

HOUSE BILL No. 5256

November 28, 2017, Introduced by Rep. Lucido and referred to the Committee on Commerce and Trade.

A bill to amend 1917 PA 350, entitled

"An act to regulate and license second hand dealers and junk dealers; and to prescribe penalties for the violation of the provisions of this act,"

by amending the title and sections 5 and 6 (MCL 445.405 and 445.406), section 5 as amended by 2008 PA 428, and by adding section 6a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to regulate and license ~~second hand~~ **SECONDHAND** dealers and junk dealers; **TO PROVIDE FOR THE DISPOSITION OF ALLEGEDLY MISAPPROPRIATED ARTICLES IN THE POSSESSION OF SECONDHAND DEALERS AND JUNK DEALERS; TO PROVIDE FOR THE POWERS AND DUTIES OF CERTAIN STATE AND LOCAL GOVERNMENTAL OFFICERS AND ENTITIES;** and to **PROVIDE**

1
2
3
4
5
6

1 **REMEDIES AND** prescribe penalties for the violation of the
2 provisions of this act.

3 Sec. 5. (1) ~~The articles purchased or exchanged shall be~~
4 ~~retained by the purchaser for at least 15 days before disposing of~~
5 ~~them, in an accessible place in the building where the articles are~~
6 ~~purchased and received. A tag shall be attached to the articles~~
7 **SUBJECT TO SECTIONS 6 AND 6A, A SECONDHAND DEALER OR JUNK DEALER**
8 **SHALL NOT DISPOSE OF ANY ARTICLE IT RECEIVES BY PURCHASE OR**
9 **EXCHANGE UNTIL THE ARTICLE HAS REMAINED IN ITS POSSESSION FOR AT**
10 **LEAST 15 DAYS. A SECONDHAND DEALER OR JUNK DEALER SHALL ATTACH A**
11 **TAG TO THE ARTICLE** in some visible and convenient place, with ~~the~~
12 ~~number written thereupon, to correspond with~~ **A NUMBER WRITTEN ON**
13 **THE TAG THAT CORRESPONDS TO** the entry number in the book or other
14 record.

15 (2) ~~The purchaser~~ **A SECONDHAND DEALER OR JUNK DEALER** shall
16 prepare and deliver on Monday of each week to the chief of police
17 or chief law enforcement officer of the local unit of government in
18 which ~~that~~ **IT CONDUCTS** business, ~~is carried on,~~ before 12 noon, a
19 legible and correct paper or electronic copy, in the English
20 language, from the book or other written or electronic record,
21 ~~containing~~ **THAT CONTAINS** a description of each article purchased or
22 received **IN EXCHANGE** during the preceding week, the hour and day
23 when the purchase **OR EXCHANGE** was made, the description of the
24 ~~person~~ **INDIVIDUAL** from whom it was purchased, and a copy of the
25 documentation required under section 4 regarding the ~~person~~
26 **INDIVIDUAL** from whom it was purchased. The statement shall be
27 verified in a manner acceptable to the chief of police or chief law

1 enforcement officer.

2 (3) This section does not apply to old rags, waste paper, and
 3 household goods except radios, televisions, record players, and
 4 electrical appliances and does not require the purchaser to retain
 5 articles purchased from ~~individuals, firms, or corporations having~~
 6 **A PERSON THAT HAS** a fixed place of business after those articles
 7 ~~shall have been~~ **ARE** reported.

8 Sec. 6. ~~If the purchaser or receiver, by exchange or~~
 9 ~~otherwise, as described in section 3, is a peddler or goes about~~
 10 ~~with a wagon to purchase or obtain by exchange or otherwise, any of~~
 11 ~~such articles, and~~ **SUBJECT TO SECTION 6A, IF A SECONDHAND DEALER OR**
 12 **JUNK DEALER** does not have a place of business in a building, ~~he~~
 13 ~~need not retain such~~ **THE SECONDHAND DEALER OR JUNK DEALER IS NOT**
 14 **REQUIRED TO RETAIN** articles for 15 days before ~~selling them,~~
 15 ~~provided on~~ **DISPOSING OF THEM IF THE SECONDHAND DEALER OR JUNK**
 16 **DEALER DOES ALL OF THE FOLLOWING:**

17 (A) **IT MAINTAINS A SEPARATE BOOK OR OTHER WRITTEN OR**
 18 **ELECTRONIC RECORD OF EACH ARTICLE IT SELLS OR OTHERWISE TRANSFERS**
 19 **TO A PERSON THAT INCLUDES THE NAME AND ADDRESS OF EACH PERSON THAT**
 20 **RECEIVED THE ARTICLE AND A DESCRIPTION OF THE ARTICLE.**

