

**IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT  
SANGAMON COUNTY, ILLINOIS**

ILLINOIS PAWNBROKERS ASSOCIATION; NATIONAL )  
PAWNBROKERS ASSOCIATION; CASH AMERICA INC. )  
OF ILLINOIS; and EZPAWN ILLINOIS, INC., )

Plaintiffs, )

vs. )

ILLINOIS DEPARTMENT OF FINANCIAL AND )  
PROFESSIONAL REGULATION, )

Defendant. )

Case No. 2021CH000043

**COMPLAINT FOR  
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

Plaintiffs, the Illinois Pawnbrokers Association (“IPA”), the National Pawnbrokers Association (“NPA”), Cash America Inc. of Illinois (“Cash America”), and EZPAWN Illinois, Inc. (“EZ” and collectively, “Plaintiffs”), by and through their undersigned counsel, hereby submit this Complaint seeking a declaration that the Predatory Loan Prevention Act (“PLPA”) does not apply to the regulated pawn industry, and permanent injunctive relief preventing Defendant Illinois Department of Financial and Professional Regulation (“IDFPR”) from applying the provisions of the PLPA to pawn transactions. In support of the relief requested herein, Plaintiffs state as follows:

**NATURE OF THE ACTION**

1. Collectively, the Plaintiffs represent most if not all of the regulated pawnbrokers in Illinois. Plaintiffs collectively bring this Complaint because the unjustified actions of the IDFPR are placing the pawn industry in grave danger.

2. In 2019, Illinois pawn shops issued 761,941 pawn tickets for a total of \$180,478,178.97. In 2020, Illinois pawn shops issued 530,417 pawn tickets that provided Illinoisans with \$160,235,172.99 during the COVID-19 global pandemic. Much of these funds

were, and continue to be, provided to un-banked or under-banked individuals who otherwise do not have access to traditional banking and lending services to make ends meet in their day-to-day lives. The average pawn transaction is \$180 or less and is often used for necessities such as food and shelter.

3. The pawn industry serves cash and credit constrained consumers by providing non-recourse funds secured *only* by pledged personal property. Pawnbroker services are essential to the community, which was especially apparent during the COVID-19 pandemic. Indeed, when Illinois's state and local governments enacted shelter-in-place policies to slow the spread of COVID-19, they allowed pawnshops to remain open because governmental authorities recognized pawnbrokers as financial institutions providing essential services to the community.

4. The Illinois pawn industry is governed by the Pawnbroker Regulation Act ("PRA"), which is pawn's enabling statute and sets forth a detailed regulatory framework for the industry with enforcement and oversight from the IDFPR. 205 ILCS 510/1 *et seq.*

5. The PRA, among other things, caps interest rates for pawns at 3% per month, and mandates that the monthly finance charge (including interest and fees) not exceed one-fifth of the advanced amount. 205 ILCS 510/2.

6. On March 23, 2021, Illinois adopted the PLPA. 815 ILCS 123/15-1-1 *et seq.*

7. Nowhere in the text of the PLPA is pawn or pawn's governing statute (the PRA) mentioned or referred to.

8. Nowhere in the legislative history of the PLPA is pawn or pawn's governing statute (the PRA) mentioned or referred to.

9. The Illinois General Assembly did not amend the PRA in the PLPA, even though it amended the governing statutes of the lending industries impacted by the PLPA.

10. Nevertheless, the IDFPR recently issued “Consumer Frequently Asked Questions” that indicate the IDFPR is taking the position that pawn transactions are covered by the recently enacted PLPA. *See* **Exhibit 1**.

11. Application of the PLPA to pawn transactions would destroy the pawn industry. Specifically, the PLPA caps all “charges” at 36% APR (3% per month), approximately 85% lower than what is authorized by the PRA. 815 ILCS 123/15-5-5. It is not economically possible for pawnbrokers to operate profitably under the 36% APR cap imposed by the PLPA because pawnbrokers must pay for appraising, storage, security, insurance, and other collateral costs that lenders in industries expressly covered by the PLPA are not required to pay.

