

BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING

Pawnbrokering Law Regulations

License Application; Annual Report; Notice of Public Auctions and Private Sales; Examinations of Licensees

Proposed Amendments: N.J.A.C. 3:16-1.2, 2.1, 2.3 and 2.4

Proposed New Rule: N.J.A.C. 3:16-2.7

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A.17:1-8.1, 17:1-15e and 45:22-1 et seq.

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

Proposal Number: PRN 2003-469

Submit comments by January 30, 2004 to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to amend N.J.A.C. 3:16 relating to pawnbrokers. 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 to amend 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 the full name and residence address of any “member.” This change 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.

As a result of the statutory change, the Department now 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. The statutory amendments give pawnbrokers the option of selling unclaimed pledges at either public auction or a private sale. The 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 report this information. N.J.A.C. 3:16-2.1(b)10 is proposed to be amended to clarify what years balance sheets and income statements are to be included in the annual report.

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 a private sale. In addition, the Department proposes to amend N.J.A.C. 3:16-2.3 dealing with advertising of sales to make it clear this section applies to public sales, 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 or private sales. The amendment would require such notices to be sent by certified mail, whereas currently regular mail is permissible, and that the

notices be sent 20 days prior to sale, whereas now the rule does not specify a minimum notice period. The amendment also proposes to require the licensee to maintain proof of the certified mailing, including the return receipt.

Lastly, the Department proposes a new N.J.A.C. 3:16-2.7, Examination of Licensees. The proposed new section will set forth when examinations will be conducted, how often they will be conducted, the extent of access examiners shall have to the licensee's books and records, the scope of the examination, the presumptive maximum cost of the examination as permitted by N.J.S.A. 45:22-10, and the reasons constituting good cause for the cost to exceed the presumptive maximum amount.

This 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 proposed amendments and new rule would apply to all New Jersey pawnbrokers. The proposed amendments will require pawnbrokers to provide notice to pledgors, keep records and report to the Department on private sales of unredeemed pledges. The amendments and new rule also prescribe the extent and scope of the examination of the licensee by the Department, the presumptive maximum fee for an examination of a pawnbroker licensee and what will constitute good cause for the amount to exceed the presumptive maximum cost. Because the amendments and new rule will enhance the Department's ability to effectively regulate New Jersey pawnbrokers and will result in a pledgor's timely receipt of information about a private sale or

public auction, they will have a beneficial social impact on the industry and consumers of pawnbroker services.

Economic Impact

The amendments and new rule reflect the presumptive maximum cost of \$2,500 for an examination of a licensee, as established by N.J.S.A. 45:22-10. In general, most pawnbrokers are small operations and their examination fees would not normally reach this level. In accordance with N.J.S.A. 45:22-10, the proposed new rule sets forth the Department's authority to charge more than \$2,500 for an examination, provided that the Commissioner determines that good cause exists. The proposed amendment specifies what constitutes good cause for the assessment of a higher charge. The costs of the examinations by the Department are nominal compared to the revenue typically generated by these businesses and are an anticipated cost of doing business in this regulated field.

The proposed amendment requiring notices of private sales and of public auctions to be sent to pledgors by certified mail, as compared to regular mail, will increase licensees' costs of doing business. This increased cost is nominal and will not have a detrimental effect on pawnbrokers. In addition, it is offset by the increased interest rate permitted to be charged by pawnbrokers each month as provided in N.J.S.A. 45:22-22.

Based on the above, the Department expects that the proposed amendments and new rule will not have a detrimental economic impact on licensees. Improving the sufficiency of the notice provided to pledgors regarding sales and auctions of pledges should result in the amendments having a positive economic impact on the consumers of pawnbrokers' services.

Federal Standards Statement

The proposed amendments and new rule are not subject to any Federal standards or requirements. Therefore, a Federal standards analysis is not required.

Jobs Impact

The Department does not anticipate that any jobs will be lost or gained as a result of the proposed amendments and new rule.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed amendments and new rule 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 proposed amendments and new rule.

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 proposed amendments and new rule will impose compliance requirements on these entities. The proposed amendments and new rule will continue to require pawnbrokers to maintain records concerning their business and to be subject to examinations of their books and records by the Department. They also set out standards and time frames for providing notice to pledgors of public auctions and private sales of their pledges. The costs for compliance are described in the Economic Impact above.

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 create a need for professional services or additional staff in order for licensees to comply.

The purposes of the proposed amendments and new rule are to protect all consumers who patronize pawnbrokers, to provide for the proper supervision of pawnbrokers by the Department, and to provide notice to licensees of the presumptive maximum fee for an examination and of the basis upon which the Commissioner may determine that good cause exists to exceed that maximum amount. These purposes do not vary based upon business size. Accordingly, no differentiation based on business size is provided.

Smart Growth Impact

The proposed amendments and new rule will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposal 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).

(b) - (c) (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 **public** sale, 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 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 auction **or private sale** of unredeemed pledges.

(c) (No change.)

(d) A licensee shall **send by certified** mail, **return receipt requested**, 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**. **The proof of certified mailing and the return receipt shall be retained for examination by the Department.**

3:16-2.7 Examinations of licensees

(a) The Commissioner may at any time, and shall at least once each year, 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 cost and charges of any such examination or investigation shall be borne by the licensee and shall not, unless the Commissioner determines that good cause exists, exceed \$2,500. Good cause for the cost of an examination to exceed \$2,500 shall be established by the existence of any of the following:

1. Prima facie evidence of the violation of any provision in N.J.S.A. 45:22-1 et seq.;

2. Prima facie evidence of the violation of any of the rules in this chapter;

3. The failure of a licensee to cooperate with the Department in providing requested documents or information;

4. A volume of business in excess of \$1,500,000 in new or renewed pledges in one year;

5. The existence of branch offices; or

6. The licensee is insolvent.

(d) 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 be conducted in accordance with the “Report of Examination” form on file with the Department.