21 (B) **ON** Monday of each week, ~~he~~ **IT** files with the chief of
 22 police or chief police officer of the city or village in which ~~he~~
 23 **IT** is located a report ~~showing the place of business~~ **THAT STATES**
 24 **THE NAME AND ADDRESS** of the ~~EACH~~ person to whom such sale was made;
 25 **THAT RECEIVED ARTICLES FROM THE SECONDHAND DEALER OR JUNK DEALER IN**
 26 **THE PRECEDING WEEK AND** a copy of the record required ~~by such~~
 27 ~~section to be kept in a separate book of the articles purchased or~~

1 ~~received during~~ UNDER SUBDIVISION (A) FOR the preceding week. 7
2 ~~including a description of such articles sold, to whom sold and his~~
3 ~~place of business.~~

4 SEC. 6A. (1) IF AN APPROPRIATE LAW ENFORCEMENT OFFICIAL HAS
5 PROBABLE CAUSE TO BELIEVE THAT AN ARTICLE RECEIVED BY AND IN THE
6 POSSESSION OF A SECONDHAND DEALER OR JUNK DEALER IS
7 MISAPPROPRIATED, OR IF A PERSON FILES AN OFFICIAL POLICE REPORT
8 ALLEGING MISAPPROPRIATION OF THE ARTICLE, THE OFFICIAL MAY PLACE A
9 WRITTEN HOLD ORDER ON THE ARTICLE. ALL OF THE FOLLOWING APPLY TO A
10 WRITTEN HOLD ORDER UNDER THIS SUBSECTION:

11 (A) THE HOLD ORDER SHALL SPECIFY A HOLDING PERIOD. THE LENGTH
12 OF THE HOLDING PERIOD SHALL NOT EXCEED 90 DAYS, UNLESS EXTENDED BY
13 COURT ORDER.

14 (B) THE APPROPRIATE LAW ENFORCEMENT OFFICIAL WHO PLACED THE
15 HOLD ORDER MAY RESCIND IT IN WRITING.

16 (C) AN APPROPRIATE LAW ENFORCEMENT OFFICIAL MAY PLACE ONLY 1
17 HOLD ORDER ON A PARTICULAR ARTICLE.

18 (D) THE HOLD ORDER MUST INCLUDE ALL OF THE FOLLOWING
19 INFORMATION:

20 (i) THE NAME AND MAILING ADDRESS OF THE SECONDHAND DEALER OR
21 JUNK DEALER.

22 (ii) THE NAME, TITLE, AND IDENTIFICATION NUMBER OF THE
23 APPROPRIATE LAW ENFORCEMENT OFFICIAL WHO PLACED THE HOLD ORDER AND,
24 IF APPLICABLE, THE NUMBER ASSIGNED TO THE CLAIM OR REPORT RELATING
25 TO THE ARTICLE.

26 (iii) A COMPLETE DESCRIPTION OF THE ARTICLE IN THE POSSESSION
27 OF THE SECONDHAND DEALER OR JUNK DEALER, INCLUDING MODEL NUMBER AND

1 SERIAL NUMBER, IF APPLICABLE.

2 (iv) THE NAME OF THE PERSON THAT REPORTED THAT THE ARTICLE WAS
3 MISAPPROPRIATED, UNLESS OTHERWISE PROHIBITED BY LAW.

4 (v) THE EXPIRATION DATE OF THE HOLDING PERIOD SPECIFIED UNDER
5 SUBDIVISION (A).

6 (2) AN APPROPRIATE LAW ENFORCEMENT OFFICIAL MUST SIGN AND DATE
7 A COPY OF A WRITTEN HOLD ORDER HE OR SHE PLACED ON AN ARTICLE UNDER
8 SUBSECTION (1) AS EVIDENCE THAT HE OR SHE PLACED THE HOLD ORDER AND
9 OF THE DATE THE HOLDING PERIOD SPECIFIED UNDER SUBSECTION (1) (A)
10 BEGINS.

11 (3) ON THE TENTH DAY AFTER A HOLD ORDER PLACED UNDER
12 SUBSECTION (1) EXPIRES, IF THE SECONDHAND DEALER OR JUNK DEALER HAS
13 NOT RECEIVED NOTICE FROM A COURT THAT IT HAS GRANTED AN EXTENSION
14 OF THE HOLD ORDER ON THE ARTICLE, TITLE TO THE ARTICLE VESTS IN AND
15 IS CONSIDERED CONVEYED BY OPERATION OF LAW TO THE SECONDHAND DEALER
16 OR JUNK DEALER, FREE OF ANY LIABILITY FOR CLAIMS AND SUBJECT TO THE
17 PROVISIONS OF THIS ACT.

18 (4) A COURT SHALL NOT GRANT AN EXTENSION OF A HOLD ORDER
19 PLACED ON AN ARTICLE UNDER SUBSECTION (1) UNLESS A PERSON THAT
20 CLAIMS AN INTEREST IN THE ARTICLE THAT IS ADVERSE TO THE SECONDHAND
21 DEALER OR JUNK DEALER HAS FILED A REPORT WITH A LAW ENFORCEMENT
22 AGENCY AND PROVIDED A COPY OF THE REPORT TO THE COURT AND A COPY OF
23 THAT REPORT ACCOMPANIES THE NOTICE FROM THE COURT THAT IT GRANTED
24 THE EXTENSION DESCRIBED IN SUBSECTION (3).

