

## Chapter 44A. Secondhand Personal Property. 1

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### Notes

1 \***Cross reference**-Sale of gold, silver, precious stones, etc., § 6-3 et seq.; antique shops, § 59-G-2.04.

### Sec. 44A-1. Definitions.

When used in this Chapter:

*Automated Purchasing Machine* means a self-service device that:

- (1) is designed to dispense payment in exchange for personal property; and
- (2) is also known as a reverse vending machine.

*Dealer* means a person conducting the business of buying, receiving, or marketing secondhand personal property in the County, including:

- (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.

*Director* means the Chief of Police.

*Firearm* means a device as defined in MD Code, Public Safety, §5-101(h), as amended.

*Person* includes an individual, corporation, business trust, estate, trust, partnership association, 2 or more persons having a joint or common interest, or any other legal or commercial entity.

*Personal property* 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; and any item serialized, marked for identification purposes, or engraved.

*Police* means the County Police Department or another police department having jurisdiction.

*Recyclable materials* means *recyclable solid waste* as defined in Section 48-46.

*Secondhand personal property* means previously owned personal property offered for sale or as collateral by any person, other than the

manufacturer, wholesale distributor, or original retail seller, acting in the ordinary course of business. Secondhand personal property does not include:

- (1) personal property purchased at a public sale;
- (2) items of personal property that do not include a firearm that are offered for sale only on residential property and are:
  - (A) owned by a resident of the property; or
  - (B) part of the estate of a deceased immediate past resident of that property; or
- (3) items of personal property that have a resale value below a dollar threshold specified for that type of personal property in a regulation adopted under method (3).

*Public sale* means a sale open to the public and held in a location open and accessible to the public, with sufficient public notice of the time and place of the sale to give the public a reasonable opportunity to participate. (1981 L.M.C., ch. 27, § 1; 1983 L.M.C., ch. 28, § 1; [2009 L.M.C., ch. 6](#), § 1; [2014 L.M.C., ch. 13](#), § 1; [2014 L.M.C., ch. 30](#), § 1; [2019 L.M.C., ch. 3](#), § 1.)

#### **Sec. 44A-2. License required.**

A person must not conduct the business of a dealer unless the person possesses a dealer's license issued by the Office of Consumer Protection, which must be displayed to the public wherever the person conducts the business of a dealer. An individual must not act as officer, employee or agent, and in that capacity engage in transactions involving secondhand personal property, for a person required to be licensed by this Chapter unless the person possesses a valid and current dealer's license. (1981 L.M.C., ch. 27, § 1; 1983 L.M.C., ch. 28, § 1; 1996 L.M.C., ch. 13, § 1; [2005 L.M.C., ch. 26](#), § 1.)

**Editor's note**—2005 L.M.C., ch. 26, §§ 2 and 3, state:

Sec. 2. Regulations. A regulation which implements a function transferred to the Office of Consumer Protection by this Act continues in effect until otherwise amended or repealed, but any reference to any predecessor department or office must be treated as referring to the Office of Consumer Protection.

Sec. 3. Transition. This act does not invalidate or affect any action taken by the Department of Housing and Community Affairs before this Act took effect. Any responsibility or right granted by law, regulation, contract, or other document, and which is associated with a function transferred by this Act from the Department of Housing and Community Affairs, is transferred to the Office of Consumer Protection.

#### **Sec. 44A-3. Required books and records; reporting requirements.**

(a) A dealer must keep all records and receipts required by this section at the business location for a minimum of 1 year from the date of the latest recorded transaction.

(b) A dealer must keep an electronic record, in English, of each purchase or receipt by or on behalf of the dealer at the time of the transaction. Each transaction must be recorded in an electronic format specified by regulation under method (3), which contains the following information:

- (1) The name, date of birth, address, race, sex, physical description, and signature of the person selling the item;
- (2) The driver's license number or similar proof of identification of the person selling the item;
- (3) The date and time of the transaction;
- (4) The identification, including signature, of the person making the record entry;
- (5) A full physical description of each item purchased or received by the dealer, including but not limited to, shape, size, color, and a list of all numbers, marks, monograms, trademarks, manufacturer's names, serial numbers, inscriptions and any other marks of identification appearing on the item; and
- (6) The consideration paid for each item or set of items.

(c) A dealer must give the Police:

- (1) electronic notice of each transaction within 24 hours after the transaction; and
- (2) a copy of the written record of each transaction required in subsection (b) within 7 days after the transaction. (1981 L.M.C., ch. 27, § 1; 1983 L.M.C., ch. 28, § 1; 1984 L.M.C., ch. 24, § 45A; 1984 L.M.C., ch. 27, § 29; [2009 L.M.C., ch. 6](#), § 1.)

#### **Sec. 44A-4. Retention of secondhand personal property.**

(a) A person must not sell, melt, change or alter (except for customary testing), take apart, destroy, obliterate identification marks, or dispose of any secondhand personal property purchased or received by a dealer until 21 days after the record of the transaction is submitted to the Police.