12. The Illinois General Assembly did not intend for the PLPA to apply to pawn transactions or to destroy the pawn industry by passing the PLPA. Plaintiffs therefore seek a declaration from this Court that the PLPA does not apply to the regulated pawn industry. Alternatively, if the PLPA does apply to the regulated pawn industry, Plaintiffs seek a declaration from this Court that it applies harmoniously with the specific PRA provision authorizing pawnbrokers to charge up to 1/5 of the advanced amount per month in interest and fees and/or does not come into effect until the IDFPR rescinds or amends the inconsistent aspects of the PRA’s governing rules and regulations as required by § 15-5-20 of the PLPA.

### **PARTIES**

13. Plaintiff Illinois Pawnbrokers Association is a professional trade association that was founded in 1993 and organized as a not-for-profit corporation pursuant to the laws of the State

of Illinois, with the purpose of educating and assisting independent pawnbrokers operating pawn businesses in the state of Illinois. The IPA currently has 53 members who independently operate 64 shops in Illinois. The IPA's principal office is located at 901 West Rand Road, Arlington Heights, Illinois 60004.

14. Plaintiff National Pawnbrokers Association is a professional trade organization and the pawn industry's only national trade association. The NPA is registered as a not-for-profit corporation in the State of Illinois. The NPA is comprised of approximately 1,100 pawnbroker members, 33 of which are based in Illinois, and other industry partners. The NPA's objective includes industry education and advancing the positive and professional image of the pawn brokering industry throughout North America. The NPA's principal address is P.O. Box 420, Victor, NY 14564.

15. Plaintiff Cash America, Inc. of Illinois is a corporation duly organized pursuant to the laws of the State of Illinois, with its principal corporate address at 1600 W. 7th Street, Fort Worth, Texas 76102, and is engaged in the pawn industry, operating 25 pawnshops in Illinois.

16. Plaintiff EZPAWN Illinois, Inc. is a corporation duly organized pursuant to the laws of the State of Delaware, with its principal corporate address at 2500 Bee Cave Rd. Bldg. 1, Rollingwood, Texas 78746, and is engaged in the pawn industry, operating pawnshops located throughout Illinois.

17. Defendant Illinois Department of Financial and Professional Regulation is an Illinois government entity entrusted with, among other things, enforcing the PLPA and PRA, issuing licenses under the PRA, and regulating the Illinois pawn industry.

## **JURISDICTION AND VENUE**

18. Jurisdiction over this matter and the IDFPR is proper under 735 ILCS 5/2-209(a)(1) (transaction of any business within this State) and Section 2-209(c) (any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States).

19. Venue is proper in this Court pursuant to 735 ILCS 5/2-101 as Defendant IDFPR is a resident of Sangamon County and some of the acts giving rise to the causes of action set forth in the Complaint arose in Sangamon County.

## **FACTS COMMON TO ALL COUNTS**

### **The Pawn Industry**

20. Illinois pawnbrokers provide a simple, immediate, safe, and reliable safety net to those without access to traditional banks or lines of credit.

21. The pawn industry is unique and completely different from other consumer lending like payday, installment, and title loans.

22. The pawn industry serves millions of credit-constrained Illinoisans by providing money in exchange for pledged personal property.

23. Unlike the unsecured and personal-credit based lending specifically targeted by the PLPA, there is no credit check or reporting, collections, bankruptcy, or cycle of debt associated with pawn transactions. In fact, the *only* consequence of not redeeming a pawned item is the loss of that item.

24. Moreover, the industry is, by its nature, environmentally sustainable and contributes to the circular economy by extending the lifecycle of pre-owned items, locally sourced

primarily from forfeited pawn collateral. The pawn industry is also one of the largest recyclers of precious metals and stones in the United States.

25. A pawnshop generally engages in three types of transactions: (1) a pledge of personal property in exchange for cash; (2) buying a piece of personal property outright; and (3) selling secondhand property, either purchased from or forfeited by a customer, to a retail customer.

26. With respect to the first category, a typical pawn transaction involves a customer bringing an item of personal property, the pawnbroker valuing the item, and the pawnbroker providing the customer a cash amount based on that value. That transaction is collateralized solely by the item.

