

HOLD PROCESS FOR SECONDHAND DEALER AND JUNK DEALER ARTICLES

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House Bill 5256 as introduced
Sponsor: Rep. Peter J. Lucido
Committee: Commerce and Trade
Complete to 2-19-18

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY:

House Bill 5256 would amend Public Act 350 of 1917, which regulates secondhand dealers and junk dealers, to allow an “appropriate law enforcement official” to place a written hold on an article in the possession of a secondhand dealer or junk dealer. An official could place a hold if he or she had probable cause to believe that the article in possession of a secondhand dealer or junk dealer was misappropriated or if a person filed a police report alleging misappropriation of the article. The bill would create a procedure for the holding process by adding Section 6a to the act.

DETAILED SUMMARY:

All of the following would apply to the written hold order under the bill:

- The hold order must include a holding period of less than 90 days, unless extended by a court order.
- The appropriate law enforcement official who placed the hold order could rescind it.
- A law enforcement official could place only one hold on a particular article.

The bill would define “appropriate law enforcement official” as any sheriff or sheriff’s deputy; village or township marshal; officer of any police department of any city, village, or township; or officer of the Michigan State Police.

The hold order would have to include all of the following:

- Name and mailing address of the secondhand dealer or junk dealer.
- Name, title, and identification number of the law enforcement official placing the hold and, if applicable, the claim or report number relating to the property.
- A description of the article, including model and serial number, if applicable.
- The name of the person that reported that the article was misappropriated, unless otherwise prohibited by law.

The law enforcement official would have to sign and date the hold order as evidence that the order was placed.

Ten days after a hold order expired, if the secondhand dealer or junk dealer received no notice that the hold order had been extended, title to the article would vest in the

secondhand dealer or junk dealer. The title to the article would be free of liability for claims, but still subject to the provisions of the act.

A court could grant an extension of a hold order if all the following conditions were met:

- The person that claimed an interest in the article that is adverse to the secondhand dealer or junk dealer filed a report with a law enforcement agency and provided a copy to the court.
- The report was included in the notice from the court to the dealer that it granted an extension.

A secondhand dealer or junk dealer would not be able to release or dispose of an article subject to a hold order, except pursuant to a court order, a written release from the appropriate law enforcement official, or the expiration of the holding period for the hold order.

While a hold order was in effect, the secondhand dealer or junk dealer would be required to release the article on request to the custody of the appropriate law enforcement official for use in a criminal investigation or proceeding related to the ownership claim. The release of the article to the law enforcement official would not be considered a waiver or release of the dealer's property rights in, interest in, or lien on the article.

A law enforcement official or any other person that obtained custody of an article could deliver the property to a person claiming ownership if both the following were met:

- The article is delivered after a court hearing that determines the merits of the claims to the article.
- If the court found against the dealer, the court ordered the seller of the article to make restitution to the dealer for all money that the dealer paid or the value of the property exchanged for the article, and reasonable attorney fees and costs the dealer incurred in defending the action related to the article.

If the court found in favor of the dealer, the article would be returned to the dealer. A dealer would not be liable to any person for any article that is seized from the dealer and unable to be returned.

Finally, the bill would change a requirement that dealers cannot dispose of an article held for less than 15 days. Currently, a seller does not have to retain articles for 15 days if he or she is has no place of business in a building, and if the seller files a report on Monday of each week with the local chief of police. The bill would add to this requirement that the seller also must maintain a separate book or other electronic written record of each article it sells or transfers to a person that includes the name and address of the receiving person and a description of the article.

The bill would take effect 90 days after being enacted into law.

MCL 445.405 and 445.406 and proposed MCL 445.406a

BRIEF BACKGROUND:

The provisions regarding the hold process are nearly identical to those proposed by House Bill 4887, which established a hold process for property held by pawnbrokers. HB 4887 was reported with recommendation from the Committee on Commerce and Trade on November 28, 2017.

FISCAL IMPACT:

House Bill 5256 would have a minor fiscal impact on the Department of State Police and local law enforcement agencies. The requirements to process, store, and relinquish—when necessary—articles in question would impose minor administrative costs on law enforcement agencies, which would be similar to the costs of processing and storing other items obtained as evidence.

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