

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 12-131—sHB 5328
General Law Committee
Judiciary Committee

AN ACT ESTABLISHING A FINE ART SECURED LENDING LICENSE

SUMMARY: This act creates a new fine art secured lending license issued by towns and cities with provisions and requirements similar to those for pawnbrokers. These include the same penalties and similar requirements for licensing, identifying sellers, recording, reporting, and payments.

The act requires anyone (including a pawnbroker) who is in the business of loaning money on the deposit or pledge of fine art to obtain the new license.

The act does not apply to loans made on stocks, bonds, notes, or other written or printed evidence of fine art ownership or on indebtedness to the holder or owner of such securities. It also does not apply to banks or their affiliates.

Under the act, anyone who willfully (1) engages in the business of fine art secured lending without a license or after notice that his or her license has been suspended or revoked is guilty of a class D felony (see Table on Penalties) and (2) violates any fine art secured lending provision for which there is no other penalty is guilty of a class A misdemeanor.

EFFECTIVE DATE: October 1, 2012

§ 1 — FINE ART

Under the act, “fine art” means any:

1. drawing;
2. painting;
3. sculpture;
4. mosaic;
5. photograph;
6. work of calligraphy;
7. work of graphic art, including any etching, lithograph, offset print, or silkscreen;
8. craft work in clay, textile, fiber, metal, plastic, or other material;
9. art work in mixed media, including any collage, assemblage, or other work combining any of the previously mentioned art; or
10. a master from which copies of an artistic work can be made, such as a mold or photographic negative, with a market value of at least \$2,500.

It does not include (1) commissioned work prepared under contract for trade or advertising use, provided the artist signs an agreement stating the commissioned work may be altered without consent prior to creating the work, and (2) work prepared by an employee within the scope of his or her duties.

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§ 2 — LICENSING

Licensing Authority

The act makes a city or town's police chief or, for any city or town that does not have an organized local police department, the state emergency services and public protection commissioner, the licensing authority.

The licensing authority may grant licenses to any suitable person and suspend or revoke a license for cause, which includes failing to comply with any specified licensing requirements imposed at the time of issuance. The license is valid for one year unless suspended or revoked.

Applications

The act requires license applications to be in writing, under oath, and contain:

1. the type of business to be engaged in;
2. the applicant's full name, age, and date and place of birth;
3. the applicant's home addresses and places of employment for the preceding five years;
4. the applicant's present occupation;
5. any criminal conviction, including the date and place; and
6. any additional information the licensing authority needs to investigate the applicant's qualifications, character, competency, and integrity.

When the applicant is a corporation, limited liability company, partnership, or association, the application must contain the information required above for anyone who is or will be an officer, shareholder, financial backer other than a financial institution, or any other individual with a similar relationship to the entity.

The application and any renewal application must also include information on any Internet website or account used to conduct business. The licensee, during the license term, must give the licensing authority written notice when it adds or discontinues an Internet website or account.

License Fees and Bond Requirements

The act requires a licensee to pay a \$50 licensing fee and an annual \$25 renewal fee. It also requires a licensee to file with the licensing authority a \$2,000 surety bond. The bond is conditioned on the faithful performance of the duties and obligations of the business. The act exempts licensees who are also secondhand dealers from the renewal fees and bond requirement.

Background Check

The act prohibits issuance of a license to anyone convicted of a felony. It allows the licensing authority to require any applicant, employee, or person with an ownership interest in the business to submit to a state and national criminal history check. When that occurs, the act requires the subject to submit two sets of fingerprints on forms the licensing authority prescribes. It also allows the licensing authority to charge the same fee the FBI and the State Police Bureau of

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Identification charge for performing background checks.

Administrative License Procedures

The act requires the licensing authority to grant or deny an application within 90 days after it is filed. The licensee must file for renewal at least 60 days before the license expires, and the licensing authority must grant or deny it within 30 days after the filing.

The licensing authority may suspend, revoke, or modify any license at any time during the license period for good cause, after notice and a hearing. The licensing authority must hold such hearing within 30 days after it issues the notice and render a decision within 14 days after the hearing. The applicant or licensee may appeal the licensing authority's decision to Superior Court.

License Display Requirements

The act requires licensees to display their licenses in a conspicuous location on their premises. It also requires them to disclose (1) their business location for the next year and (2) all the places they use or intend to use to buy, receive, store, or sell fine art. During the term of the license, the licensee must notify the licensing authority in advance of any additional business locations.

FINE ART SECURED LENDER

§ 3 — Identification and Sale to Minor

The act requires a licensed fine art secured lender (lender) to obtain proof of identity before receiving or purchasing from a person depositing, pledging, or selling fine art. The identification must include a photograph; an address, if available on the identification; and an identifying number, including date of birth. Lenders may not transact business with a minor, unless he or she is accompanied by a parent or guardian.

