AGENDA Item 7
March 31, 2009
Action

MEMORANDUM

TO: County Council

FROM: Robert H. Drummer, Legislative Attorney

SUBJECT: **Action:** Expedited Bill 33-08, Secondhand Personal Property - Amendments

Public Safety Committee recommendation: approve the Bill with amendments.

Expedited Bill 33-08, Secondhand Personal Property - Amendments, sponsored by the Council President at the request of the County Executive, was introduced on October 28, 2008. A public hearing was held on November 18 and the Public Safety Committee held worksessions on the Bill on December 4, 2008, February 5, 2009 and March 19, 2009.

Bill 33-08 would clarify that the County secondhand personal property law applies to certain individuals making or assisting in sales over the internet. This Bill would also modify the reporting requirements for dealers in secondhand property, prohibit transactions in secondhand property involving minors, establish guidelines for seizing certain secondhand personal property, extend the amount of time a dealer must hold secondhand personal property, eliminates the current exception for dealers who derive less than 10% of their gross personal property sales from the sale of secondhand personal property, and generally amend the secondhand personal property law.

Background

The County's Secondhand Personal Property Law was first enacted in 1983. This law provides law enforcement officials with a tool necessary to recover stolen property and identify suspects who commit crimes in the County. The law requires a dealer in secondhand personal property to obtain a license from the Office of Consumer Protection, report all transactions to the Police, and hold all property received for a certain period of time after reporting the transaction. The Police can then check stolen property reports against the list of secondhand personal property received or sold by dealers. Neighboring jurisdictions have enacted similar laws and the law enforcement officials in all local jurisdictions work together to help solve these crimes. For example, the County Police recently arrested a suspect in a series of violent crimes in the County due to the transaction report from a dealer located in Prince George's County of the sale of secondhand personal property owned by one of the victims. See ©17-18.

The Maryland Secondhand Precious Metal Object Dealers and Pawnbrokers Act, codified at Md. Business Regulation Article, §§12-101 – 12-601, regulates dealers of secondhand

precious metals and certain pawnbrokers of other secondhand personal property in the State. Section 12-102(c) expressly authorizes county laws regulating pawnbrokers in the county unless they are dealers in precious metals or coins. The State law has been interpreted to apply to pawnbrokers only while they are acting as a covered dealer in a specific transaction, and a county is free to regulate transactions in other types of secondhand personal property by these dealers. See, *Hamdan v. Klimovitz*, 124 Md. App. 314, 326-328 (1998).

The December 4 Worksession

The Committee discussed Expedited Bill 33-08 at a worksession on December 4, 2008 after receiving background information from Police Department representatives. The Committee agreed (3-0) to recommend the Bill for approval as introduced. However, an affected business owner, Michael J. Hadad, approached the Chair after the worksession ended and expressed concerns with the Bill. Mr. Hadad followed up with a letter attached at ©37-39 explaining his concerns with the Bill. Since the Committee did not have the opportunity to hear Mr. Hadad's concerns and the Police Department's response to these concerns (see ©40-42), the Chair scheduled a second worksession on the Bill.

Mr. Hadad owns a business that assists customers to sell secondhand personal property over the internet. Mr. Hadad requested that the Bill be amended to exclude internet trading assistant businesses such as his.

The February 5 Worksession

The Committee discussed Expedited Bill 33-08 at a second worksession on February 5, 2009. The Committee heard from Michael J. Hadad, the owner of "iSold It" in Gaithersburg and William Lemer and Davis Kiyonaga, owners of "Drop & Ship" in Bethesda. Both businesses operate a store in the County that receives secondhand personal property from customers and sells it through the eBay internet auction site for a fee. These business owners generally oppose the application of this Bill to their businesses and specifically opposed the Bill's mandatory 30 day holding period. Captain J. Mitchell Cunningham and Maureen Walter of the Police Department explained the Bill is designed to apply equally to all possible businesses that could provide an avenue for the sale of stolen secondhand personal property. The Committee did not decide these issues. The objections from these business owners are described as Issues 3 & 4 below.

The March 19, 2009 Worksession

The Committee again discussed Expedited Bill 33-08 at a third worksession on March 19. The Committee recommended (2-0, Councilmember Berliner absent) that the Bill be enacted with the following amendments:

1. reduce the mandatory retention period for dealers from 30 days to 21 days; and
2. delete the mandatory reporting of a customer's social security number.

Issues

1. What are the laws in other local jurisdictions?

Prince George's County – The County has enacted a Secondhand and Pawn Dealer Law. See ©21-22. Code §5-238 has a 30 day retention period similar to the extended retention period in Bill 33-08. Code §5-236 prohibits transactions with minors. The definition of dealer includes businesses that receive property for money, trade, barter, or other valuable consideration. There is no exception for businesses that derive less than 10% of gross sales from secondhand personal property.

Anne Arundel County – Title 12 of the County Code regulates pawnbrokers. See ©23-26. There is a 30 day retention period for dealers. Transactions with minors are prohibited. There is no exception for businesses that derive less than 10% of gross sales from secondhand personal property. The definition of dealer may not include internet facilitators.

Howard County – The County has a law regulating pawnbroker and secondhand dealers. See ©27-34. The definition includes internet facilitators. Transactions with minors are prohibited. There is a normal 10 day holding period with an option for the Police to extend it for an additional 12 days for good cause. There is no exception for businesses that derive less than 10% of gross sales from secondhand personal property.

2. Should transactions with minors be prohibited?

Bill 33-08 would add a prohibition on transactions with minors. This would align the County law with laws in other local jurisdictions. Unfortunately, thefts of personal property by minors occur all too frequently. **Committee recommendation (3-0):** approve this provision of Bill 33-08.

3. Should the definition of dealer be expanded to include businesses that facilitate transactions in secondhand personal property through the internet?

The internet has opened up many new opportunities for people to transact business. The ability to place an item for sale or auction on the internet has dramatically increased the ability of merchants of all types to market items beyond their local area. This change has also benefited dealers in secondhand personal property. One of the new business models created by the change in technology has been a business that markets, for a fee, secondhand personal property over the internet for a customer without purchasing the item. The inclusion of these internet facilitators in the coverage of this law would prevent them from marketing stolen secondhand personal property for anonymous customers.

Mr. Hadad, in his letter of December 12 attached at ©37-39, argues that the extension of Bill 33-08 to his "iSold it on eBay" franchise would force him and other similar businesses to close down. Mr. Hadad's business provides locations for customers to drop off secondhand personal property. Mr. Hadad lists the items for sale on eBay under his business name. If the

item is sold, Mr. Hadad ships the item to the purchaser and pays the proceeds to his customer by check after deducting his fee. Mr. Hadad stated that his average sale is approximately $120 and the average service fee is $36. Mr. Hadad claims that his business has $50,000 of eBay sales per month. Mr. Hadad argues that the present law does not apply to his business since he is not a pawn shop, and he therefore does not report these sales to the Police or hold the items before selling them for the statutory holding period. Mr. Hadad points out that all eBay transactions are open to inspection on the internet during the auction period of up to 10 days. Finally, Mr. Hadad claims that his business has not had "a single problem regarding stolen property" in their 3 years of operation. Mr. Lemer and Mr. Kiyonaga of "Drop and Ship" have a similar business model and made similar arguments.

Police Chief Manger's response is attached at ©40-42. First, the County's Office of Consumer Protection has interpreted current law to include eBay trading assistants such as iSold it on eBay. In fact, Eric Friedman told Mr. Hadad that his business was covered by current law in an exchange of letters in 2007 attached at ©43-50. The Office of Consumer Protection has not taken an enforcement action against Mr. Hadad for failing to apply for or receive a secondhand personal property dealer's license. Bill 33-08 would clarify current law to include eBay trading assistants who receive secondhand personal property for sale to others. Mr. Hadad claims that jurisdictions have not applied secondhand personal property laws to eBay trading assistants. However, the Maryland General Assembly enacted amendments to the State secondhand precious metal object dealer law to expressly include businesses who arrange for sale of objects on Internet auction sites. See Chapter 591 of the 2008 Laws of Maryland at ©51-53 and the Fiscal and Policy Note for Chapter 591 (Senate Bill 569) at ©54-56. Therefore, even if Mr. Hadad is correct that current County law does not include eBay trading assistants, the State law requires his business to report all sales of secondhand precious metal objects.

Chief Manger also disputes Mr. Hadad's contention that stolen property is not sold on eBay or other internet auction sites. The Chief points out that Mr. Hadad did not report any of his 20,000 sales over the last 3 years, preventing the police from checking these items against stolen property reports before the sales are consummated. The Chief also attached several media reports of stolen property being sold on eBay. In addition, many licensed secondhand personal property dealers in the County also sell property on eBay. However, they report transactions to the Police and comply with the statutory holding period before completing the transaction.

Mr. Hadad, on behalf of Mr. Lemer, Mr. Kiyonaga and himself, sent a follow-up letter to the Committee after the February 5 worksession dated February 11, 2009. See ©19-20. Mr. Hadad continues to argue that his business does not deal in stolen secondhand personal property. He offered to permit the Police Department to check all items sold by both businesses in the last year against the Department's stolen property list. Captain Cunningham responded in a letter dated March 2, 2009 attached at ©57-58. Captain Cunningham argues that eBay trading businesses remain a viable avenue for the sale of stolen secondhand personal property whether or not these 2 businesses have received stolen property in the last year.

Internet auction sites such as eBay are excellent venues for the sale of secondhand personal property. Thefts routinely result in the sale of secondhand personal property. It seems reasonable to assume that some of the secondhand personal property sold on internet auction

sites is stolen. While a thief may attempt to list stolen property on eBay directly, an eBay trading assistant business permits a person to list secondhand personal property for sale on eBay anonymously under the name of the business. Finally, both Howard County and the State of Maryland have already included these internet auction businesses within their secondhand personal property laws. **Committee recommendation (2-0, Councilmember Berliner absent):** approve the revised definition to include internet auction businesses.

4. Should the mandatory retention period for dealers be extended from 18 days to 30 days?

The testimony from the Police Department at the public hearing supported this extension of the holding period. The additional time would give the Police more time to match stolen property reports with secondhand personal property reports from dealers. This 30 day period is consistent with the laws in both Prince George's and Anne Arundel Counties. The Bill would extend both the standard holding period to 30 days and permit the Police to require an additional 30 day holding period for property where there is evidence of theft.[1]

The extension of the mandatory holding period from 18 to 30 days was strongly opposed by Mr. Hadad, Mr. Lemer, and Mr. Kiyonaga. They argue that they normally list an item for sale on eBay within one week of receipt. The item is normally subject to a 7 day auction on eBay. Once the item is sold, they must ship it to the purchaser immediately or risk a negative rating on the eBay site. Therefore, they argue that the 30 day holding period would hurt their business by forcing them to delay listing the property for several weeks. They requested the Committee to reduce the mandatory holding period from 18 to 10 days for their businesses. See ©19. Captain Cunningham strongly opposed any amendment to create a different holding time for internet auction businesses. See ©57-58. The Police Department offered to compromise between the current 18 day holding period and the 30 day holding period in the Bill by creating a 21 day holding period for all secondhand personal property dealers.

Creating a separate shorter holding period for items sold on internet auction sites would provide a loophole for all secondhand personal property dealers. A traditional pawnshop could reduce its holding period by simply selling the property on eBay – a practice that many already use. Extending the holding period to 21 days for all dealers seems reasonable. It would give the Police Department more time to check secondhand personal property reports against their stolen property lists and would not unduly delay the listing of secondhand property on internet auction sites. Property cannot be sold, but can be listed for sale, during this 21 day period.
Committee recommendation (2-0, Councilmember Berliner absent): approve the extension of the initial mandatory holding period from 18 to 21 days and the discretionary additional holding period from 18 to 30 days.

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[1] Md. Business Regulation Art. §12-401 requires a dealer to release suspected stolen property to the police in all Counties and permits the local police to require an additional holding period of 12 days for such property. Current County law authorizes the police to require an additional holding period of 18 days. Although this 12 day period raises an issue of State preemption of the 30 day period, we believe that a longer period in County law does not directly conflict with the State law and is therefore not preempted. See ©35-36.

5. Should the Bill be amended to remove precious metals, coins, or numismatic items from the definition of secondhand personal property?

Md. Business Regulation Art. §12-102(d) provides that a "county or municipal corporation may not enact a law to regulate dealers, coins, or numismatic items." Section 12-101(b) defines a "dealer" as a business trading in "secondhand precious metal objects." These statutory provisions preempt County laws regulating transactions in these secondhand precious metals, coins, or numismatic items. In order to prevent confusion, the Bill should be amended to expressly exclude these items from the definition of personal property. **Committee recommendation (3-0):** do not amend the Bill to remove precious metals, coins, or numismatic items from the definition of secondhand personal property.