25 (5) EXCEPT AS PROVIDED IN SUBSECTION (6), A SECONDHAND DEALER
26 OR JUNK DEALER SHALL NOT RELEASE OR DISPOSE OF AN ARTICLE THAT IS
27 SUBJECT TO A HOLD ORDER UNDER THIS SECTION EXCEPT PURSUANT TO A

1 COURT ORDER, A WRITTEN RELEASE FROM THE APPROPRIATE LAW ENFORCEMENT
2 OFFICIAL, OR THE EXPIRATION OF THE HOLDING PERIOD OF THE HOLD ORDER
3 DESCRIBED IN SUBSECTION (1) (A) .

4 (6) WHILE A HOLD ORDER IS IN EFFECT, ON REQUEST, THE
5 SECONDHAND DEALER OR JUNK DEALER MUST RELEASE THE ARTICLE THAT IS
6 SUBJECT TO THE HOLD ORDER TO THE CUSTODY OF THE APPROPRIATE LAW
7 ENFORCEMENT OFFICIAL WHO PLACED THE HOLD ORDER FOR USE IN A
8 CRIMINAL INVESTIGATION OR PROCEEDING RELATED TO THE OWNERSHIP
9 CLAIM. THE RELEASE OF THE ARTICLE TO THE CUSTODY OF THE APPROPRIATE
10 LAW ENFORCEMENT OFFICIAL IS NOT CONSIDERED A WAIVER OR RELEASE OF
11 THE SECONDHAND DEALER'S OR JUNK DEALER'S PROPERTY RIGHTS IN,
12 INTEREST IN, OR LIEN ON THE ARTICLE.

13 (7) AN APPROPRIATE LAW ENFORCEMENT OFFICIAL OR ANY OTHER
14 PERSON THAT OBTAINS CUSTODY OF AN ARTICLE UNDER THIS SECTION SHALL
15 NOT DELIVER THE ARTICLE TO ANY PERSON THAT CLAIMS OWNERSHIP OF THE
16 ARTICLE UNLESS BOTH OF THE FOLLOWING ARE MET:

17 (A) THE ARTICLE IS DELIVERED AFTER A HEARING AT WHICH A COURT
18 DETERMINES THE MERITS OF THE CLAIMS TO THE ARTICLE.

19 (B) IF THE COURT FINDS AGAINST THE SECONDHAND DEALER OR JUNK
20 DEALER, THE COURT ORDERS THE PERSON THAT SOLD THE ARTICLE TO OR
21 EXCHANGED THE ARTICLE WITH THE SECONDHAND DEALER OR JUNK DEALER TO
22 MAKE RESTITUTION TO THE SECONDHAND DEALER OR JUNK DEALER FOR ALL
23 MONEY THAT THE SECONDHAND DEALER OR JUNK DEALER PAID OR THE VALUE
24 OF THE PROPERTY EXCHANGED BY THE SECONDHAND DEALER OR JUNK DEALER
25 FOR THE ARTICLE, TOGETHER WITH REASONABLE ATTORNEY FEES AND COSTS
26 THAT THE SECONDHAND DEALER OR JUNK DEALER INCURRED IN DEFENDING THE
27 ACTION RELATED TO THE DISPUTED ARTICLE.

1 (8) IF THE COURT AFTER A HEARING DESCRIBED IN SUBSECTION
2 (7) (A) FINDS IN FAVOR OF THE SECONDHAND DEALER OR JUNK DEALER, THE
3 ARTICLE MUST BE RETURNED TO THE SECONDHAND DEALER OR JUNK DEALER.

4 (9) A SECONDHAND DEALER OR JUNK DEALER IS NOT LIABLE TO ANY
5 PERSON FOR ANY ARTICLE THAT IS SEIZED FROM THE SECONDHAND DEALER OR
6 JUNK DEALER BASED ON THE SECONDHAND DEALER'S OR JUNK DEALER'S
7 INABILITY TO RETURN THE ARTICLE TO THAT PERSON BECAUSE OF THE
8 SEIZURE.

9 (10) AS USED IN THIS SECTION, "APPROPRIATE LAW ENFORCEMENT
10 OFFICIAL" MEANS A SHERIFF OR SHERIFF'S DEPUTY OF A SHERIFF'S
11 DEPARTMENT IN THIS STATE; A VILLAGE OR TOWNSHIP MARSHAL OF A
12 VILLAGE OR TOWNSHIP IN THIS STATE; AN OFFICER OF THE POLICE
13 DEPARTMENT OF ANY CITY, VILLAGE, OR TOWNSHIP IN THIS STATE; OR AN
14 OFFICER OF THE MICHIGAN STATE POLICE.

15 Enacting section 1. This amendatory act takes effect 90 days
16 after the date it is enacted into law.