27. Customers can return and redeem their pawned items by paying the amount they were advanced plus interest and fees. If they do not do so, the item is forfeited to the pawnbroker at which point it will be held for a certain grace period. This allows customers a further opportunity to redeem their items. Once the redemption grace period expires, the item is displayed for retail sale at the pawnshop.

28. Unlike other products identified in the PLPA, a pawn transaction depends only on the value of the personal property pledged, not the customer's creditworthiness. In fact, there is *no* credit check or reporting associated with pawn. Because pawn transactions are secured solely by the customer's item, which the pawnbroker stores onsite, there is no legal recourse or repercussion to the customer for non-payment; the pawnbroker simply retains the item.

29. Pawn transactions take approximately 15 minutes.

30. The average pawn transaction is for \$180.00.

31. Over 70% of pawn customers redeem their collateral.

32. Over the term of the pawn, the customer's pledged collateral is insured and stored securely on the premises of the pawnbroker.

33. Pawnbrokers record descriptions of items either sold to the pawnshop or pledged as pawn collateral and report daily to law enforcement.

34. Notably pawnbrokers do not engage in any collection activity or credit reporting. Pawn transactions have no cycle of debt and no repercussions for non-payment, meaning no harassing collection efforts, no credit damaging credit reports or repossession attempts, and no forced bankruptcy. All of these issues accompany the lending industries to which the PLPA expressly applies.

### **Illinois Pawnbroker Regulation Act**

35. The PRA governs the pawn industry in Illinois and specifically dictates the requirements of pawn transactions and the obligations of pawnbrokers. 205 ILCS 510/1 *et seq.*

36. Indeed, the PRA requires that every pawnbroker post Section 2 of the PRA in a prominent location at the pawn shop. *Id.* at § 3.

37. A pawnbroker must be licensed by the IDFPR in order to lawfully operate in Illinois. *Id.* at § 0.05(c).

38. A pawn customer must be at least 18 years old and provide the pawnbroker with valid identification to pawn an item. *Id.* at § 5.

39. The PRA sets forth the terms and permissible finance charges that must be offered to pawn customers. Every pawn transaction must disclose in printed form (a "pawn ticket"): (1) the amount extended for the pledged item, which must be designated as the amount financed; (2) the maturity date of the pawn transaction, which must be at least 30 days after the item was

pledged; (3) the total interest and service charges payable on the maturity date, which must be designated as a “finance charge”; (4) the total number of payments that must be paid to redeem the pledged good(s) on the maturity date; and (5) the “finance charge” converted to an annual percentage rate, computed according to regulations adopted under the Federal Truth in Lending Act. *Id.* at § 2.

40. If the customer chooses not to redeem by the maturity date specified on the pawn ticket, the pawnbroker must automatically give the customer a grace period of 30 additional days from the default date and cannot dispose of or sell the pawned item during that time. *Id.* at § 10.

41. Thus, the typical minimum pawn term totals 60 days—a 30-day term and 30-day grace period.

42. The parties to a pawn transaction may mutually agree to extend or renew it, but any such terms must be in accordance with the PRA. *Id.*

43. The PRA also requires pawnbrokers to make daily reports to the police, which include information regarding all property pawned or purchased during the preceding day, the exact time the items were received or purchased, and a description of the person or persons who pawned or sold the item. *Id.* at § 7.

44. All pawn records are to be maintained for 3 years. *Id.* § 5.

45. The PRA obligates a pawnbroker to replace articles or property that is lost or rendered inoperable, and requires pawnbrokers to maintain insurance coverage equal to at least two times the aggregate value of the outstanding pawn tickets for items held in pawn. *Id.* at § 5.5.

46. Importantly, for purposes of this Complaint, the PRA expressly caps the interest rate a pawnbroker can charge at 3% per month. *Id.* at § 2.