6. Should reports to the Police require the customer's social security number, date of birth, and physical description?

Mr. Hadad, in his February 11 letter requested the Committee to amend the Bill to delete the current requirement that reports to the Police include the customer's social security number, date of birth, and physical description. See ©20. Mr. Hadad suggested that a driver's license number and a physical address would be enough. The Police Department representatives indicated at the worksession that they do not normally receive the social security number of the customer from dealers, but they do receive the date of birth and physical description since it is located on the driver's license.

Identity theft through social security numbers has grown since the law was first enacted in 1983 and many people are legitimately concerned about releasing their social security numbers. Deleting a required social security number from the reports filed by all dealers is reasonable. However, the date of birth and physical description are both listed on a person's driver's license and do not raise a similar identity theft problem. **Committee recommendation (2-0, Councilmember Berliner absent):** delete the reference to social security number on line 56 of the Bill.

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Expedited Bill No. 33-08
Concerning: Secondhand Personal Property- Amendments
Revised: March 26, 2009 Draft No. 5
Introduced: October 28, 2008
Expires: April 28, 2010
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN EXPEDITED ACT to:

(1) clarify that the County secondhand personal property law applies to certain individuals making or assisting in sales over the internet;
(2) modify the reporting requirements for dealers in secondhand property;
(3) prohibit transactions in secondhand property involving minors;
(4) establish guidelines for seizing certain secondhand personal property; and
(4) generally amend the secondhand personal property law.

By amending
Montgomery County Code
Chapter 44A, Secondhand Personal Property

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Chapter 44A is amended as follows:

44A-1. Definitions.

When used in this [chapter]Chapter:

[(a)] *Dealer* means [any] a person conducting the business of buying, [obtaining, acquiring or] receiving, or marketing secondhand personal property in the County, including: [and any person engaged as]

(1) an auctioneer; and

(2) a person who buys, receives, markets, or assists in the sale of secondhand personal property through the internet or another electronic method.

[(b)] *Director* means the [director of the department of police] Chief of Police.

[(c) *Merchant* means a person who regularly deals in personal property or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practice or goods involved in transactions involving personal property or to whom such knowledge or skill may be attributed by employment of an agent or broker or other intermediary who, by his occupation, holds himself out as having knowledge or skill relating to personal property.]

[(d)] *Person* [means] includes an individual, corporation, business trust, estate, trust, partnership association, [two (2)] 2 or more persons having a joint or common interest, or any other legal or commercial entity.

[(e)] *Personal property* [means] includes radios and other audio equipment; televisions and other video equipment; photographic, optical and computer equipment; typewriters, calculators and other electronic or electrical home or office appliances, machines or equipment; firearms; bicycles; jewelry; furs, leather goods; watches; paintings; fine or historic china, crystal, glass or porcelain; *objets d'art;* power tools; carpets and rugs; musical instruments;

29 and any item serialized, marked for [personal] identification purposes, or
30 engraved.
31 *Police* means the County Police Department or another police department
32 having jurisdiction.
33 [(f)] *Secondhand personal property* means previously owned personal
34 property [which is] offered for sale or as collateral by any person, other than
35 [a] the manufacturer, wholesale distributor, or original retail seller, acting in
36 the ordinary course of business. [It] Secondhand personal property does not
37 include personal property purchased at a public sale.
38 [(g)] *Public sale* means a sale open to the public and held in a location open
39 and accessible to the public, [pursuant to] with sufficient public notice of the
40 time and place of the sale [such as will afford] to give the public a
41 reasonable opportunity to participate [in the sale].
42 * * *
43 **44A-3. Required books and records; reporting requirements.**
44 (a) A dealer [shall] must keep all [business books] records and receipts
45 required by this section at the business location for a minimum of [one
46 (1)] 1 year from the date of the latest [transaction] recorded
47 transaction [in said book].
48 (b) A dealer [shall cause a written] must keep an electronic record, in
49 [the] English [language], [to be made] of each [transaction involving
50 a] purchase[, acquisition] or receipt by or on behalf of the dealer [of
51 secondhand personal property] at the time of the transaction. Each
52 transaction [shall] must be recorded in [a] an electronic format
53 specified by [executive] regulation[, adopted by the county executive]
54 under method (3), [of section 2A-15 of this Code, and shall contain]
55 which contains the following information:

56 (1) The name, date of birth, address, [[social security number,]]
57 race, sex [and], physical description, and signature of the person
58 selling the item;
59 (2) The driver's license number or similar proof of identification of
60 the person selling the item;
61 (3) The date and time of the transaction;
62 (4) The identification, including signature, of the person making
63 the record entry;
64 (5) A full physical description of each item purchased[, obtained,
65 acquired] or received by the dealer, including but not limited to,
66 shape, size, color, and a [listing] list of all numbers, marks,
67 monograms, trademarks, manufacturer's names, serial numbers,
68 inscriptions and any other marks of identification appearing on
69 the item; and
70 (6) The consideration paid for each item or set of items [for which
71 a separate price was negotiated].
72 (c) A dealer must give the Police:
73 (1) electronic notice of each transaction within 24 hours after the
74 transaction; and
75 (2) [submit] a copy of the written record of each transaction
76 required in [paragraph] subsection (b) [to the Montgomery
77 County Department of Police] within [seven (7)] 7 days after
78 the transaction [identified in the written record].
79 **44A-4. Retention of secondhand personal property.**
80 (a) A person [may] must not sell, melt, change or alter (except for
81 customary testing), take apart, destroy, obliterate identification marks,
82 or dispose of any secondhand personal property purchased[, obtained,

83 acquired] or received by a dealer until [eighteen (18)] [[30]] 21 days
84 [have elapsed from the date of compliance with the reporting
85 requirements of section 44A-6] after the record of the transaction is
86 submitted to the Police.
87 (b) All secondhand personal property purchased[, obtained, acquired] or
88 received by a dealer [shall] must be stored at the dealer's business
89 location until [eighteen (18)] [[30]] 21 days [have elapsed from the
90 date of compliance with the reporting requirements of section 44A-6]
91 after the record of the transaction is submitted to the Police, or for
92 such additional time [as to] per any specific item [or items] as [may be
93 directed by the director or his designee] the Police require. All stored
94 items [being so stored shall] must be identified by a tag attached to the
95 property numbered [in a manner] to correspond with the number of
96 the transaction [description in the business records required to be kept
97 by section 44A-3] record. Items purchased in bulk may be tagged in
98 bulk. The storage requirements in this subsection do not apply to a
99 [Consignees] consignee who: [need not comply with the foregoing
100 storage requirements, provided they]
101 [(i) operate] (1) operates from a fixed place of business[,];
102 [(ii) comply] (2) complies with the tagging requirements of this
103 subsection[,]; and
104 [(iii) withhold] (3) withholds payment for consignments for at least
105 [eighteen (18)] 30 days [from the date they are] after each item
106 is received.
107 (c) Items may be stored at other locations in [Montgomery] the County
108 approved by the [director] Police. The dealer [shall] must produce
109 these items at the business location within [one (1)] 1 hour [of] after a

request to do so by [a police officer] the Police. [having jurisdiction. Where compliance is impossible because of] A dealer who cannot comply with a request to produce an item made after regular business hours [the close of business hours, the item shall be produced within one (1)] must produce the item within 1 hour [of] after the opening of business on the next business day.

[(c)](d) The requirements of subsections (a), [and] (b), and (c) [shall] do not [be applicable] apply to [any] secondhand personal property which has been inspected and [received written clearance] cleared for earlier disposition by the [director or his designee in accordance with] Police under regulations adopted [by the county executive] under method (3) [of section 2A-15 of this Code].

44A-5. [Exemption for certain dealers.] Transactions involving minors prohibited.

[The county executive may, by regulation adopted under method (3) of section 2A-15 of this Code, modify or eliminate the licensing, holding, record keeping or reporting requirements of this chapter as they pertain to dealers who derive less than ten (10) percent of their gross personal property sales from the sale of secondhand personal property.] A dealer must not buy or receive any secondhand personal property from a person under 18 years old.

44A-6. [Report to Montgomery County department of police; regulations and forms] Confidentiality of reports to Police.

[A dealer shall deliver to the director, or his designee, on or before the first business day of each week, a complete, correct and legible copy of the information required to be kept in section 44A-3, on forms prescribed by the director for all secondhand personal property purchased, obtained, acquired or received since the date of the last report. These] The reports [shall be considered] to the Police

137 required by Section 44A-3 are confidential information for use by law enforcement
138 agencies for law enforcement purposes. The full physical description of reported
139 items may, however, be shown to private individuals [for the purpose of] to aid in
140 identifying stolen property.

141 **44A-7. Inspection by [Montgomery County department of] police; release of**
142 **stolen property.**

143 (a) A dealer [shall] must permit [any officer of the Montgomery County
144 department of police, or other police departments having jurisdiction]
145 the Police, to:
146 (1) examine the [books and] records required by this [chapter]
147 Chapter;
148 (2) [to] examine any personal property purchased, [obtained,
149 acquired,] received, or stored at the business location; and
150 (3) [to] require retention for an additional [eighteen (18)] 30 days
151 [beyond] after the storage retention period [specified above]
152 under Section 44A-4, of any property [known or believed by]
153 which the police know or believe to be missing or stolen.
154 (b) A dealer must release to the Police an item of secondhand personal
155 property, other than a security or printed evidence of indebtedness,
156 located at the dealer's place of business [of the dealer] if:
157 (1) the Police have reasonable cause to believe that the item was
158 stolen;
159 (2) the owner of the item or victim of the theft has positively
160 identified the item;
161 (3) the owner of the item or the owner's agent or designee has
162 provided an affidavit of ownership;
163 (4) the stolen property report describes the item by:

164 (i) a date;
165 (ii) initials it bears;
166 (iii) an insurance record;
167 (iv) a photograph;
168 (v) a sales receipt;
169 (vi) a serial number;
170 (vii) specific damage;
171 (viii) the facts that show that the item is one of a kind; or
172 (ix) a unique engraving; or
173 (5) the property is involved in an on-going criminal or
174 administrative proceeding where violations of this Chapter have
175 occurred.
176 (c) The Police must give the dealer a receipt for each item of secondhand
177 personal property released to the Police pursuant to subsection (b).
178 The receipt must:
179 (1) describe the item; and
180 (2) notify the dealer of the right to request a statement of charges
181 against the individual who sold or gave the item to the dealer
182 for theft under State law.
183 **44A-8. Application for license; license fee.**
184 (a) [Each application for a license must be made on the form that the] The
185 Office of Consumer Protection [requires. The] must make available an
186 application form for a dealer's license that requires an applicant
187 [must] to certify that the information given is correct under the
188 penalties of perjury.
189 (b) [The annual license fee for each license shall be established by the
190 County] The Executive, by [written] regulation adopted under method

191 (3) [of Section 2A-15 of this Code], must set a license fee in an
192 amount that does not [to] exceed the estimated costs of administering
193 and enforcing this Chapter.
194 (c) [Each] The dealer must agree in the application [for a dealer's license
195 shall contain a statement] to:
196 (1) [that the applicant authorizes] authorize the [Montgomery
197 County Department of] Police [or other police departments
198 having jurisdiction] to inspect the [books,] records, inventory,
199 and premises of the business during normal business hours[,
200 and a statement that the dealer agrees];
201 (2) [to] pay for the purchase of any secondhand personal property
202 by check; and
203 (3) not [to] cash any [such] check, except a check issued by the
204 dealer to pay for secondhand personal property or as permitted
205 by [executive] regulation adopted [by the County Executive]
206 under method (3)[of Section 2A-15 of this Code].
207 (d) Only individuals may apply for a dealer's license.
208 (1) [If an] A license application [for a license is made] on behalf of
209 a corporation or limited partnership[, the license shall] must be
210 applied for by and issued to the president of the corporation or
211 one or more members of the partnership who are authorized to
212 act for it.
213 (2) [If the application is made] A license application on behalf of a
214 partnership[, the license shall] must be applied for by and
215 issued to all of the partners who are authorized to act for the
216 partnership. [Where any partner is a corporation or limited
217 partnership, the application shall be made by and issued to the

218 president of the corporation or members of the limited
219 partnership who are authorized to act for it.]
220 (3) Each individual who applies for a dealer's license under this
221 Section assumes, as an individual, all responsibilities of the
222 dealer and, as an individual, is subject to all conditions,
223 restrictions and requirements imposed on dealers.

