22-1 et seq. and the chapter.

The Department seeks to amend certain rules. Most of the amendments are necessary as a result of changes to the “Pawnbrokering Law,” N.J.S.A. 45:22-1 et seq., enacted by P.L. 2001, c. 388 in 2002.

The Department proposes amendments to N.J.A.C. 3:16-1.2(d)1 dealing with information on a license application. The rule currently requires the application to contain the full name and residence address of each owner, substantial stockholder, officer, director, partner and manager of the business to be licensed. The Department proposes to add the requirement of providing the full name and residence address of any “member.” This amendment will update this section to take into account that certain licensed entities now use as a form of business a limited liability company, the owners of which are known as “members” of that company.

The Department proposes to amend N.J.A.C. 3:16-2.1(b) covering information to be reported to the Commissioner as part of the annual report. This is a result of the statutory change in 2002. The statutory amendments give pawnbrokers the option of selling unclaimed pledges at either public auction or a private sale. The proposed amendment will require the licensee to report the number of pledges sold at each private sale; licensees currently report those sold at public auction. There should be no increased costs to licensees to report this information. N.J.A.C. 3:16-2.1(b)10 is proposed to be amended to clarify what year's balance sheets and income statements are to be included in the annual report filed with the Department.

The statutory amendments have also precipitated the Department proposing to amend N.J.A.C. 3:16-2.4, dealing with public auctions and notice, to include therein notice provisions on the newly authorized private sales. The proposed amendment would add the requirement of recording and maintaining the names and addresses of purchasers at private sales, and the requirement that the licensee record and maintain a list of the items it acquires as a result of

private sales. It would also change the heading of the section to include private sales. In addition, the Department proposes to amend N.J.A.C. 3:16-2.3(d) dealing with advertising to make it clear this section applies to public auctions, because, by their nature, private sales are not advertised.

Further, the Department proposes to amend N.J.A.C. 3:16-2.4(d) dealing with notices mailed to pledgors about public auctions to also include private sales. The proposed amendment would also require that the notices be sent 20 days prior to sale, whereas now the rule does not specify a minimum notice period.

Lastly, the Department proposes a new N.J.A.C. 3:16-2.7, Examination of licensees. The proposed new section will set forth how examinations will be conducted, the extent of access examiners shall have to the licensee's books and records, and the scope of the examination.

The Department has reviewed the remaining rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

The Department's rule proposal provides for a comment period of 60 days, and, therefore pursuant to N.J.A.C. 1:30-3.3(a)5, is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

#### Social Impact

The rules proposed for readoption with amendments apply to all persons or entities in the pawnbroking business in New Jersey. They will continue to implement N.J.S.A. 45:22-1 et seq. by requiring pawnbrokers to be licensed and to keep records of their transactions. They also require pawnbrokers to post their fees in the place of business of the pawnbroker. The rules provide to the general public and to those who use the services and purchase the merchandise

offered for sale by pawnbrokers a basic level of protection when dealing with pawnbrokers. They also make it clear to pawnbrokers what records they must maintain and the minimum business procedures with which they must comply. Thus, the rules proposed for re-adoption with amendments will continue to have a beneficial social impact on the general public, consumers of pawnbroker services and pawnbrokers.

### Economic Impact

It is not expected that the rules proposed for re-adoption with amendments will have a significant negative economic impact on New Jersey pawnbrokers. The requirement that pawnbrokers be licensed, keep proper records and maintain insurance to cover the pledgor's property is mandated by N.J.S.A. 45:22-1 et seq., and in any case, is a reasonable and anticipated commercial requirement. The application fee for the license is \$500.00, increased from \$400.00 effective June 19, 2006 (see 38 N.J.R. 2674(a)). The Department believes the proposed increased fee, which is a one time fee, is an anticipated cost of doing business and a proper charge for the time of the Department's staff in reviewing such an application. The cost of the required surety bond of \$1,000 is set by the insurance company who issues the bond.

The full and truthful disclosure about the fees charged to customers, the proper posting of those fees in the place of business of the pawnbroker and the limit of the service charge on loans secured by the pledge to eight percent but not to exceed \$4.00, which is required by the rules proposed for re-adoption with amendments, will continue to provide a substantial measure of protection to the consumers of pawnbroker services and thereby avert potential negative economic consequences to such consumers.