(b) All secondhand personal property purchased or received by a dealer must be stored at the dealer's business location until 21 days after the record of the transaction is submitted to the Police, or for such additional time per any specific item as the Police require. All stored items must be identified by a tag attached to the property numbered to correspond with the number of the transaction record. Items purchased in bulk may be tagged in bulk. The storage requirements in this subsection do not apply to a consignee who:

- (1) operates from a fixed place of business;
- (2) complies with the tagging requirements of this subsection; and
- (3) withholds payment for consignments for at least 30 days after each item is received.

(c) Items may be stored at other locations in the County approved by the Police. The dealer must produce these items at the business location within 1 hour after a request to do so by the Police. A dealer who cannot comply with a request to produce an item made after regular business hours must produce the item within 1 hour after the opening of business on the next business day.

(d) The requirements of subsections (a), (b), and (c) do not apply to secondhand personal property which has been inspected and cleared for earlier disposition by the Police under regulations adopted under method (3). (1981 L.M.C., ch. 27, § 1; 1983 L.M.C., ch. 28, § 1; 1984 L.M.C., ch. 24, § 45A; [2009 L.M.C., ch. 6](#), § 1.)

#### **Sec. 44A-5. Transactions involving minors prohibited.**

A dealer must not buy or receive any secondhand personal property from a person under 18 years old. (1981 L.M.C., ch. 27, § 1; 1983 L.M.C., ch. 28, § 1; 1984 L.M.C., ch. 24, § 45A; [2009 L.M.C., ch. 6](#), § 1.)

#### **Sec. 44A-6. Confidentiality of reports to Police.**

The reports to the Police required by Section 44A-3 are confidential information for use by law enforcement agencies for law enforcement purposes. The full physical description of reported items may, however, be shown to private individuals to aid in identifying stolen property. (1981 L.M.C., ch. 27, § 1; 1983 L.M.C., ch. 28, § 1; [2009 L.M.C., ch. 6](#), § 1.)

#### **Sec. 44A-7. Inspection by police; release of stolen property.**

(a) A dealer must permit the Police to:

- (1) examine the records required by this Chapter;
- (2) examine any personal property purchased, received, or stored at the business location; and

(3) require retention for an additional 30 days after the storage retention period under Section 44A-4, of any property which the police know or believe to be missing or stolen.

(b) A dealer must release to the Police an item of secondhand personal property, other than a security or printed evidence of indebtedness, located at the dealer's place of business if:

- (1) the Police have reasonable cause to believe that the item was 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 owner's agent or designee has provided an affidavit of ownership;
- (4) the stolen property report describes the item by:
  - (i) a date;
  - (ii) initials it bears;
  - (iii) an insurance record;
  - (iv) a photograph;
  - (v) a sales receipt;
  - (vi) a serial number;
  - (vii) specific damage;
  - (viii) the facts that show that the item is one of a kind; or
  - (ix) a unique engraving; or

(5) the property is involved in an on-going criminal or administrative proceeding where violations of this Chapter have occurred.

(c) The Police must give the dealer a receipt for each item of secondhand personal property released to the Police pursuant to subsection (b). The receipt must:

(1) describe the item; and

(2) notify the dealer of the right to request a statement of charges against the individual who sold or gave the item to the dealer for theft under State law. (1981 L.M.C., ch. 27, § 1; 1983 L.M.C., ch. 28, § 1; [2009 L.M.C., ch. 6](#), § 1.)

#### **Sec. 44A-8. Application for license; license fee.**

(a) The Office of Consumer Protection must make available an application form for a dealer's license that requires an applicant to certify that the information given is correct under the penalties of perjury.

(b) The Executive, by regulation adopted under method (3), must set a license fee in an amount that does not exceed the estimated costs of administering and enforcing this Chapter.

(c) The dealer must agree in the application to:

(1) authorize the Police to inspect the records, inventory, and premises of the business during normal business hours;

(2) pay for the purchase of any secondhand personal property by check; and

(3) not cash any check, except a check issued by the dealer to pay for secondhand personal property, or as permitted by regulation adopted under method (3).

(d) Only individuals may apply for a dealer's license.

(1) A license application on behalf of a corporation or limited partnership must be applied for by and issued to the president of the corporation or one or more members of the partnership who are authorized to act for it.

(2) A license application on behalf of a partnership must be applied for by and issued to all of the partners who are authorized to act for the partnership.

(3) Each individual who applies for a dealer's license under this section assumes, as an individual, all responsibilities of the dealer and, as an individual, is subject to all conditions, restrictions and requirements imposed on dealers. (1981 L.M.C., ch. 27, § 1; 1983 L.M.C., ch. 28, § 1; 1984 L.M.C., ch. 24, § 45A; 1984 L.M.C., ch. 27, § 29; 1996 L.M.C., ch. 13, § 1; [2005 L.M.C., ch. 26](#), § 1; [2009 L.M.C., ch. 6](#), § 1.)