47. A pawnbroker can also receive a monthly service charge, which, inclusive of interest and fees, cannot exceed one-fifth of the transaction amount. *Id.* The monthly service charge, which is expressly not “interest,” is “for appraising, investigating title, storing and insuring the collateral, closing the loan, making daily reports to local law enforcement officers including enhanced computerized reporting, complying with regulatory requirements, and for other expenses and losses of every nature whatsoever and for all other services.” *Id.*

48. The PRA also sets forth that the IDFPR can promulgate rules to regulate the pawnbroker industry. *Id.* at § 0.05.

49. The IDFPR promulgated rules with respect to the licensing and regulation of pawnbrokers. *See* 38 Ill. Reg. 360.100 *et seq.*

#### **The Predatory Loan Prevention Act**

50. On March 23, 2021, Governor Pritzker signed Senate Bill 1792, the PLPA, into law. 815 ILCS 123/15-1-1 *et seq.*

51. The PLPA caps interest rates at a 36% annual percentage rate (APR) for all loans to which the Act applies. *Id.* at § 15-5-5. The 36% APR is to be calculated in accordance with 32 CFR § 232.4 (the military annual percentage rate (MAPR)). *Id.*

52. The PLPA gives IDFPR the authority to adopt rules consistent with the Act and to rescind or amend rules that are inconsistent. *Id.* at § 15-5-20.

53. The PLPA also provides that: “Any administrative rule regarding loans that is adopted by the Department prior to the effective date of this Act and that is inconsistent with the provisions of this Act is hereby preempted to the extent of the inconsistency.” *Id.* at § 15-10-10.

54. In discussing its purpose, the PLPA specifically names consumer installment loans, payday loans, and title loans as the types of loans it applies to. *Id.* Pawn brokering is notably absent.

55. Indeed, the PLPA's provisions amend the Consumer Installment Loan Act, the Payday Loan Reform Act, and the Sales Finance Agency Act. *Id.* at § 15-10-5.

56. The PLPA does not amend the PRA and makes no reference to or mention of the pawn industry, pawn transactions, pawn brokering, or the PRA.

57. The legislative history of the PLPA reveals that the pawn industry was never meant to be impacted by the PLPA; no draft of the PLPA addressed, mentioned or referenced pawn in any way, and no floor debates and committee hearings in the House and Senate ever mention or discuss pawn.

#### **IDFPR Issues Consumer Frequently Asked Questions**

58. On April 28, 2021, over a month after the PLPA was enacted, the IDFPR issued a "Consumer Frequently Asked Questions" (FAQ) that lists "pawn loans" as examples of loans covered by the PLPA. *See* Ex. 1 hereto.

59. This consumer FAQ is the first and only time that the pawn industry has been mentioned in conjunction with the PLPA.

60. Indeed, on April 5, 2021 the IDFPR released an industry-oriented FAQ that never referenced pawn. *See* Ex. 2 hereto.

61. Unlike its actions with respect to the lending industries the PLPA expressly covers, the IDFPR has not issued or provided any formal notice to Plaintiffs or others in the pawn industry about the IDFPR's interpretation of the PLPA or provided the specific basis for its interpretation.

62. The IDFPFPR has not provided any guidance or direction to the pawn industry, including information about how the PLPA and PRA interact, what (if anything) should change from a compliance standpoint in terms of how pawn transactions are to be done, how existing transactions are impacted, and what (if any) steps need to be taken with respect to those existing pawn transactions.

63. The IDFPFPR has not promulgated any rules or regulations with respect to the PLPA and its proposed rulemaking with respect to the PLPA does not address the issues raised herein with respect to pawn.

64. With its April 28, 2021 *consumer* FAQ, the IDFPFPR has not only created a myriad of questions in terms of how the pawn industry in Illinois is supposed to operate, but it has done so while placing a target on the industry's back and opening it up to consumer-facing litigation.

65. If the 36% APR cap in the PLPA were to apply to the pawn industry it would have a devastating effect on the industry and likely lead to the closure of most if not all pawn shops in Illinois because the pawn segment is the main revenue source of the business.

66. Due to the low dollar and short term nature of pawn transactions, the business would not be able to cover its costs, let alone be profitable, if forced to recover only \$3.00 for every \$100.00 it advances. That is an untenable business model.