The Department does not believe the balance of the amendments will have any economic impact because they are technical in nature and will impose no new requirements which increase the expenses of licensees.

#### Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption with amendments are not subject to any Federal requirements or standards.

#### Jobs Impact

The Department does not anticipate any jobs will be generated or lost as a result of the rules proposed for readoption with amendments. Pawnbrokers will use existing staff for continued compliance with the existing rules. Pawnbrokers should not have to employ professional services to meet the recordkeeping, reporting and other compliance requirements. The proposed amendments will not require additional staff for a pawnbroker.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed readoption with amendments together with their written comments on other aspects of this proposal.

#### Agriculture Industry Impact

The Department does not expect any agriculture industry impact from the rules proposed for readoption with amendments.

### Regulatory Flexibility Analysis

Many New Jersey pawnbrokers are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption with amendments will continue to impose compliance requirements on these entities. The rules proposed for readoption with amendments will continue to require licensing of pawnbrokers and require them to maintain records concerning their business. The costs for compliance are set out in the Economic Impact statement above. Pawnbrokers must also report legal actions to the Commissioner.

The Department believes that these requirements are generally mandated pursuant to N.J.S.A. 45:22-1 et seq. Moreover, the Department does not believe that these requirements are unduly burdensome and should not impose the need for professional services to comply. The purpose of N.J.S.A. 45:22-1 et seq. and these rules proposed for readoption with amendments is to protect all consumers who use pawnbrokers. Thus, the purpose of these requirements does not vary based upon business size. Accordingly, no differentiation based on business size is provided.

### Smart Growth Impact

The rules proposed for readoption with amendments will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:16.

Full text of the proposed amendments and new rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## SUBCHAPTER 1. GENERAL PROVISIONS

### 3:16-1.2 Licensing

(a) - (c) (No change.)

(d) An applicant for a license shall apply on a form supplied by the Commissioner, which shall require the following information:

1. The full name and residence address of each owner, substantial stockholder, officer, director, **member**, partner and manager of the business to be licensed;

2. - 8. (No change.)

## SUBCHAPTER 2. CONDUCT OF BUSINESS; RECORDKEEPING; **EXAMINATIONS**

### 3:16-2.1 Recordkeeping; reporting

(a) (No change.)

(b) A licensee shall file an annual report with the Commissioner on or before March 1 of every year on a form supplied by the Commissioner. The annual report shall supply the following:

1. - 6. (No change.)

**7. The number of pledges sold at each private sale;**

[7.] **8.** The number [or] **of** purchases made during the preceding year at public auction;

[8.] **9.** The number [or] **of** purchases made during the preceding year on condition of resale at a stipulated price;

[9.] **10.** Balance sheets and income statements for the [current year] **year** **addressed in the report**; and

[10.] **11.** (No change in text).

(c)- (d) (No change.)

### 3:16-2.3 Advertising

(a) - (c) (No change.)

(d) The licensee shall conspicuously post a list of items available for sale on the licensee's principal business premises at least three days prior to the date of [sale] **public auction**, and the licensee shall make the list available to members of the public upon request.

### 3:16-2.4 Public auction **or private sale**; notice

(a) A licensee shall obtain the name and address of each person who makes a purchase as a result of [an] **a public auction or private sale**. The purchasers' names and addresses shall be retained for examination by the Department and the police.

(b) A licensee shall prepare and maintain a list containing a description of each item which the licensee acquires as a result of [an] **a public auction or private sale** of unredeemed pledges.

(c) (No change.)



(d) A licensee shall mail a notice of public auction **or private sale** to each pledgor of record of items to be sold **at least 20 days prior to the auction or sale.**

**3:16-2.7 Examinations of licensees**

(a) **The Commissioner may at any time investigate the business of all licensees.**

(b) **The Commissioner, or his or her designee, shall have free access, during the licensee's usual business hours, to the licensee's place of business, and to the books, papers, records, safes and vaults pertaining to, or used in the course of the business of the licensee, wherever located, and shall also have the authority to examine, under oath, any person whose testimony he or she may require relative to the business of the licensee.**

(c) **The examination conducted by the Department shall be "exception-based." All apparent failures to comply with statutes or rules shall be noted. The examination shall include reviews of the licensee's books, records, bonding and insurance policies, and shall cover all matters referenced in the "Report of Examination" form on file with the Department.**