224 **44A-9. Payments by check.**

225 A dealer must pay for [the purchase of all] each item of secondhand personal
226 property by check, except as permitted by [executive] regulation [adopted by the
227 [county executive] under method (3)[of section 2A-15 of this Code].

228 * * *

229 **44A-11. Expiration and renewal of license; prohibition on transfer.**

230 (a) Each license issued under this [chapter] Chapter expires July 30 of
231 each year.
232 (b) A license issued under this [chapter] Chapter may be renewed on
233 application and payment of a fee, established by [the county executive
234 by] regulation [adopted] under method (3)[of section 2A-15 of this
235 Code, which shall not exceed the estimated costs of administration
236 and enforcement].
237 (c) A license [may] must not be transferred or assigned.

238 * * *

239 **44A-13. Hearing; appeals.**

240 (a) [Before revoking, suspending or refusing to renew any license, the]
241 The Office of Consumer Protection must offer [the dealer] an
242 applicant or licensee an opportunity for a hearing [to show cause why
243 a license should not be revoked, suspended or refused] before
244 denying, revoking, suspending, or refusing to renew a license. The

245 Director of the Office of Consumer Protection may serve as hearing
246 officer [at the hearing,] or the Director may appoint a hearing officer.
247 The Director of the Office of Consumer Protection must give the
248 applicant or licensee [must receive at least 15 days] written notice of
249 the hearing by personal service or certified mail delivered to the last
250 address recorded in the official County registry at least 15 days before
251 the date of the hearing. The notice must:
252 (1) specify the time, date and place of the hearing;
253 (2) [and]contain sufficient information to inform the applicant or
254 licensee of the reason for denying, revoking, suspending, or
255 refusing to renew the license;
256 (3) [The notice must] specify that the applicant or licensee has a
257 right to representation by counsel; and
258 (4) state that the license may be denied, suspended, revoked, or
259 refused by the County.
260 (b) The hearing officer[, upon finding a violation of this Chapter, or the
261 violation of any of the provisions of Chapter 11 of this Code, or the
262 violation of any other applicable provision of law or regulation
263 relating to conducting business as a dealer, shall have the power to]
264 may deny, revoke, suspend, or refuse to renew the license of any
265 dealer if the hearing officer finds a violation of:
266 (1) this Chapter;
267 (2) Chapter 11; or
268 (3) any other applicable law or regulation which applies to
269 conducting business as a dealer.
270 (c) [Any] A decision to deny, revoke, suspend, or refuse to renew a
271 license [shall] must be in writing and [shall include a statement of]

272 specify the facts [upon] on which it is based. [Decisions shall] Each
273 decision must be served [upon] on the dealer by personal service or
274 [by] certified mail. [Any] A dealer aggrieved by [any] a decision to
275 deny, revoke, suspend, or refuse to renew a license may appeal to the
276 circuit court for the County in accordance with the procedure
277 prescribed for administrative appeals by the Maryland Rules of
278 Procedure.

279 **44A-14. Return of licenses on suspension or revocation.**

280 (a) If the license of [any employee or] a dealer is suspended, revoked or
281 not renewed, the [employee or] dealer must immediately return the
282 license to the Office of Consumer Protection.

283 (b) At the end of a suspension, the Office must return the license [shall be
284 returned] to the [employee or] dealer.

285 **44A-15. Computer reporting of information.**

286 (a) The [Montgomery County department of police is authorized to
287 transfer] Police may maintain the information received [pursuant to]
288 under this [chapter] Chapter [into] in a computer [information system]
289 program [and to report the information in such forms as] in a form
290 that [the department of police may determine] is useful in [department
291 of] police investigations.

292 (b) The [department is encouraged to] Police should coordinate the form
293 and content of the information required by Section 44A-3 in order to:

294 (1) [and]share [such] the information with [cognizant] law
295 enforcement agencies [and] in neighboring jurisdictions;

296 (2) [to] maximize the usefulness of [such] the recordkeeping; and

297 (3) make [uniform] the requirements on dealers uniform in each
298 jurisdiction.

299 **44A-16. Regulations; restitution.**

300 The [county executive shall] Executive must adopt reasonable and necessary
301 regulations under method (3) [(2) of section 2A-15 of this Code, reasonable and
302 necessary regulations for the implementation and administration of] to implement
303 and administer this [chapter] Chapter [. These regulations] which may [include
304 provisions providing for the county to, and the county may,] authorize the County
305 to obtain restitution on behalf of an injured party.

306 **44A-17. Penalties.**

307 (a) Any person [violating any provisions of] who violates this [chapter
308 shall be] Chapter is subject to punishment for a class A violation [as
309 set forth in section 1-19 of chapter 1 of the County Code]. Each day
310 that a violation continues [shall be] is a separate offense.

311 (b) The Director of the Office of Consumer Protection may file an action
312 in any court with jurisdiction to enjoin any violation of this Chapter or
313 to enforce any order or decision issued under this Chapter.

314 **Sec. 2. Expedited Effective Date.**

315 The Council declares that this legislation is necessary for the immediate
316 protection of the public interest. This Act takes effect on the date when it becomes
317 law.

318

319 *Approved:*

320

321

322 Philip M. Andrews, President, County Council Date

323 *Approved:*

324

325

326 Isiah Leggett, County Executive Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 33-08
Secondhand Personal Property Law - Amendment

DESCRIPTION: This bill amends the County's secondhand personal property law to address a changing marketplace and to better enable the Department of Police to investigate and locate stolen property in Montgomery County.

PROBLEM: Chapter 44A was designed to enable the Police to more effectively control the sale of stolen property by establishing secondhand dealer licensing, retention, and reporting requirements. In the last few years changes have occurred in the marketplace in which secondhand personal property is increasingly being sold "online" through internet websites like eBay. This has resulted in the creation of new businesses called "trading assistants" which operate in Montgomery County. These new businesses acquire secondhand personal property and help individuals sell this property through the internet. However, these new businesses claim that they are not subject to Chapter 44A. In addition to closing this potential loophole, the Pawn Unit of the Department of Police has identified substantive revisions to Chapter 44A which will enable the Police to better control the sale of stolen secondhand property in Montgomery County.

GOALS AND OBJECTIVES: To clearly include internet resellers within the definition of the term dealer and to enable the Department of Police to more efficiently and effectively monitor and control the sale of stolen secondhand property.

COORDINATION: Department of Police

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: There should be little or no economic impact.

SOURCE OF INFORMATION: Eric Friedman, Director, Office of Consumer Protection, (240) 777-3719
Maureen Walter, MCPD Pawn Section, (240) 773-5066
William A. Snoddy, Associate County Attorney, (240) 773-5004

APPLICATION WITHIN MUNICIPALITIES: Yes.

PENALTIES: Subject to Class "A" violation.

F:\Law\Bills\0833 Secondhand Personal Property\Lrr.Doc

BILL

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CC
SEF
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BD

037933

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

September 17, 2008

TO: Michael J. Knapp, President
Montgomery County Council

FROM: Isiah Leggett, County Executive

SUBJECT: Amendment of Montgomery County Code Chapter 44A, Secondhand Personal Property

I am forwarding for Council consideration a bill that would amend Montgomery County Code Chapter 44A, Secondhand Personal Property, and a Legislative Request Report for the bill. The bill would permit the County to more efficiently and effectively monitor and limit the sale of stolen secondhand property. Thank you for your consideration of this important bill.

IL:jgs

Enclosure

cc: Timothy L. Firestine, Chief Administrative Officer
J. Thomas Manger, Chief, Department of Police
Eric Friedman, Director, Office of Consumer Protection
Leon Rodriguez, County Attorney

2008 SEP 19 PM 3:24
MONTGOMERY COUNTY COUNCIL

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038899

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

November 13, 2008

TO: Michael J. Knapp, Council President

FROM: Joseph F. Beach, Director, Office of Management and Budget

SUBJECT: Expedited Council Bill 33-08, Secondhand Personal Property - Amendments

The purpose of this memorandum is to transmit a fiscal impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

The proposed legislation would, in part, amend the County's secondhand personal property law (Chapter 44A) to apply to certain individuals making or assisting in sales over the internet. The legislation would also modify the reporting requirements for dealers in secondhand property, prohibit transaction in secondhand property involving minors, establish guidelines for seizing certain secondhand personal property, and generally amend the secondhand personal property law to enable the Department of Police to investigate and locate stolen property in Montgomery County.

FISCAL SUMMARY

The Department of Police is responsible for the law enforcement provisions of the legislation overseeing an average of 300 transactions each day. The Office of Consumer Protection is responsible for administering the licensing provisions of this legislation and has issued licenses to 103 dealers. The Department of Police does not anticipate a fiscal impact with the enactment of this legislation as they are already performing the legislation's law enforcement requirements. The Office of Consumer Protection reports that the additional licensing requirements of the proposed legislation will not have a fiscal impact on the Office.

The following contributed to and concurred with this analysis: Captain Diane McCarthy and Maureen Walter of the Department of Police, Eric Friedman and Marsha Carter of the Office of Consumer Protection, and Ed Piesen of the Office of Management and Budget.

JFB:ep

washingtonpost.com

Pawnshop Led Police To Suspect In Invasions

Advertisement

By Dan Morse
Washington Post Staff Writer
Tuesday, October 21, 2008; B01

For 13 months, Montgomery County police tried to catch up with a man who was scaring the wits out of older residents in Chevy Chase, Bethesda and Potomac. The man broke into homes and -- according to new details revealed yesterday -- hogtied and gagged residents as old as 92. He pistol-whipped a 78-year-old, took items ranging from keepsakes to jewelry to bottles of liquor, and finally, in early September, killed one of the homeowners.

But for all of the detectives' hard work over those months, it was a lucky break that led them to a suspect.

On Oct. 7, the suspect, identified by police as Jose Garcia-Perlera, walked into Fred's Pawn Shop, a half-mile from his home in Hyattsville, and for $400 unloaded an Apple laptop computer that had been reported stolen, authorities said. The pawnshop owner reported the transaction, and police were soon searching Garcia-Perlera's home.

There they found items linked to the home invasions, including two "talking" wristwatches for the sight-impaired and a Mercury space mission medallion kept by homicide victim Mary Havenstein because her late husband was a "pioneering member" of the project, according to an affidavit signed by Detective Paula Hamill.

Garcia-Perlera was ordered held without bond yesterday by District Court Judge William G. Simmons. He is charged with numerous counts of robbery and theft and with first-degree murder in Havenstein's death.

Police have not released her exact cause of death, but two sources said yesterday that Havenstein was hit or beaten during the break-in; one source said she was not shot. They spoke on condition of anonymity because the investigation is open.

Court records indicated that Garcia-Perlera does not yet have an attorney. He is not a U.S. citizen and is wanted for deportation by federal immigration officials, according to the records.

Hamill's affidavit, made available in court records yesterday, indicates a trend of increasing violence in the crimes.

They began Sept. 17, 2007, when the burglar removed a pane from the rear basement window of a home on Maryknoll Avenue in Bethesda, the affidavit stated. Inside the home, police said, Garcia-Perlera stole the wristwatches and other items totaling about $2,450 in value.

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Two months later, he broke through a basement window of a woman's home in Chevy Chase, stealing jewelry, keepsakes and other items valued at $800, according to Hamill's affidavit. During this attack, the victim told The Washington Post last week, she asked the assailant to loosen the clothesline around her arthritic knees, and he did so.

On Feb. 27, the assailant turned more violent, according to the affidavit. A 78-year-old woman on Picasso Lane in Potomac walked from her house to check an open storage area. Garcia-Perlera came out of the area, beat her with a silver revolver and forced her into her basement, according to the affidavit. The victim was found two days later when a relative went to check on her. She continues to suffer from a serious injury to at least one of her hands, a neighbor said.

The suspect left behind a black baseball cap, from which detectives extracted DNA that they later matched to DNA found at two of the other crime scenes. All three samples matched DNA taken from inside Garcia-Perlera's cheek after he was detained, police said.

On May 7, according to Hamill's affidavit, Garcia-Perlera broke into a couple's house in the Kenwood neighborhood. The assailant entered the bedroom wearing a scarflike garment over his face and military-style clothing. After hogtying the 70-year-old woman, he removed her rings, the affidavit said.

In late August came the laptop burglary.

On Aug. 28, police said, Garcia-Perlera walked into the unlocked front door of a home on Seven Locks Road. At the time, a woman -- younger than the previous victims -- was asleep in her room, the woman said in an interview yesterday. She spoke on condition of anonymity to protect her safety and privacy. Her son and two of his friends were in a sunroom listening to music. When their computer's battery went dead, one of the friends walked upstairs for a backup and discovered that the laptop was missing. In another room, jewelry was gone.

