

SENATE BILL NO. 755

January 23, 2020, Introduced by Senator LUCIDO and referred to the Committee on Regulatory Reform.

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 2018 PA 329, and by adding
section 6a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE
2 An act to regulate and license ~~second hand~~ **secondhand** dealers

1 and junk dealers; **to provide for the disposition of allegedly**
 2 **misappropriated articles in the possession of secondhand dealers**
 3 **and junk dealers; to provide for the powers and duties of certain**
 4 **state and local governmental officers and entities; and to provide**
 5 **remedies and** prescribe penalties for the violation of the
 6 provisions of this act.

7 Sec. 5. (1) Except as provided in subsection (2), **and subject**
 8 **to sections 6 and 6a,** a ~~second hand~~**secondhand** dealer or junk
 9 dealer shall retain each article it purchases or receives in
 10 exchange for at least 15 days before disposing of it, in an
 11 accessible place in the building where the article is purchased and
 12 received. The dealer shall attach a tag to the article in a visible
 13 and convenient place, and write on the tag the number that
 14 corresponds with the entry number in the book or other record.

15 (2) A ~~second hand~~**secondhand** dealer that operates an automated
 16 recycling kiosk may store articles acquired at the kiosk in a
 17 secure off-site location. A dealer ~~must~~**shall** retain an article
 18 stored under this subsection for 30 days, and upon request return
 19 that article to a law enforcement officer of this state without
 20 cost.

21 (3) A ~~second hand~~**secondhand** dealer or junk dealer shall
 22 prepare and deliver on Monday of each week to the local law
 23 enforcement agency of the local unit of government in which the
 24 ~~dealer's~~**dealer conducts** business, ~~is carried on,~~ before 12 noon, a
 25 legible and correct paper or electronic copy, in the English
 26 language, from the book or other written or electronic record, that
 27 contains a description of each article purchased or received in
 28 exchange during the preceding week, the hour and day when the
 29 purchase or exchange was made, a description of the individual from

1 whom it was purchased or received in exchange, and a copy of the
 2 documentation required under section 4 concerning the individual
 3 from whom it was purchased or received in exchange. The statement
 4 shall ~~must~~ be verified in a manner acceptable to the chief of
 5 police or chief law enforcement officer of the local law
 6 enforcement agency.

7 (4) This section does not apply to old rags, waste paper, and
 8 household goods except radios, televisions, record players, and
 9 electrical appliances and does not require a ~~second hand~~ **secondhand**
 10 dealer or junk dealer to retain articles purchased from a person
 11 that has a fixed place of business after those articles are
 12 reported under subsection (3).

13 Sec. 6. ~~If the purchaser or receiver, by exchange or~~
 14 ~~otherwise, as described in section 3, is a peddler or goes about~~
 15 ~~with a wagon to purchase or obtain by exchange or otherwise, any of~~
 16 ~~such articles, and~~ **Subject to section 6a, if a secondhand dealer or**
 17 **junk dealer** does not have a place of business in a building, ~~he~~
 18 ~~need not retain such~~ **the secondhand dealer or junk dealer is not**
 19 **required to retain** articles for 15 days before ~~selling them,~~
 20 ~~provided on disposing of them if the secondhand dealer or junk~~
 21 **dealer does all of the following:**

22 (a) **Maintains a separate book or other written or electronic**
 23 **record of each article it sells or otherwise transfers to a person**
 24 **that includes the name and address of each person that received the**
 25 **article and a description of the article.**

26 (b) **On Monday of each week, he** files with the chief of police
 27 or chief police officer of the city or village in which ~~he~~ **it** is
 28 located a report ~~showing the place of business~~ **that states the name**
 29 **and address of the each person to whom such sale was made, that**

1 received articles from the secondhand dealer or junk dealer in the
2 preceding week and a copy of the record required by such section to
3 be kept in a separate book of the articles purchased or received
4 during under subdivision (a) for the preceding week. , including a
5 description of such articles sold, to whom sold and his place of
6 business.