67. Eliminating the pawn business in Illinois would not only lead to the loss of thousands of jobs and the closure of hundreds of small businesses, it would also cripple a ready source of cash and a stable safety-net that many Illinois consumers (some of whom are small business owners themselves) depend on during this precarious time. The legislature simply did not intend to include pawn or wreak this havoc by enacting the PLPA.

## COUNT I

*(Declaratory judgment pursuant to 735 ILCS 5/2-701 that the PLPA does not apply to pawn)*

68. Plaintiffs restate and reallege paragraphs 1-67 as though fully set forth herein.

69. An actual controversy exists between the parties following the IDFPR's issuance of its April 28, 2021 "Consumer Frequently Asked Questions." Specifically, there is an actual controversy as to whether the PLPA applies to pawn.

70. An immediate and definitive determination is necessary to clarify the rights and interests of the parties.

71. In the event that a declaration of rights is the only relief sought, by statute, such declaration may be set for an early and expedient hearing. *See* 735 ILCS 5/2-701(b).

WHEREFORE, the Plaintiffs pray that this Honorable Court enter an Order:

- (a) Declaring that the PLPA does not apply to pawn;
- (b) Declaring that the April 28, 2021 consumer FAQ sheet constitutes improper rulemaking and is null and void;
- (c) Requiring IDFPR to remove "pawn loans" from its consumer FAQ sheet and requiring it to issue a clarifying FAQ that the PLPA does not apply to pawn; and
- (d) Awarding such other and further relief as justice requires.

## COUNT II

*(In the alternative, declaratory judgment pursuant to 735 ILCS 5/2-701 that the PRA and not the PLPA governs the permissible fees for pawn transactions)*

72. Plaintiff restates paragraphs 1- 67 as though fully set forth herein.

73. If this Court determines that the PLPA does apply to pawn, there still remains an actual controversy as to the scope of that application. Specifically, there is an actual controversy as to whether the PLPA impliedly overrides the PRA's express provision authorizing pawnbrokers to charge interest and service fees of up to 1/5 of the advanced amount.

74. An immediate and definitive determination is necessary to clarify the rights and interests of the parties.

75. In the event that a declaration of rights is the only relief sought, by statute, such declaration may be set for an early and expedient hearing. *See* 735 ILCS 5/2-701(b).

WHEREFORE, Plaintiffs pray that this Honorable Court enter an Order:

- (a) Declaring that the PRA has not been repealed;
- (b) Declaring that Section 2 of the PRA and not the PLPA governs the amount of fees a pawnbroker is allowed to charge in connection with a pawn transaction; and
- (c) Granting such other and further relief as justice requires.

### COUNT III

***(In the alternative, declaratory judgment pursuant to 735 ILCS 5/2-701 that if the PLPA applies to pawn, its provisions are not applicable until the IDFPR rescinds or amends the inconsistent governing rules implementing the PRA)***

76. Plaintiff restates paragraphs 1- 67 as though fully set forth herein.

77. If this Court determines that the PLPA does apply to pawn, there still remains an actual controversy as to the scope of the PLPA's application.

78. Specifically, there is an actual controversy as to when the PLPA became applicable to pawn and whether the IDFPR must rescind or amend the inconsistent aspects of the PRA's

governing regulations before the PLPA can be applied to the pawn industry. *See* 815 ILCS 123 § 15-5-20.

79. An immediate and definitive determination is necessary to clarify the rights and interests of the parties because, as set forth in paragraphs 62 - 64 above, there is a great deal of confusion within the pawn industry with respect to how to operate with the PLPA.

80. In the event that a declaration of rights is the only relief sought, by statute, such declaration may be set for an early and expedient hearing. *See* 735 ILCS 5/2-701(b).

WHEREFORE, Plaintiffs pray that this Honorable Court enter an Order:

- (a) Declaring that the PLPA cannot apply to pawn unless and until the IDFPR amends or rescinds the regulations promulgated by the IDFPR to implement the PRA that are inconsistent with the PLPA; and
- (b) Granting such other and further relief as justice requires.

Illinois Pawnbrokers Association, National  
Pawnbrokers Association, Cash America Inc. of  
Illinois, and EZPAWN Illinois, Inc.,

By: /s/ Irina Dashevsky  
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