Investigators did not classify the burglary as one of the home invasions. The victims were younger, and no one was tied up or attacked. The woman in the home said she felt the same way, even when she went to a community meeting about the home invasions.

"I didn't link it at all," she said.

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Bill 33-08

Shops at Potomac Valley
12101 Darnestown Road
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phone# 301-990-2040 • fax# 301-990-2045

cc

iSOLD It
The Easy Way to Sell on eBay

February 11, 2009

Mr. Phil Andrews
President, Montgomery County Council
100 Maryland Ave.
Rockville, MD 20850

040466

Re: Expedited Bill 33-08

Dear Mr. Andrews,

On behalf of Bill Lemer, Davis Kiyonaga and myself, I would like to thank you and the other Council members, as well as the Police Department representatives, for a productive discussion at the February 5, 2009 Public Safety committee hearing. We appreciate the opportunity provided by the committee to be heard on this important issue.

You mentioned in the meeting that the Council would have to weigh the public benefits of additional regulation, which you indicated could be very small, against the impact of such regulation on many area small businesses and individuals. We firmly believe that public harm caused by third party eBay listing services does not exist, as evidenced by the lack of any information to the contrary (even though these services have been available for almost five years).

However, we want to be as cooperative as possible and find common ground to work with the County. We would like to suggest an exercise that could either prove the Police Department's opinion about the likelihood of stolen property being brought to a business like ours, or prove our assertion regarding the unlikelihood of the same. We at iSold It and Drop & Ship would be willing to provide the police with data on all items received and all sellers who brought those items during the last full year. This data extract would likely comprise details on over 5,000 items and over 1,000 sellers. The police could import the data and run it against stolen property reports during the last year to see if there are any matches.

If the results of the exercise support our assertion, then we would respectfully ask that eBay listing services such as ours not fall under the Secondhand Dealer law. If the Council ultimately decides that eBay listing services and other internet resellers need to be part of the Secondhand Dealer law, we feel that we would at least be able to continue business operations with slight changes to Bill 33-08.

Regarding the timeframe for retention of personal property, we suggest that period be 10 days, with an additional 30 days for property which the police know or suspect to be stolen, for any items that are being posted on a publicly available website (with photographs, model/serial numbers, etc.). Since property received is to be reported to the police within 24 hours, the suggested timeframe would in essence provide a citizen 11 days to report an item missing and for the police to do a quick search in their database. It also provides an additional 30 days for the police to conduct an investigation if warranted.

Regarding the personal seller data to be reported, we would respectfully request that race, SSN, date of birth, and physical description not be required. The County should be able to accomplish its goals with a valid driver's license number and current physical address of the seller.

Thank you very much for your consideration. We would be glad to meet with you and other County representatives to further this discussion.

Sincerely,

Michael J. Hadad

CC: Robert H. Drummer, Legislative Attorney
Roger Berliner, District 1
Mark Elrich, At Large
William Snoddy, Associate County Attorney

Prince George's County Code

Sec. 5-232. Purpose.

The purpose of this Division is to promote the safety and welfare of the citizens of Prince George's County by prescribing procedures which will significantly curtail the disposition of certain stolen property by thieves and which will assist in identifying that stolen property so that it may be returned to the owners thereof.
(CB-127-1982)

Sec. 5-233. Definition.

(a) The term "**secondhand dealer**" means any person, corporation, or other business entity in this County engaged regularly in the business of receiving, in exchange for money, trade, barter, or other valuable consideration, items of tangible personal property, including, but not limited to, the following:

(1) Binoculars;
(2) Cameras;
(3) Firearms;
(4) Furs;
(5) Household appliances;
(6) Musical instruments;
(7) Office machines or equipment (excluding furniture and similar furnishings);
(8) Radios, television sets, video disc machines, video cassette recorders, stereo equipment;
(9) Personal computers, tape and disc recorders;
(10) Watches;
(11) Bicycles;
(12) Typewriters;
(13) Tangible personal property pledged as collateral (pawned items);
(14) Power tools.

(b) The term "**pawn dealer**" means any person, corporation, or other business entity in the County, including a secondhand dealer, engaged in the business of lending money on the deposit or pledge of tangible personal property or in the business of purchasing tangible personal property on the condition of reselling the same to the seller at a stipulated price.
(CB-127-1982; CB-107-1994; CB-29-1997)

Sec. 5-236. Prohibition of trading with minor.

No secondhand dealer or pawn dealer shall purchase, barter, exchange, or otherwise receive any item described in Section 5-233 from a person under the age of eighteen (18).
(CB-127-1982; CB-107-1994; CB-29-1997)

Sec. 5-238. Retention of items.

No secondhand dealer or pawn dealer and no employee or other person acting for that dealer shall dispose of any item described in Section 5-233 and received by the dealer until a period of thirty (30) days shall have elapsed after the date of submission or electronic transmission of the report required by Section 5-237, or the item is inspected by the County Police Department, whichever shall occur first. Where the dealer finds that the thirty (30) day waiting period constitutes a burden, he may contact the Police Department by letter stating his need for early action and requesting an expedited inspection. Within 96 hours after receiving the request, the Police Department shall approve or deny the request. The dealer shall retain, for an additional period of twelve (12) days, any item described in Section 5-233 if the County Police Department requests that the dealer retain the item and the County Police Department has reasonable cause to believe the item has been stolen. Items which are required to be retained by the provisions of this Section shall be tagged in compliance with regulations of the County Police Department and shall be securely stored in a separate location within the business, apart from other items of property. In any case, no item shall be sold or otherwise be removed from the location of the licensed business of the secondhand dealer or pawn dealer during the period of prescribed retention. The thirty (30) day holding period required by this Section shall not apply to pawned items which are redeemed with the original ticket. (CB-127-1982; CB-107-1994; CB-29-1997)

Sec. 5-238.01. Release of stolen property.

(a) A dealer shall hold for, and release to, an authorized member of the County Police Department any item of personal property listed in Section 5-233 located at the place of business of the secondhand dealer if:

(1) The item is established to have been stolen;

(2) The owner of the item or victim of the theft has:

(A) Positively identified the item; or

(B) Provided an affidavit of ownership; and

(3) The stolen property report describes the item.

(b) When the County Police Department no longer needs an item for evidence, the County Police Department shall give the item to its owner.

(c) A secondhand dealer or pawn dealer who is required to release an item under this Subdivision is not entitled to reimbursement for any pledge or purchase price paid for the item from:

(1) The County Police Department to which the secondhand dealer or pawn dealer released the item;

(2) The owner of the item; or

(3) The victim of the theft.

(CB-107-1994; CB-29-1997)

Anne Arundel County Code

TITLE 12. PAWNBROKERS

Section

11-12-101. Pawnbrokers.

11-12-102. Records and reports.

11-12-103. Disposal of property.

11-12-104. Transactions with intoxicated individuals or minors.

§ 11-12-101. Pawnbrokers.

(a) **Definition.** In this title, "pawnbroker" means a person who loans money on deposits or pledges of personal property other than securities or printed evidences of indebtedness or who deals in the purchasing of personal property on the condition of selling it back to the same person or someone acting on that person's behalf at a stipulated price.

(b) **License required.** A person may not do business as a pawnbroker without a license issued by the Department.

(c) **Standards.** No person required to obtain a pawnbroker's license may have:

(1) ever been convicted, held liable, or found to have committed acts involving moral turpitude, including any violation of federal, state, or local law or regulation;

(2) ever had a judgment entered in an action for fraud, deceit, or misrepresentation by any court of competent jurisdiction;

(3) associations with individuals known to have engaged in organized crime or racketeering;

(4) a financial relationship with any person known to have engaged in organized crime or racketeering;

(5) had direct managerial or supervisory control over an enterprise in which there was a pattern of cheating, fraud, or employee dishonesty; or

(6) engaged in any other conduct that the Director determines to be a threat to the integrity of pawnbrokering.

(d) **Fee.** The fee for a pawnbroker's license for the first individual licensed to work at a pawnshop is $250. The fee for each additional individual licensed at the same pawnshop is $50.

(e) **Insurance.** A person who acts as a pawnbroker may not undertake to do any work within the County unless the person carries general liability insurance in the amount of $300,000 and property damage insurance in the amount of $100,000.

(f) **Contents of license.** A license shall designate the address where the licensee is authorized to act as a pawnbroker.

(g) **Expiration.** A pawnbroker's license expires on April 30 of each year.

(h) **Revocation.** A violation of this title is cause for revocation of a pawnbroker's license.

(1985 Code, Art. 16, §§ 13-101, 13-102, 13-104, 13-106, 13-107, 13-108) (Bill No. 13-89; Bill No. 46-92; Bill No. 55-97)

State Code reference – Business Regulation Article, Title 12.

§ 11-12-102. Records and reports.

Pawnbrokers shall maintain permanent records of items received by them in the course of their business. A pawnbroker shall submit to the Police Department on forms prescribed by the Department a legible and correct transcription from the records maintained by the pawnbroker of the description of items received in pawn or pledge during the preceding day's business. The transcription of the preceding day's business shall be transmitted electronically by 10:00 a.m. on the next business day. In preparing these forms:

(1) diamonds and other precious stones shall be designated by giving the approximate weight of the stone, style, or mounting; whether lady's or gentleman's ring; the number of stones and initials, inscriptions, scratch numbers, or peculiar distinguishing marks or characteristics;

(2) watches shall be designated by the kind of metal; maker's name; whether lady's, gentleman's, or child's; and initials, inscriptions, scratch numbers, or peculiar distinguishing marks or characteristics;

(3) jewelry shall be described as to kind; character, whether lady's, gentleman's, or child's; number of stones; name of each stone; and any initials, inscriptions, or peculiar distinguishing marks or characteristics;

(4) chains shall be designated by kind; character of metal or other material; design or link; whether lady's, gentleman's, or child's; and inscriptions, initials, or peculiar distinguishing marks and characteristics;

(5) silverware shall be designated by the kind and character, maker's name, and initials, inscriptions, or peculiar distinguishing marks or characteristics;

(6) furs shall be designated by kind; character; whether lady's, gentleman's, or child's; color; maker's name; owner's name, if attached; or initials, inscriptions, or peculiar distinguishing marks or characteristics;

(7) field, marine, and opera glasses, binoculars, and other optical equipment shall be designated by full description, maker's or owner's name and initials, inscriptions, or peculiar distinguishing marks or characteristics;

(8) instruments, such as surgical, architectural, mathematical, surveying, and the like, shall be designated by the kind, character, design, name or maker and any initials, inscriptions, or peculiar distinguishing marks or characteristics, whether upon the case or the instruments;

(9) tools shall be designated by the trade in which the same may be used whether carpenter's, machinist's, or otherwise and numbers, name of maker or number, and initials, inscriptions, or peculiar distinguishing marks or characteristics whether on the tools or upon the box or case;

(10) clothes shall be designated by kind; character; whether lady's, gentleman's, or child's; color; size; material; maker's, owner's or alterer's name, if attached; and initials, inscriptions, or peculiar distinguishing marks or characteristics; and

(11) electronics, computer and office equipment, and any other tangible personal property shall be designated by kind, name of maker, model number, serial number, owner applied number, inscription or peculiar distinguishing marks or characteristics, and a statement as to whether the item is in its original box and whether it appears to be new in box.

(1985 Code, Art. 16, § 13-109)

State Code reference – Business Regulation Article, Title 12.

§ 11-12-103. Disposal of property.

(a) **Generally.** A pawnbroker may not transfer or dispose of property for a period of 30 days after the date upon which the transaction was reported to the Police Department, except that the property may be redeemed or repurchased with the original pawn ticket by the person who pawned the property or by that person's authorized agent.

(b) **Stolen items.** If an item located in a pawnshop has been identified as having been stolen, the pawnbroker shall release the item without payment or reimbursement to the Police Department on written demand signed by the Chief of Police or the

designee of the Chief of Police. The item shall be returned to the pawnbroker if the identification is proven erroneous.

(1985 Code, Art. 16, §§ 13-110, 13-111)

§ 11-12-104. Transactions with intoxicated individuals or minors.

A pawnbroker may not transact business with a person who is obviously under the influence of intoxicating liquors or drugs or who is a minor.

(1985 Code, Art. 16, § 13-112)

State Code reference – Business Regulation Article, § 12-213.