7 Sec. 6a. (1) If a law enforcement official has probable cause
8 to believe that an article received by and in the possession of a
9 secondhand dealer or junk dealer is misappropriated, or if a person
10 files an official police report alleging misappropriation of the
11 article, the official may place a written hold order on the
12 article. All of the following apply to a written hold order under
13 this subsection:

14 (a) The hold order shall specify a holding period. The length
15 of the holding period shall not exceed 90 days, unless extended by
16 court order.

17 (b) The law enforcement official who placed the hold order may
18 rescind the order in writing.

19 (c) A law enforcement official may place only 1 hold order on
20 a particular article.

21 (d) The hold order must include all of the following
22 information:

23 (i) The name and mailing address of the secondhand dealer or
24 junk dealer.

25 (ii) The name, title, and identification number of the law
26 enforcement official who placed the hold order and, if applicable,
27 the number assigned to the claim or report relating to the article.

28 (iii) A complete description of the article in the possession of
29 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, if applicable, unless otherwise prohibited by law.

4 (v) The expiration date of the holding period specified under
5 subdivision (a).

6 (2) A law enforcement official who places a written hold order
7 on an article under subsection (1) must sign and date a copy of the
8 order as evidence that he or she placed the hold order and of the
9 date the hold period specified under subsection (1)(a) begins.

10 (3) On the tenth day after a hold order placed under
11 subsection (1) expires, if the secondhand dealer or junk dealer has
12 not received notice from a court that it has granted an extension
13 of the hold order on the article, title to the article vests in and
14 is considered conveyed by operation of law to the secondhand dealer
15 or junk dealer, free of any liability for claims and subject to the
16 provisions of this act.

17 (4) A court shall not grant an extension of a hold order
18 placed on an article under subsection (1) unless a person that
19 claims an interest in the article that is adverse to the secondhand
20 dealer or junk dealer has filed a report with a law enforcement
21 agency and provided a copy of the report to the court, and a copy
22 of that report accompanies the notice from the court that it
23 granted the extension described in subsection (3).

24 (5) Except as provided in subsection (6), a secondhand dealer
25 or junk dealer shall not release or dispose of an article that is
26 subject to a hold order under this section unless the release or
27 disposal is pursuant to a court order, a written release from the
28 law enforcement official who placed the hold order, or the
29 expiration of the holding period of the hold order specified under

1 subsection (1) (a) .

2 (6) While a hold order is in effect, the secondhand dealer or
3 junk dealer shall release upon request the article that is subject
4 to the hold order to the custody of the law enforcement official
5 who placed the hold order for use in a criminal investigation or
6 proceeding related to an ownership claim. The release of the
7 article to the custody of the law enforcement official is not
8 considered a waiver or release of the secondhand dealer's or junk
9 dealer's property rights in, interest in, or lien on the article.

10 (7) A law enforcement official or any other person that
11 obtains custody of an article under this section shall not deliver
12 the article to any person that claims ownership of the article
13 unless both of the following are met:

14 (a) The article is delivered after a hearing at which a court
15 determines the merits of the claims to the article.

16 (b) If the court described in subdivision (a) finds against
17 the secondhand dealer or junk dealer, the court orders the person
18 that sold the article to, or exchanged the article with, the
19 secondhand dealer or junk dealer to make restitution to the
20 secondhand dealer or junk dealer for all money that the secondhand
21 dealer or junk dealer paid, or the value of the property exchanged
22 by the secondhand dealer or junk dealer for the article, together
23 with reasonable attorney fees and costs that the secondhand dealer
24 or junk dealer incurred in defending the action related to the
25 disputed article.

26 (8) If the court after a hearing described in subsection
27 (7) (a) finds in favor of the secondhand dealer or junk dealer, the
28 article must be returned to the secondhand dealer or junk dealer.

29 (9) A secondhand dealer or junk dealer is not liable to any

1 person for any article that is seized from the secondhand dealer or
2 junk dealer based on the secondhand dealer's or junk dealer's
3 inability to return the article to that person because of the
4 seizure.

5 (10) As used in this section, "law enforcement official" means
6 a sheriff or sheriff's deputy of a sheriff's department in this
7 state, a village or township marshal of a village or township in
8 this state, an officer of the police department of any city,
9 village, or township in this state, or an officer of the Michigan
10 state police.

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