

INTERPRETIVE LETTER 16-02 (February 9, 2016)

1. General Guidance for a Pawnshop Contemplating the use of Electronic Signature Technology

The Illinois Department of Financial and Professional Regulation, Division of Banking (“Department”) has reviewed the guidance on the use of electronic signatures and remote transactions for the pawn industry. The Department recommends if a pawnshop is going to begin usage of electronic signature technology, it becomes familiar with the Illinois Electronic Commerce Security Act (“ECSA”) [5 ILCS 175]. While all provisions of the ECSA may not directly apply to pawn transactions, it would be in the pawnshops best interests to review the ECSA. The Illinois Secretary of State’s Office has been given authority of the ECSA, including promulgation of rules under the ECSA. The ECSA contains specific provisions relating to the proper creation and securing of electronic records and electronic signatures that your company would be required to comply with. It is recommended that you use the services of either company legal counsel or outside private legal counsel for more information regarding the ECSA. Also note, if the contemplated transaction is interstate or foreign the Electronic Signature in Global and National Commerce Act (E-Sign Act, 15 U.S.C. ch. 96) will most likely apply. Please consult with legal counsel or federal authorities for more information regarding this federal law.

2. Specific Legal Analysis of Pawnbroker Act pertaining to use of Electronic Signature and Remote Access for a Pawn Loan Renewal

Pursuant to the Pawnbroker Regulation Act (205 ILCS 510/) (the “Act”) and custom in the pawn industry, one must physically enter the pawn shop to initiate a pawn transaction. This allows for the pawnbroker to diagnose the person’s physical and mental state and to gain control of the object being pawned. According to Section 2 of the Act, each pawnbroker, when making a loan under the Act, must disclose in printed form on the pawn contract the following information to the persons receiving the loan:

- (1) the amount of money advanced, which must be designated as the amount financed;
- (2) the maturity date of the pawn, which must be at least 30 days after the date of the pawn;
- (3) the total pawn interest and service charge payable on the maturity date, which must be designated as the finance charge;
- (4) the total of payments that must be paid to redeem the pledged goods on the maturity date, which must be designated as the total of payments; and
- (5) the annual percentage rate, computed according to the regulations adopted by the Board of Governors of the Federal Reserve System under the Federal Truth in Lending Act.

So long as the above steps are followed, the Act allows for an extension or renewal of a loan upon terms agreed upon by the parties, provided the terms comply with the requirements of the Act (205 ILCS 510/10). Because an extension of a pawn loan is not an initiation of a transaction one does not need to physically enter a store for an extension. Should a pawnshop wish to make pawn loan extensions via remote devices (computers, applications on smart phones, etc.), the Act does not prohibit them from doing so. If a pawnshop wishes to use remote devices for this reason they must ensure the programs they are using have the same security and protections as is customary practice for online banking. This will ensure a customer's private information is not compromised or lost. Again, if considering the usage of electronic signature technology from remote devices the pawnshop should consult with a legal counsel that specializes in this specific area.

Please note the above analysis is based on the information and representations provided by ***. Should the underlying facts or the intended use of the Pawnshop Application change it is possible the conclusion of the legal opinion could change.

Sincerely,