Howard County Code

SUBTITLE 10. PAWNBROKER AND SECONDHAND DEALERS

Sec. 14.1000. Purpose.
The purpose of this subtitle is to protect the safety and welfare of the citizens of Howard County by regulating pawnshops and secondhand dealers in order to prevent the disposition of stolen property, to identify stolen property, and to return stolen property to its owners.
(C.B. 5, 2005, § 1)

SEC. 14.1001. Definitions.
In this subtitle the following terms have the meanings indicated.
(a) *Antique dealer* means a person whose primary retail trade is buying and selling objects made in, or typical of, an earlier period of time, that either have special value because of their age or are examples of works of art or handicrafts.
(b) *Department* means the Howard County Department of Inspections, Licenses and Permits.
(c) *Director* means the director of the department of inspections, licenses and permits or the director's authorized designee.
(d) *Item* means tangible personal property including, but not limited to, a household appliance, personal computer, compact disc player, digital video disc player, power tool, camera, firearm, radio, television set, video game system, video game accessory or component, or stereo equipment.
(e) *Pawnbroker* means a person who engages in pawnbroker transactions.
(f) *Pawnbroker* or *secondhand dealer establishment* means a person with a fixed place of business where pawnbroker or secondhand dealer transactions occur. A pawnbroker or secondhand dealer establishment includes both the person and its fixed place of business.
(g) *Pawnbroker transaction* means engaging in the act of:
(1) Lending money on the deposit or pledge of tangible personal property other than secondhand precious metal objects, coins, or numismatic items; or
(2) Purchasing tangible personal property, other than secondhand precious metal objects, coins, or numismatic items, on the condition of reselling the property to the seller at a stipulated price.
(h) *Person* means an individual, corporation, partnership, business trust, limited liability company, or any other type of business entity.
(i) (1) "Secondhand dealer" means a person that engages in secondhand dealer transactions.
(2) *Secondhand dealer* does not include:
(i) A charitable, religious, or non-profit organization, if the exchange of items for consideration is incidental to the organization's primary activity;
(ii) An antique show, trade show, convention, or auction;
(iii) A flea market as defined in the Howard County Zoning Regulations;
(iv) A person whose primary retail trade is new and unused video game components, video game systems, video games, or video game accessories; or
(v) An antique dealer.

(j) *Secondhand dealer transaction* means engaging in the act of receiving tangible personal property, other than secondhand precious metal objects, coins, or numismatic items, and offering the tangible personal property to the public for sale, trade, barter, or other consideration.
(C.B. 5, 2005, § 1)

Sec. 14.1002. Licenses required.
(a) A person shall not own or operate a pawnbroker or secondhand dealer establishment within howard county unless the person obtains a pawnbroker or secondhand dealer establishment license as required by this subtitle.
(b) A person shall not conduct or participate in pawnbroker or secondhand dealer transactions unless the person obtains an employee license as required by this subtitle.
(C.B. 5, 2005, § 1)

Sec. 14.1003. Requirement to maintain license.
(a) A license required by this subtitle shall be issued for 2 calendar years.
(b) A license required by this subtitle shall be renewable upon payment of a license fee and compliance with the requirements of this subtitle.
(c) If a person required to be licensed under this subtitle ceases to engage or operate in pawnbroker or secondhand dealer transactions or is no longer employed as a pawnbroker or secondhand dealers, the license shall be returned to the department upon cessation of the pawnbroker or secondhand dealer transactions.
(C.B. 5, 2005, § 1)

Sec. 14.1004. Transferability.
(a) A license to operate a pawnbroker or secondhand dealer establishment shall not be transferred from one person to another.
(b) A person who holds a pawnbroker or secondhand dealer establishment license shall notify the director in writing prior to moving the establishment from one location to another location within Howard County.
(c) An employee license shall not be transferred from one individual to another.
(C.B. 5, 2005, § 1)

Sec. 14.1005. Fees.
(a) The county shall charge a license application fee and a 2-year license fee for each license required by this subtitle.
(b) A license shall be issued for 2 calendar years and the license fee shall be due upon application for a new or renewed license.
(c) There shall not be a refund of a license application fee. There shall not be a refund or proration of a 2-year license fee, except that a first 2-year license fee submitted with the initial application may be refunded if the initial license is not granted.
(d) The county council shall annually adopt by resolution a fee schedule for a license application and a license.
(C.B. 5, 2005, § 1)

Sec. 14.1006. Applications in general.
(a) An application for a license shall be submitted to the department on a form provided by the director.
(b) An application shall include a notarized statement attesting to the truth of the information provided under penalties of perjury which shall be signed by:
(1) Each individual listed on the application; or
(2) If the applicant is a corporation, association, partnership, sole proprietorship, or other business entity, each authorized officer, director, or general partner of the applicant.
(c) An application shall be accompanied by payment of the application fee and the license fee for the first 2-year term.
(d) An individual under the age of 18 shall not be eligible to receive a license under this subtitle.
(e) The director shall have the authority to obtain a criminal background check on each individual listed in the application.
(f) During the term of the license, if there is a change in the information that a person provided in an application for a license or license renewal, the person must report the change to the department within 30 days after the change occurs and must certify, under penalties of perjury, that the new information is correct.
(C.B. 5, 2005, § 1)

Sec. 14.1007. Application for pawnbroker or secondhand dealer establishment license.
(a) If an applicant for a pawnbroker or secondhand dealer establishment is an association, partnership, or corporation the application shall include information from the following individuals:
(1) If the applicant is an association or partnership, the required application information shall be provided for each associate or partner;
(2) If the applicant is a corporation, the required application information shall be provided for each officer or director; or
(3) If another corporation owns 10% or more of the stock of the applicant, the required information shall also be provided for each officer or director of the owning corporation.
(b) An applicant that is an association, partnership, corporation, limited liability company, or other business entity shall provide a copy of all organizational documents, including, without limitation, articles of incorporation.
(c) For each individual listed in an application, the application shall include:
(1) That individual's:
(i) Full name, including maiden name, aliases, and names under which the individual has previously been known;
(ii) Date of birth, residence address, social security number, and residence phone number at the time of application and for the 3-year period preceding the date of application; and
(iii) Business address and business phone number at the time of application;
(2) A complete set of fingerprints taken by the Howard County Police Department;

(3) Information regarding any pawnbroker or secondhand dealer-related permit or license issued in any jurisdiction which has been denied, suspended, or revoked and the reasons for the denial, suspension, or revocation; and
(4) A state-issued photograph identification card or drivers' license.
(D) An application for a pawnbroker or secondhand dealer establishment license shall include:
(1) The location, mailing address, and phone number of the premises where the pawnbroker or secondhand dealer will operate;
(2) The location, mailing address, and phone number of an off-site storage location where the pawnbroker or secondhand dealer will store items;
(3) If the pawnbroker or secondhand dealer is not the owner of the premises, written acknowledgement from the owner of the premises approving the use of the premises to engage in pawnbroker or secondhand dealer transactions;
(4) If the pawnbroker or secondhand dealer is not the owner of the off-site storage location, written acknowledgement from the owner of the off-site storage location approving the use of the off-site storage location to store items; and
(5) If the pawnbroker or secondhand dealer is not the owner of the premises or off-site storage location, they shall include a copy of their current lease with their application.
(e) An application shall include an authorization for governmental inspection, including police inspection, of the premises or off-site storage location during the application process and while the license is in effect for the purpose of ensuring compliance with this subtitle.
(C.B. 5, 2005, § 1)

Sec 14.1008. Application for an employee license.
(a) Only an individual shall be eligible for an employee license.
(b) For each individual listed in the application, the application shall include:
(1) The individual's:
(i) Full name, including maiden name, aliases, and names under which the individual has previously been known;
(ii) Date of birth, residence address, social security number, and residence phone number at the time of application and for the 3-year period preceding the date of application; and
(iii) Business address and business phone number at the time of application; and
(2) A complete set of fingerprints taken by the Howard County Police Department;
(3) Information regarding any pawnbroker or secondhand dealer-related permit or license issued in any jurisdiction which has been denied, suspended, or revoked and the reasons for the denial, suspension, or revocation;
(4) A state-issued photograph identification card or drivers' license; and
(5) 3 recent photographs of the individual required to be licensed, not more than 2 inches square.
(C.B. 5, 2005, § 1)

Sec. 14.1009. Granting application.
The director shall approve an application unless:
(a) The information provided by the applicant is incorrect or incomplete;

(b) The applicant has been convicted of a felony, crime of moral turpitude, or a violation of gambling, controlled dangerous substance, or theft laws;
(c) The applicant's license to act as a pawnbroker or secondhand dealer or as an employee of a pawnbroker or secondhand dealer in any jurisdiction has been denied, revoked, or suspended; or
(d) The premises listed in the application does not meet the county's health, zoning, fire or building code requirements.
(C.B. 5, 2005, § 1)

Sec 14.1010. Operating requirements.
(a) A pawnbroker or secondhand dealer establishment may be open to the public only between the hours of 7 a.m. and 10 p.m. and shall not conduct pawnbroker or secondhand dealer transactions with the public at any other time.
(b) A pawnbroker or secondhand dealer shall not conduct business through the use of a drive-up window or other practice, service, or device that enables an individual to conduct business from a motor vehicle without leaving the motor vehicle.
(c) A person licensed shall conspicuously display a license granted pursuant to this subtitle within the premises.
(C.B. 5, 2005, § 1)

Sec. 14.1011. Trading with minors prohibited.
A pawnbroker or secondhand dealer shall not engage in pawnbroker or secondhand dealer transactions with an individual who is under the age of 18.
(C.B. 5, 2005, § 1)

Sec. 14.1012. Record-keeping requirements.
(a) A pawnbroker or secondhand dealer shall maintain a record of each item purchased, bartered, exchanged, or received in the course of business, including a record of the disposition of the item.
(b) The record shall be signed by the seller and the pawnbroker or secondhand dealer or an agent or employee of the pawnbroker or secondhand dealer, and shall include:
(1) The date, time, and place of the transaction;
(2) The name and address of the principal, if the transaction is conducted by an agent;
(3) A comprehensive description of the item, including any visible identification marks such as initials, name of manufacturer, model and serial number, owner-applied identification numbers, and whether the item appears to be new or in its original box or packaging;
(4) The consideration received;
(5) For each individual from whom the pawnbroker or secondhand dealer acquires an item:
(i) The name, address, telephone number, date of birth, and driver's license number of the individual; or
(ii) Identification information about the individual that:
1. Identifies the individual from at least 2 forms of identification, which may include an age of majority card, military identification, or passport; and

2. Provides a physical description of the individual, including the gender, race, any distinguishing features, and approximate age, height, weight, hair and eye color of the individual; and
(6) The name, address, and telephone number for each individual to whom the pawnbroker or secondhand dealer sells or transfers the item.
(C) The pawnbroker or secondhand dealer shall:
(1) Maintain the record for at least 3 years from the date of the transaction;
(2) Retain the record in an electronic data storage medium specified by the police department; and
(3) Submit a copy of the record to the police department by electronically transmitting the record by 10 a.M. On the next business day after the transaction.
(C.B. 5, 2005, § 1)

Sec. 14.1013. Holding periods.
(a) A pawnbroker or secondhand dealer shall hold each item purchased or received in the course of business for 10 days after submitting a copy of the record of the transaction or until the item is inspected by the police department, whichever occurs first.
(b) (1) A pawnbroker or secondhand dealer may submit to the police department a written request for a shorter holding period for a specific item.
(2) Within 96 hours after receiving the request, the police department shall approve or deny the request.
(3) If the police department does not respond to the request within 120 hours, the request is deemed to be approved.
(c) During the holding period for an item, the pawnbroker or secondhand dealer:
(1) Shall tag the item in accordance with police department requirements;
(2) Shall store the item in a secure location on the premises that is separate from other items or at the off-site storage location listed in the application; and
(3) Shall not remove the item from the pawnbroker or secondhand dealer's licensed location of business or off-site storage location.
(d) The holding period required by this section does not apply to a pawned item that is redeemed with the original pawn ticket.
(C.B. 5, 2005, § 1)

Sec 14.1014. Release of stolen property to the police department.
A pawnbroker or secondhand dealer is subject to the provisions of the business regulation article, section 12-401 of the Annotated Code of Maryland in regard to the release of stolen property to the police department.
(C.B. 5, 2005, § 1)

Sec. 14.1015. Inspections and right of entry.
(a) A pawnbroker or secondhand dealer shall allow an authorized member of the department, the police department, or other enforcement agency to enter the pawnbroker or secondhand dealer establishment or storage premises at any reasonable time for the purpose of enforcing this subtitle.