Record-Keeping System

The act requires lenders to maintain a computerized record-keeping system that the licensing authority approves. The entries must be entered into the system in English at the time items are purchased and be consecutively numbered. The system must also include a description of each article; the name, home address, proof of identity, and general description of the person selling the property; and the date and hour when the property was received, with a digital photograph of any item without any identifiable numbers or markings.

The act requires the lender to maintain and enter detailed information into the system regarding transactions involving sums taken or received in secured art transactions, whether through a collective fund or otherwise. The records must be maintained for at least two years.

Digital Photographs and Tagging

The act requires tags to be attached to the article in a visible and convenient

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place with a number corresponding to the entry number in the record-keeping system. The tag must remain attached to the article until it is sold or disposed of and be visible in the digital photograph. The licensing authority must establish procedures authorizing the removal of the tags, including from jewelry that is cleaned and repaired on the premises.

Police Examination

A state or municipal police officer, the licensing authority, or their designees may, at any time, examine the records and place where business is carried on, including all articles on the property. They may require any employee on the premises to provide proof of his or her identity.

Record Description

The record's property description of the fine art articles must include:

1. all distinguishing marks;
2. names of any kind, including serial numbers;
3. engravings;
4. etchings;
5. affiliations with any institution or organization;
6. dates;
7. initials;
8. colors;
9. vintage; or
10. image represented.

Any description of media must include the title and artist or other identifying information from its cover or external surface. The licensing authority may exempt or establish additional or different description requirements depending on the nature of the property, transaction, or business, including articles sold in bulk lots.

§ 4 — MEMORANDUM OR NOTE

The act requires lenders to give the person who deposits, pledges, or sells his or her property a memorandum or note containing the entry from the lender's records. The memorandum or note also must include a copy of a statement signed by the person stating (1) he or she is the rightful owner of the fine art with the right to enter into the transaction and (2) that the fine art is not stolen and does not have any liens or encumbrances against it. The memorandum or note must also state that the person will indemnify and hold harmless the lender for any loss arising from the transaction because of someone else's superior right of possession. Lenders may charge customers a fee for costs associated with the memorandum or note, transaction, art storage, insurance, and appraisals.

Payment

The act requires lenders to make payments only by check, draft, wire, or money order, not cash. However, a lender can cash a check, draft, or money order

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he or she issues to a person, provided he or she requires proof of the person's identity.

The act requires any check, draft, or money order a lender uses to pay for property he or she receives to contain the same identification numbers the lender used in his or her record-keeping system. The lender must keep the electronic copy of any check or other record issued by the financial institution that processes it. The copy is subject to inspection as part of the lender's record-keeping system.

The act prohibits lenders who loan money for the deposit of fine art from charging more than 2% per month or fraction of a month.

The act prohibits (1) a lender from cashing any check, draft, or money order he or she issues over \$1,000 and (2) a person from structuring his or her transactions to avoid this limit. Any transaction between a lender and the same party within a 24-hour period is considered a single transaction for this purpose.

§ 5 — REPORTING REQUIREMENTS

The act requires lenders to submit electronic quarterly sworn statements of their transactions to the licensing authority that describe the art received, including summarizing the nature and terms of the transaction. The act allows the licensing authority to exempt a lender from this electronic reporting for good cause.

The act requires each lender to maintain a written record of the name and residential address and a description of each customer. This written record must be available to law enforcement authorities if requested.

§ 6 — SEIZURE OF PROPERTY BY LAW ENFORCEMENT OFFICERS

The act requires a law enforcement officer, when seizing fine art from a lender, to give him or her a duly signed receipt for the seized fine art containing:

1. a case number,
2. a description of the fine art,
3. the reason for the seizure,
4. the officer's name and address,
5. the name and address of the person claiming a right to the fine art prior to the lender, and
6. the lender's name.

Under the act, if a lender claims an ownership interest in the fine art, he or she may request its return by filing a request with the law enforcement agency in accordance with the seized property procedures established in law.

The act allows the court to order restitution to the lender if the person who deposited, pledged, or sold the fine art is convicted of an offense arising out of the lender's acquisition or disposition of the property and the lender suffered an economic loss as a result. Such order may be enforced in accordance with the financial restitution order enforcement statutes.

§ 7 — SALE OF PROPERTY

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The act prohibits lenders from selling or otherwise disposing of fine art left with them for less than 60 days, unless the customer is the person who deposited, pledged, or sold it, or his or her agent. The act also specifies that if the fine art is not redeemed within 60 days, the lender acquires the entire interest the customer had in the art without further notice. The lender may then sell or dispose of the fine art at his or her business place or through a public sale. These requirements do not apply if a lender and customer have entered into a contract regarding disposal of the fine art.

OLR Tracking: DC:RC:pf:tjo