(b) If a pawnbroker or secondhand dealer refuses to allow entry, the county may seek a court order allowing entry.
(c) An authorized member of the department, the police department, or other enforcement agency shall have the right to enter a building, structure, or premises without the prior consent of the owner or occupant where there is evidence that a violation of this subtitle exists which threatens or may threaten the public health and safety for the purpose of enforcing the provisions of this subtitle. The authorized member of the department, the police department, or other enforcement agency shall produce proof of identity prior to entry.
(d) This section does not prohibit the police department from seeking a search warrant for the investigation of any criminal violation, including a violation of this subtitle.
(C.B. 5, 2005, § 1)

Sec 14.1016. Regulations.
The chief of police or the director may adopt regulations to implement this subtitle.
(C.B. 5, 2005, § 1)

Sec. 14.1017. Notice of violation.
(a) Except as provided in subsection (c) of this section, if a violation of this subtitle is found, the director shall provide to the licensee a written notice that describes the violation, specifies the action necessary to correct the violation, and sets forth the time to correct the violation.
(b) The director shall serve a notice of violation by certified mail, restricted delivery or by personal service. If service cannot be obtained by certified mail, restricted delivery or personal service, the notice may be posted in a conspicuous location on the pawnbroker or secondhand dealer establishment.
(c) A notice of violation shall not be required if the licensee violates the same provision of this subtitle for which it had received one notice of violation within a 12-month period.
(C.B. 5, 2005, § 1)

Sec. 14.1018. Denial, revocation or suspension of license.
(a) The director may issue an order denying, revoking, or suspending a license for the following reasons:
(1) The information provided by the licensee or applicant in the application is incorrect, incomplete, or has not been updated as required by this subtitle;
(2) The licensee or applicant has been convicted of a felony, crime of moral turpitude, or a violation of controlled dangerous substances, gambling, or theft law;
(3) The licensee or applicant's permit or license to act as a pawnbroker or secondhand dealer in any jurisdiction has been denied, revoked, or suspended;
(4) A licensee has failed to comply with a notice of violation; or
(5) The licensee or applicant has violated one or more of the provisions of this subtitle.
(b) An order denying, revoking, or suspending a license shall be served upon the licensee or applicant by certified mail, restricted delivery or by personal service. The order shall contain the reasons for the denial, revocation, or suspension. If service cannot be obtained by certified mail, restricted delivery or personal service, the notice may be posted in a conspicuous location on the pawnbroker or secondhand dealer establishment.

(c) Within 30 days of the date of an order, a person aggrieved may appeal the order to suspend, revoke, or deny a license to the department in accordance with administrative procedures act set forth at Title 2, Subtitle 1, Article 3 of the Howard County Code. The filing of an appeal shall not stay the order of the director.
(d) Within 30 days of the date of the decision of the department on the appeal of an order, a person aggrieved may appeal the decision to the Circuit Court of Howard County, Maryland in accordance Title 2, Subtitle 1, Article 3 of the Howard County Code. The filing of an appeal shall not stay the order of the department.
(C.B. 5, 2005, § 1)

Sec. 14.1019. Civil penalties.
(a) The department may institute any action at law or equity, including injunction or mandamus, to enforce the provisions of this subtitle.
(b) Alternatively, and in addition to and concurrent with all other remedies, the department may enforce the provisions of this subtitle with civil penalties in accordance with Title 24 of this Code.
(1) A violation of section 14.1015 Of this subtitle is a class a offense.
(2) A first violation of any other provision of this subtitle is a Class B offense. A subsequent violation of any other provision of this subtitle is a Class A offense.
(c) Each day that a violation continues is a separate offense.
(C.B. 5, 2005, § 1)

Sec. 14.1020. Criminal penalties.
A person who violates any provision of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $900 or imprisonment not exceeding 5 months or both.
(C.B. 5, 2005, § 1)

Sec. 14.1021. Severability.
If any part of this subtitle is held invalid, the invalidity shall not affect the other parts.
(C.B. 5, 2005, § 1)

Maryland Secondhand Precious Metal Object Dealers and Pawnbrokers Act (Excerpt)

Article - Business Regulation

§12–401.

(a) This section applies to all dealers and all pawnbrokers wherever located in the State.

(b) A dealer or pawnbroker shall release to the primary law enforcement unit an item of personal property, other than a security or printed evidence of indebtedness, located at the place of business of the dealer or pawnbroker if:

(1) the item is established to have been stolen;

(2) the owner of the item or victim of the theft has positively identified the item;

(3) the owner of the item or the agent or designee of the owner has provided an affidavit of ownership;

(4) the stolen property report describes the item by:

(i) a date;

(ii) initials;

(iii) an insurance record;

(iv) a photograph;

(v) a sales receipt;

(vi) a serial number;

(vii) specific damage;

(viii) a statement of the facts that show that the item is one of a kind; or

(ix) a unique engraving; and

(5) the primary law enforcement unit provides to the dealer or pawnbroker a receipt that describes the item and that notifies the dealer or pawnbroker of the dealer's or pawnbroker's right to file an application for a statement of charges against the individual who sold the item to the dealer or pawnbroker, or other alleged thief for theft under § 7-104 of the Criminal Law Article.

(c) A dealer shall retain in the dealer's place of business, for an additional period of 12 days, any item of personal property or other valuable thing, other than securities or printed evidence of indebtedness, if:

(1) the primary law enforcement unit requests that the dealer retain the item;

(2) the primary law enforcement unit has reasonable cause to believe the item has been stolen; and

(3) the item has not been identified under subsection (b)(2) of this section.

(d) When a primary law enforcement unit no longer needs an item for evidence, the primary law enforcement unit shall give the item to its owner.

(e) A dealer or pawnbroker who is required to release an item under this section is not entitled to reimbursement for any pledge or purchase price paid for the item from:

(1) the primary law enforcement unit to which the dealer released the item;

(2) the owner of the item; or

(3) the victim of the theft.

(f) If the owner of the item or the victim of the theft chooses to participate in the prosecution of the alleged identified thief, then the charges of theft from the owner or the victim of the theft and the charges of theft from the dealer or pawnbroker may be heard in a joint trial.

B33-08

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BD
CC

December 12, 2008

039385

Mr. Phil Andrews
President, Montgomery County Council
100 Maryland Ave.
Rockville, MD 20850

Dear Mr. Andrews,

It was a pleasure meeting you at the December 3rd Public Safety Committee meeting and discussing Expedited Bill 33-08, Secondhand Personal Property – Amendments.

As owner of an iSold It on eBay franchise in Gaithersburg, MD, and as a citizen residing in Potomac, MD, I would like to express my strong objections to applying Code 44A to individuals and businesses assisting in sales over the internet. If enacted, the amendments to Expedited Bill 33-08 would curtail the growth of small businesses in Montgomery County by effectively treating Internet retailers like licensed pawnbrokers. These changes would also force many small Internet businesses to close down, which would not be advantageous during the current economic recession.

Our franchise is an eBay Trading Assistant and a Registered eBay Drop-Off Location (REDOL) that helps individuals, small businesses, and charities sell items on eBay. There are dozens of eBay Trading Assistants in Montgomery County including dedicated eBay drop-off locations, individuals that pick up items from a home or business and sell them on eBay from their homes, and multipurpose businesses that offer to sell items on eBay (including pack & ship centers, golf equipment stores, junk hauling services, camera stores, musical instrument stores, etc).

Since opening our Gaithersburg store in August 2005, we have marketed over 20,000 items on eBay on behalf of almost 3,000 customers (sellers) that are primarily based in Montgomery County. And in our 3-years of existence there has not been a single problem regarding stolen property.

Most eBay drop-off locations are existing small businesses or franchises with store-front operations. As sellers drop off goods, they must provide a legitimate address and contact information in order to receive the proceeds of the sale. Goods posted for sale on eBay by a Trading Assistant are available for viewing by the public for up to 10 days, and the record of the sale is retained by eBay for at least two years. Only after the buyer has made payment will the Trading Assistant send the seller the proceeds.

Trading Assistants also allow people who lack computers or computer skills the ability to sell their items to a worldwide marketplace. Such Assistants make for a more even playing field for individuals that formerly could only sell goods through pawnbrokers at much greater cost.

The eBay marketplace is safe and transparent; eBay deploys advanced technology and a team of over 1000 employees that work closely with law enforcement fighting aberrant

misbehavior on the Internet. Businesses that use such well-lit and open marketplaces should not be subject to outdated second-hand goods statutes that were created to help eliminate problems existing in the pawnbrokering business

We are a very unlikely outlet for stolen property. Each item is posted onto eBay with 6 – 10 digital photographs, including model and serial numbers if present. Items are posted on a public web site that has over 200 million users worldwide (88 million classified as active). We will not post items unless the owner provides a valid government issued photo ID and it is highly unlikely a thief would want a stolen item advertised so publicly.

Also, it is very important to point out that cash is not provided to sellers; in fact, there is no immediate payment to sellers at all, unlike pawnbrokers. Sellers receive a check in the mail if that item sells on eBay approximately 4 – 6 weeks after items are dropped off. This contrasts sharply with traditional pawnbroker operations, where a seller can walk into any pawn shop with stolen merchandise and walk out minutes later with cash in their pocket. Thieves would not be interested in the public exposure of their stolen items, the long delay in receiving funds, or the method of payment.

There is no cash transacted for merchandise; items are paid by buyers over the internet via secure payment systems such as PayPal, Visa, or Mastercard. Sellers receive a paper bank check. Also, unlike many pawnbrokers, there are no loans made to sellers.

Expansion of the existing legislation which would add licensing and regulatory burdens to Trading Assistants could cripple and undermine a new and expanding source of small business job generation. Our business and others like it would surely have to shut down.

Our average eBay sale is about $120 and the average service fee for making the sale is about $36. The cost of complying with the burdensome data collection and reporting requirements would dismantle already thin operating margins. The bill has merchandise retention requirements that may be appropriate for pawnbrokers and consignment shops but are misplaced in the world of e-commerce sales, where seller and buyers expect fast order fulfillment.

We are providing a valuable service to customers, who are mostly based in Montgomery County. Out of an average of $50,000 per month in eBay sales, we are sending about $35,000 per month back to our sellers and the county economy.

During these tough economic times, a growing percentage of our customers are using their seller check proceeds to supplement retirement income, pay for childcare, and help meet basic living expenses. This positive impact was highlighted in recent news stories by the Washington Post and FOX 5 News, which featured iSold It – Gaithersburg and other businesses.

We fully support the spirit of 44B and helping the County control the sale of stolen property. While it is unlikely that thieves would use eBay and other e-commerce sites to sell stolen goods, there are very straightforward ways for the police to access readily available data on eBay, and these methods would be much less expensive than the data collection methods outlined in the Bill:

- At no cost, current live eBay postings are accessed through any web browser. eBay provides simple filtering that allows any user to search by item category, eBay seller ID, geography, price, time ending soonest, etc.

- At no cost, completed eBay listings are available through eBay for a period of 14 days after the sale.

- For a nominal subscription cost of $25 per month, the Terapeak database shows detailed eBay sales completed in the last 90 days.

- For a small yearly fee, the Police Department can subscribe to LeadsOnline, a national database used for the tracking of stolen goods over the Internet. This would eliminate the costly burden of the current tracking system and bring greater efficiencies and productivity to government. More information can be found at www.leadsonline.com.

- Since merchandise is searchable by eBay seller ID, the County could easily compile a list of county-based seller IDs and conduct searches whenever it makes sense (as an item is reported stolen). This contrasts favorably with collecting reams of data on 100% of Internet sales.

- Concurrent to the above, it is reasonable to require Internet sales agents to retain seller and buyer information, and to make that information available for inspection by the County upon request.

According to eBay and other sources, during 2000 – 2006 many local jurisdictions across the country looked at the possibility of regulating Internet sales organizations in a manner similar to that outlined in 33-08. There are good reasons why none of them went this route (many of those reasons are outlined above) but generally there was recognition that such regulation is not in the public's best interest. And during 2007 and 2008, very few counties and cities have seriously investigated similar oversight and regulation.

Unfortunately the changes outlined in 33-08 are a solution looking for a problem. Placing small Internet businesses under the same regulations as licensed pawnbrokers will only stifle growth and eliminate much needed jobs and income in our county.

Thank you very much for your consideration and I would be glad to meet with you at your convenience.

Sincerely,

Michael J. Hadad

CC: Robert H. Drummer, Legislative Attorney
Roger Berliner, District 1

DEPARTMENT OF POLICE

Isiah Leggett
County Executive

J. Thomas Manger
Chief of Police

MEMORANDUM

TO: The Honorable Phil Andrews, Council President
Montgomery County Council

FROM: J. Thomas Manger
Chief of Police

SUBJECT: Proposed amendments to the County's Secondhand Personal Property law

The Department of Police, in conjunction with the Office of Consumer Protection, has proposed amendments to the County's Secondhand Personal Property law to better aid it in the investigation of crime and to protect the public. Chapter 44A was enacted in 1981 for the purpose of enabling the Police to more effectively prevent the sale of stolen property by establishing secondhand-dealer licensing, retention, and reporting requirements. In the nearly 30 years since the law's passage, the modes of commerce have changed rapidly—particularly from a technological standpoint—and the law has not kept pace. We are trying to catch criminals with pencils and paper instead of computers and technology and our citizens are being hurt.

Mr. Michael J. Hadad, in a letter to Council President Phil Andrews, expressed his objection to the proposed amendment on the grounds that secondhand items consigned to stores like his are unlikely to be stolen because they are posted on a public website and that requiring businesses such as his to collect information on sellers and to hold property is too burdensome and time-consuming. Mr. Hadad understates the criminal activity associated with e-commerce and overstates the burden on his business.

Initially, it should be understood that Mr. Hadad and his iSold It store are currently subject to Chapter 44A's provisions. As a person who is in business of obtaining, acquiring or receiving secondhand personal property, Mr. Hadad is a dealer and must do all that is required under the law, including being licensed, keeping books and records, and retaining property for 18 days. Mr. Hadad has been steadfastly non-compliant. Additionally, iSold It stores (such as Mr. Hadad's) that for compensation arrange for the sale or delivery of a secondhand precious-metal object on behalf of someone else are also dealers under the State Precious Metals law, Md. Code Ann. Business Regulations Article § 12-101 *et seq.*, and are not complying with that statute as well.

Office of the Chief of Police

2350 Research Boulevard • Rockville, Maryland 20850 • 240-773-5000 • 301-762-7619 TTY
www.montgomerycountymd.gov

It is well understood that eBay and other e-commerce sites such as Craigslist are used to sell stolen goods. I am sure members of the Committee have heard stories of victims turned cybersleuths who have located their stolen property on the Internet. Newspapers, magazines, television news programs, and web-based publications have reported extensively on thieves' use of eBay to sell everything from shoplifted merchandise to gift cards received by shoplifters in exchange for items they returned without receipts. I have attached several articles for your review. There are even websites such as ebaycrooks.com that report on Internet crime.

Mr. Hadad's claim that his store has not had a "single problem regarding stolen property" is not surprising when you consider that he has not reported a single item he has received to the police as required by law. In reality, it is impossible to say whether Mr. Hadad's store does or does not have a problem with stolen property if the police do not know what items he is acquiring. iSold It stores provide the same services as pawn shops and secondhand stores. Whether in a recession or in times of prosperity, there are always citizens who are in need of the secondhand industry, as demonstrated by Mr. Hadad's marketing of more than 20,000 items since August of 2005. Since Mr. Hadad's store is in the business of "obtaining, acquiring, or receiving secondhand personal property," it should be treated the same as pawn shops and be held to the same standards.

Mr. Hadad's suggestions on how the police could investigate whether stolen items are being sold on the Internet are unreasonable and costly. Daily checking websites, as Mr. Hadad suggests, would require the addition of at least two positions to the Pawn Unit. The Department would also have to pay $25 a month just to see transactions in the last 90 days and would have to pay a yearly fee to subscribe to a far less superior database than what we have now. Additionally, the Department would have to devote time to inspecting these shops to get the seller's name and information.

This legislation is important. In Montgomery County alone, millions of dollars in stolen property have been recovered from all types of shops and reporting has helped the Department identify suspects in cases involving homicides, robberies, rapes, identity thefts, and all types of property crimes. Because of the current economy, we have all types of opportunistic businesses opening up in the secondhand industry. Precious-metal licenses are being issued for hair salons, dollar stores, liquor stores, real-estate sellers, title companies, traveling gold-buying events, and home "Tupperware"-type gold-buying parties. A big retail chain is now starting up a secondhand portion of its business with a focus on buying GPSs, electronics, and computers. This business is also asking for exemptions.

Montgomery County has always led other municipalities with regard to ensuring fairness for all with landmark laws and regulations. Given the inevitable crime-rate increases that are likely to occur because of the recent economic slowdown, Montgomery County must remain proactive in addressing those weaknesses in the law that allow greater invisibility to a growing number of offenders who will use them in greater numbers. Also, the requested changes will bring the County in line with many of our neighboring jurisdictions and will strengthen the Department's crime-fighting capabilities by allowing the police to keep up with the technological advances being used by the secondhand industry. It will also free up law enforcement to conduct more proactive investigations of suspicious transactions and compliance checks.

While the Department understands the concerns raised by Mr. Hadad, it nevertheless believes that the proposed amendments place no greater burden on eBay sellers than on any other secondhand-personal-property dealer and that the objections of one dealer must not prevail over the many victims of crime and their representatives who rightly have every expectation that proven methods of criminal investigation will be used to recover their stolen property and increase their personal safety.

Thank you for the opportunity to address this very important issue.

# # #

JTM:mam
c: ACA William Snoddy

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CONSUMER PROTECTION

JAN 30 2007

RECEIVED

January 29, 2007

Ms. Nellie Miller
Compliance Administrator
Office of Consumer Protection
100 Maryland Avenue, Suite 330
Rockville, MD 20850

Re: Case #32091 – Executive Director

Dear Ms. Miller,

Thank you for your letter dated January 24, 2007 regarding the need for iSold It on eBay to have a Secondhand Personal Property Dealers License.

As a lifelong Montgomery County resident, I have always strived to conduct my personal and business affairs in a law abiding manner and I will continue to do so. However, I do want to provide clarification and additional information to you regarding the nature of our business:

- We are not auctioneers. We are an eBay listing service that provides functions such as digital photography, ad copy creation, and packing/shipping.
- We post new and used items on eBay for individuals and businesses which can be in a fixed-price format, auction, or any other format that eBay supports.
- We are an eBay Trading Assistant. eBay has many thousands of registered Trading Assistants throughout the country that help others list items on their site. Some Trading Assistants have staffed drop-off locations, and those that do not typically take items into their own homes to conduct the same services.
- In Montgomery County, there are dozens if not hundreds of registered eBay Trading Assistants. A quick search on eBay shows there are 40 Trading Assistants listed in and within 10 miles of the 20850 zip code (13 of these are designated as staffed drop-off locations) and 29 in and within 10 miles of our own 20878 zip code (8 are staffed drop-off locations).
- eBay Trading Assistants with a store-fronts either dedicate their location to the service (such as iSold It) or are co-located with other businesses. For instance, every UPS Store in the country, including the 6 in Montgomery County, is a registered eBay Trading Assistant because of their partnership with a national eBay selling service (people drop off items for sale on eBay at any UPS Store). Another Trading Assistant has a staffed drop-off location at the MotoPhoto in Bethesda.

- We are an unlikely outlet for stolen property. Customers understand that we post up to 8 digital photographs with each listing, which include model and serial numbers if present. These items are posted on a public web site that has over 81 million active users worldwide. We will not post items unless the owner provides a valid government issued photo ID and it is highly unlikely a thief would want a stolen item advertised so publicly.

- We do not buy items from our customers and we do not sell items from our store directly to the local public. We sell items to registered eBay users that purchase those items online.

- Items that do not sell after a 7-day listing are usually retrieved by their owners or donated to charity (we use Vietnam Veterans Association). Occasionally we will re-list item a second time.

- We do not employ current or former auctioneers in our store, nor do we have any experience in the auctioning business.

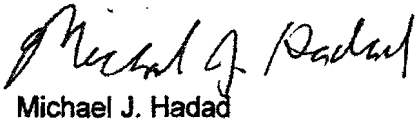
eBay drop-off stores and Trading Assistants are a relatively new type of business. Every jurisdiction will need to decide how to classify them. According to our franchisor, the vast majority of governments throughout the country have chosen not designate them as auction services.

I respectfully request that we not be classified as auctioneers and therefore not fall within the provision of Chapter 44A. Also, I believe the code would be difficult to fairly implement and monitor across all eBay Trading Assistants throughout Montgomery County.

Realizing that you are very busy, I would like to meet to discuss this request further. And if it would be at all useful to you during our meeting, I would be glad to provide information and education to the County about this growing business category. The best number to reach me is 301-332-8360.

Thank you very much for your consideration.

Sincerely,



Michael J. Hadad
Managing Member
Online Sales, LLC
d/b/a iSold It on eBay

OFFICE OF CONSUMER PROTECTION

Isiah Leggett
County Executive

Eric S. Friedman
Acting Director

January 31, 2007

iSOLD It-Store #MD0118
12101 Darnestown Road
Gaithersburg, MD 20878

Attn: Michael J. Hadad, Managing Member

Re: Case #32019-Executive Director

Dear Mr. Hadad:

This will serve to confirm receipt of your January 29, 2007 correspondence regarding the above named case. Your concerns have been noted and are currently under review. After our review you will be advised of our decision. Thank you for your patience.

Sincerely,

Nellie Miller
Nellie Miller
Compliance Administrator

100 Maryland Avenue, Suite 330 • Rockville, Maryland 20850 • 240-777-3636 • 240-777-3768 FAX
www.montgomerycountymd.gov/consumer

OFFICE OF CONSUMER PROTECTION

Isiah Leggett
County Executive

August 8, 2007

Eric S. Friedman
Acting Director

Mr. Michael J. Hadad
Managing Member
Online Sales, LLC (d/b/a isold It on eBay)
Shops at Potomac Valley
12101 Darnestown Road
Gaithersburg, Maryland 20878

Re: Secondhand Personal
Property Dealer

Dear Mr. Hadad:

Thank you for taking the time to speak with me and for your thoughtful letter of several months ago.

Chapter 44A, Secondhand Personal Property, of The Montgomery County Code defines a "Dealer" as any person conducting the business of "...receiving secondhand personal property...." Accordingly, it is our interpretation that all "eBay Trading Assistants" operating or receiving secondhand property in Montgomery County are currently required to comply with Chapter 44A.

Please know that we will notify all "trading assistants" we are able to identify in Montgomery County. Please feel free to contact me directly for any further discussion. Thank you.

Sincerely,

Eric S. Friedman
Director

ESF/ks

cc: Walter Wilson, Esquire
William Snoddy, Esquire
Mauren Walters, Police
Nellie Miller, OCP

Hadad Ltr.(Secondhand)7August07.doc

100 Maryland Avenue, Suite 330 • Rockville, Maryland 20850 • 240-777-3636 • 240-777-3768 FAX
www.montgomerycountymd.gov/consumer

OFFICE OF CONSUMER PROTECTION

Isiah Leggett
County Executive

Eric S. Friedman
Acting Director

August 16, 2007

iSold it-store #MD0118
12101 Darnestown Road
Gaithersburg, MD 20878

Attn: Michael J. Hadad, Managing Member

Re: Case #32091-Secondhand Personal Property Dealer's License
Chapter 44A

Dear Mr. Hadad:

You were notified that "eBay Trading Assistants" who receive secondhand property in Montgomery County are required to comply with Chapter 44A of the Montgomery County Code.

Enclosed is the license application along with other related materials. Thank you.

Sincerely,

Nellie Miller
Nellie Miller
Compliance Administrator

Enc.

100 Maryland Avenue, Suite 330 • Rockville, Maryland 20850 • 240-777-3636 • 240-777-3768 FAX
www.montgomerycountymd.gov/consumer

Shops at Potomac Valley
12101 Darnestown Road
Gaithersburg, MD 20878
phone# 301-990-2040 • fax# 301-990-2045

iSOLD It
he Easy Way to Sell on eBay

August 28, 2007

CONSUMER PROTECTION
AUG 29 2007
RECEIVED

Mr. Eric Friedman
Acting Director
Office of Consumer Protection
100 Maryland Avenue, Suite 330
Rockville, MD 20850

Dear Mr. Friedman,

Thank you for your call earlier this month and your letter dated August 8, 2007.

You indicated the county plans to require that all eBay Trading Assistants in Montgomery County comply with Chapter 44A code, Secondhand Personal Property. I would like to express my objection to this direction and also suggest an alternative method for accomplishing the spirit of 44A.

The vast majority of eBay Trading Assistants are individuals or very small businesses providing their eBay expertise to help sell items through the eBay software. I believe code 44A will be overly burdensome to all eBay Trading Assistants. And as a practical matter, if your objective is to deter selling stolen property, it is hard to conceive how the reporting data accomplishes this any more than the information already available on public web sites.

Regarding my own business, we are a small family run service (my wife and I plus 4 employees; 2 full-time and 2 part-time). Our average eBay sale is about $105, for which we receive an average commission of about $29. Based on the 44A requirements outlined in the package I received, the transactional costs for reporting this data would surely put us out of business. This sad reality just happened to a recently closed iSold It store in Harrisburg, PA. The margins they could realistically make on their service were not enough to cover the labor necessary to fulfill newly imposed government reporting requirements.

The county will be challenged to enforce 44A across all parties who sell things for others on eBay. I provided some information to you about how to locate eBay Trading Assistants through the eBay web site. But a seller can simply turn off this designation on the eBay site and never be visible as a selling resource, while continuing to sell for others.

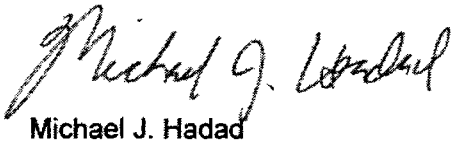
There are many other situations that will be difficult to monitor. For instance, the Gazette newspaper just did a story two weeks ago about a North Potomac junk removal service that claims to derive about 20% of their revenues from selling customers' things on eBay that are too valuable to trash (profits are split with owner 50/50). Golf stores that agree to sell used clubs for its customers are likely using eBay to sell the items.

In short, eBay is simply an e-commerce platform that is used by a range of individuals or businesses to sell things, either for themselves or for others. The data is easily searchable through a seller's eBay ID by any police department with Internet access. If the police believe they have found an item on eBay that has been reported stolen, a quick phone call or visit to the seller can easily help make a final determination.

This leads me to my recommendation. We would be glad to make all of our records available to the county for inspection as needed. This would include customer/seller data, customer/buyer data, and merchandise data. These records are stored in our computerized inventory management system. I believe that imposing this requirement on all county eBay Trading Assistants, while not mandating burdensome reporting on every transaction, would be an excellent way to discourage any selling assistant who might consider accepting questionable property, while at the same time providing the county with relevant information as needed. Do you think this is a workable solution?

Thank you for considering this request and I look forward to hearing from you.

Sincerely,



Michael J. Hadad
Managing Member
Online Sales, LLC
d/b/a iSold It on eBay
301-332-8360

CC: William Wilson, Esq.
William Snoddy, Esq.
Maureen Walters, Police
Nellie Miller, OCP

OFFICE OF CONSUMER PROTECTION

Isiah Leggett
County Executive

Eric S. Friedman
Director

September 18, 2007

Mr. Michael J. Hadad
Managing Member
Online Sales, LLC (d/b/a isold It on eBay)
Shops at Potomac Valley
12101 Darnestown Road
Gaithersburg, Maryland 20878

Re: Chapter 44A

Dear Mr. Hadad:

Thank you for your thoughtful comments and suggestions contained in your letter of August 28, 2007.

Your correspondence will be carefully considered.

Sincerely,

Eric S. Friedman
Director

ESF/ks

Hadad Ltr.(Secondhand)18Sept.07.doc

CHAPTER 591

(Senate Bill 569)

AN ACT concerning

Secondhand Precious Metal Object Dealers and Pawnbrokers – Definition of Dealer

FOR the purpose of altering the definition of "dealer", as it relates to the regulation of secondhand precious metal object dealers, to mean an individual who arranges for the sale or delivery of a secondhand precious metal object on behalf of a person who does not hold a license to do business as a dealer; altering the definitions of "fixed business address" and "local law enforcement unit", as they relate to the regulation of secondhand precious metal object dealers, to clarify their scope; and generally relating to the regulation of secondhand precious metal object dealers and pawnbrokers.

BY repealing and reenacting, without amendments,
Article – Business Regulation
Section 12–101(a), (e), and (i) and 12–201
Annotated Code of Maryland
(2004 Replacement Volume and 2007 Supplement)

BY repealing and reenacting, with amendments,
Article – Business Regulation
Section 12–101(b), (d), and (f)
Annotated Code of Maryland
(2004 Replacement Volume and 2007 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Business Regulation

12–101.

(a) In this title the following words have the meanings indicated.

(b) (1) "Dealer" means:

(I) an individual who acquires commercially from the public or trades commercially with the public in secondhand precious metal objects;

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(II) AN INDIVIDUAL WHO FOR COMPENSATION ARRANGES FOR THE SALE OR DELIVERY OF A SECONDHAND PRECIOUS METAL OBJECT ON BEHALF OF A PERSON WHO DOES NOT HOLD A LICENSE UNDER THIS TITLE; or

(III) [,] unless otherwise provided, a pawnbroker.

(2) "Dealer" includes a retail jeweler as to transactions in which the retail jeweler acquires commercially from the public or trades commercially with the public in secondhand precious metal objects.

(d) "Fixed business address" means a single physical location **IN MARYLAND** where a licensee regularly conducts business and at which the licensee or an employee of the licensee is physically present:

(1) during normal business hours; or

(2) other hours as provided in the application for the license which are sufficient to provide an authorized law enforcement officer or agent access to the licensee's place of business as provided in § 12–306 of this title.

(e) "License" means a license issued by the Secretary to do business as a dealer.

(f) "Local law enforcement unit" means the **MARYLAND** Department of State Police, a **MARYLAND** police department, or **MARYLAND** sheriff, as designated by resolution of the county or municipal governing body, with jurisdiction over any place where a dealer transacts business other than the dealer's fixed business address.

(i) "Precious metal object" means:

(1) a precious metal that is:

(i) gold;

(ii) iridium;

(iii) palladium;

(iv) platinum; or

(v) silver;

(2) a precious or semiprecious stone, or a pearl, that is or appears to have been attached to or inlaid in a precious metal listed in paragraph (1) of this subsection or any alloy of a precious metal; or

(3) an object that is composed of a precious metal listed in paragraph (1) of this subsection or any alloy of a precious metal if:

(i) the market value of the metal in the object lies principally in its precious metal component; or

(ii) at least 25% of the weight of the object is precious metal.

12–201.

(a) Except as otherwise provided in this title, an individual shall have a license before the individual does business as a dealer in the State.

(b) Except those pawnbrokers who are exempt from State licensing under § 12–102(c) of this title, all pawnbrokers must be licensed as dealers.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2008.

Approved by the Governor, May 22, 2008.

Department of Legislative Services

Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 569 (Senator Dyson)
Education, Health, and Environmental Affairs Economic Matters

Secondhand Precious Metal Object Dealers and Pawnbrokers - Definition of Dealer

This bill expands the definition of a secondhand precious metal object dealer to include an individual who is compensated for the sale or delivery of a secondhand precious metal object on behalf of an unlicensed party.

Fiscal Summary

State Effect: Potential increase in general fund revenues and expenditures for licensing new dealers. Potential minimal increase in general fund revenues and expenditures due to imposition of existing criminal and civil penalties on unlicensed dealers.

Local Effect: Potential minimal increase in revenues and expenditures due to imposition of existing criminal penalties on unlicensed dealers.

Small Business Effect: Potential meaningful application and administrative costs for individuals and businesses not previously required to be licensed as secondhand precious metal object dealers.

Analysis

Current Law: The Department of Labor, Licensing, and Regulation regulates dealers who acquire and trade secondhand precious metal objects, including gold, iridium, palladium, platinum, silver, precious and semiprecious stones, and pearls. Dealers of these objects, including individuals, retail jewelers, and pawnbrokers not otherwise regulated by a county, must be licensed before doing business in the State. An unlicensed dealer is guilty of a misdemeanor and subject to a maximum fine of $10,000 and imprisonment for up to two years. The Secretary of Labor, Licensing, and

Regulation is also authorized to impose civil penalties of up to $5,000, payable to the general fund.

Applicants for licensure must pay a nonrefundable fee of $75 and sign an application under oath that contains specified information, including a fixed business address. The applicant must also agree to submit to an investigation of the dealer's inventory by law enforcement agencies in the case of a stolen property investigation. All licensed dealers and their employees must submit to a criminal history records check, including fingerprinting at the individual's expense. Licenses are issued for a period of two years.

Licensees are required to maintain records of all transactions that involve the acquisition of secondhand precious metal objects, including identifying information and a physical description of the person from whom the object was acquired. All records must be submitted to law enforcement and retained by the dealer for at least three years in a location within the State. Any secondhand precious metal object acquired by a dealer must be held for at least 18 days after a record is submitted to law enforcement.

Background: The bill would effectively expand the definition of a secondhand precious metal object dealer to include auctioneers of secondhand precious metal objects. This could include those who operate at traditional auction sites and those who arrange for sale of objects on Internet auction sites. The Maryland Association of Auctioneers counts membership of more than 100 businesses, an unknown subset of which deals in secondhand precious metal objects. eBay, a prominent Internet auction site, has 2 million registered users in Maryland; 5,700 of these traders record sales of $1,000 or more per month. This bill could affect those Maryland businesses that arrange sales on Internet auction sites, such as eBay, on behalf of others.

DLLR advises that it currently licenses 234 secondhand precious metal object dealers.

State Fiscal Effect: This bill could increase the number of applicants for licensure as secondhand precious metal objects dealers. Each applicant would be required to pay the $75 application fee, which would be deposited in the general fund.

Additional general fund revenues could result from the monetary penalty provision for cases of unlicensed dealers heard in the District Court. Civil penalties imposed by the Secretary of Labor, Licensing, and Regulation on unlicensed dealers would also accrue to the general fund.

DLLR expenditures could increase for processing of additional license applications and associated administrative expenses. The Governor has included $5,800 for licensing of secondhand precious metal object dealers in his proposed fiscal 2009 budget. Should licensing activity increase significantly, DLLR would need additional administrative or

clerical staff to handle the workload; however, licensing volume cannot be accurately quantified at this time. DLLR could request additional staff through the budget process.

General fund expenditures could also increase minimally if unlicensed dealers are committed to Division of Correction or local detention facilities. The number of people convicted is expected to be minimal.

Local Fiscal Effect: Additional revenue could result from the monetary penalty provision for cases of unlicensed dealers heard in the circuit courts.

Expenditures could increase minimally for incarceration of unlicensed dealers. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days.

Additional Information

Prior Introductions: Identical bills were introduced in the 2007 session as HB 333 and SB 365. Neither the House Economic Matters Committee nor the Senate Education, Health, and Environmental Affairs Committee took action on the bills.

Cross File: None designated, although HB 422 is identical.

Information Source(s): Department of Labor, Licensing, and Regulation; Department of Legislative Services

Fiscal Note History: First Reader - February 22, 2008
mll/ljm

Analysis by: Suzanne O. Potts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

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DEPARTMENT OF POLICE

Isiah Leggett
County Executive

J. Thomas Manger
Chief of Police

INFORMATION SUPPORT AND ANALYSIS DIVISION

March 2, 2009

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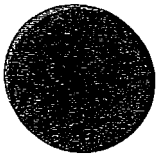

Philip M. Andrews
President, Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Dear Mr. Andrews:

Re: Expedited Bill 33-08

I want to thank you and your fellow Public Safety Committee members Roger Berliner and Marc Elrich for your careful consideration of this very important legislation. I trust that the recent worksession demonstrated the need for reporting by all businesses that acquire, market, or sell secondhand personal property.

While I believe the bill as drafted best serves the public interest, we are willing to compromise on the length of time secondhand personal property dealers are required to retain secondhand personal property they acquire. Both Maureen Walter of the Department of Police's Pawn Unit and Associate County Attorney William A. Snoddy met with Michael Hadad, Bill Lemer, and Davis Kiyonaga following the February 5 Public Safety Committee work session in an effort to reach a compromise on the issues. Messrs. Hadad, Lemer and Kiyonaga, however, were not amenable to reaching an accord on retention time or any other issue related to reporting their receipt of secondhand personal property. The Department remains willing to reduce the retention time to 21 days, which represents an additional three days over current.

As it stands, the provisions of Chapter 44A currently apply to Mr. Hadad's iSold It store and other businesses that acquire and sell secondhand personal property regardless of their mode of operation. As Mr. Hadad's letter dated February 11, 2009, demonstrates, he remains committed to his and similar business being treated differently than others who acquire secondhand personal property. This is not a workable solution.

Whether iSold It, Drop and Ship, or other eBay listing services have actually obtained or sold stolen property is irrelevant. In fact, it is the very thing for which we strive. A side benefit of the regulation is that many dealers decline suspicious transactions. One of the purposes of the reporting and retention requirements is to close avenues to criminals who seek to turn stolen property into cash. Certainly we would not excuse a pawn shop from the law's requirements

because it could show that it has not obtained stolen property. Granting eBay listing services such as iSold It an exception to the reporting and retention requirements will only serve to open up another avenue for criminals to unload stolen goods with fewer impediments. It will also create an avalanche of complaints from licensed (and reporting) dealers who feel the exemption is discriminatory to their businesses.

Thank you for the opportunity to address this very important issue.

Sincerely,

Captain J. Mitchell Cunningham, Director
Information Support and Analysis Division