**Editor's note**—2005 L.M.C., ch. 26, §§ 2 and 3, state:

Sec. 2. Regulations. A regulation which implements a function transferred to the Office of Consumer Protection by this Act continues in effect until otherwise amended or repealed, but any reference to any predecessor department or office must be treated as referring to the Office of Consumer Protection.

Sec. 3. Transition. This act does not invalidate or affect any action taken by the Department of Housing and Community Affairs before this Act took effect. Any responsibility or right granted by law, regulation, contract, or other document, and which is associated with a function transferred by this Act from the Department of Housing and Community Affairs, is transferred to the Office of Consumer Protection.

#### **Sec. 44A-9. Payments by check or store credit.**

A dealer must pay for each item of secondhand personal property by check or by granting a credit toward the purchase of other merchandise from the dealer, except as permitted by regulation under method (3). (1981 L.M.C., ch. 27, § 1; 1983 L.M.C., ch. 28, § 1; 1984 L.M.C., ch. 24, § 45A; 1984 L.M.C., ch. 27, § 29; [2009 L.M.C., ch. 6](#), § 1; [2014 L.M.C., ch. 30](#), § 1.)

#### **Sec. 44A-10. Reporting changed information.**

If, during any license year, there is a change in the information that a person gave in obtaining or renewing a license under this Chapter, the person must report the change to the Office of Consumer Protection within 30 days after the change occurs and certify that the information given is correct under the penalties of perjury. (1981 L.M.C., ch. 27, § 1; 1983 L.M.C., ch. 28, § 1; 1996 L.M.C., ch. 13, § 1; [2005 L.M.C., ch. 26](#), § 1.)

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

(a) Each license issued under this Chapter expires one year from the date of issuance.

(b) A license issued under this Chapter may be renewed on application and payment of a fee established by regulation under method (3).

(c) A license must not be transferred or assigned. (1981 L.M.C., ch. 27, § 1; 1983 L.M.C., ch. 28, § 1; 1984 L.M.C., ch. 24, § 45A; [2009 L.M.C., ch. 6](#), § 1; [2019 L.M.C., ch. 3](#), § 1.)

#### **Sec. 44A-12. Grounds for refusal, suspension or revocation of license.**

The Office of Consumer Protection may refuse to grant a license under this Chapter to any individual and may suspend, revoke or refuse to renew the license of any person if it finds:

(a) The person has violated or is attempting to violate any provisions of this Chapter or any rule or regulation adopted under this

Chapter.

(b) A similar license issued to the person has been suspended, revoked or refused in another jurisdiction for a reason which would justify such action under this section.

(c) Any officer, manager, agent or employee of the individual or dealer has violated or is attempting to violate any provision of this Chapter or any rule or regulation adopted under this Chapter unless the person or dealer:

(1) Had no knowledge of the wrongful conduct and in the exercise of reasonable diligence could not have known of the conduct; and

(2) Was unable to prevent the violation or attempted violation with the exercise of reasonable diligence.

(d) The person or dealer has been convicted of theft or a felony on one (1) or more occasions within the past seven (7) years. (1981 L.M.C., ch. 27, § 1; 1983 L.M.C., ch. 28, § 1; 1996 L.M.C., ch. 13, § 1; [2005 L.M.C., ch. 26](#), § 1.)

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#### **Sec. 44A-13. Hearing; appeals.**

(a) The Office of Consumer Protection must offer an applicant or licensee an opportunity for a hearing before denying, revoking, suspending, or refusing to renew a license. The Director of the Office of Consumer Protection may serve as hearing officer or the Director may appoint a hearing officer. The Director of the Office of Consumer Protection must give the applicant or licensee written notice of the hearing by personal service or certified mail delivered to the last address recorded in the official County registry at least 15 days before the date of the hearing. The notice must:

(1) specify the time, date and place of the hearing;

(2) contain sufficient information to inform the applicant or licensee of the reason for denying, revoking, suspending, or refusing to renew the license;

(3) specify that the applicant or licensee has a right to representation by counsel; and

(4) state that the license may be denied, suspended, revoked, or refused by the County.

(b) The hearing officer may deny, revoke, suspend, or refuse to renew the license of any dealer if the hearing officer finds a violation of:

(1) this Chapter;

(2) Chapter 11; or

(3) any other applicable law or regulation which applies to conducting business as a dealer.

(c) A decision to deny, revoke, suspend, or refuse to renew a license must be in writing and specify the facts on which it is based. Each decision must be served on the dealer by personal service or certified mail. A dealer aggrieved by a decision to deny, revoke, suspend, or refuse to renew a license may appeal to the circuit court for the County in accordance with the procedure prescribed for administrative appeals by the Maryland Rules of Procedure. (1981 L.M.C., ch. 27, § 1; 1983 L.M.C., ch. 28, § 1; 1996 L.M.C., ch. 13, § 1; [2005 L.M.C., ch. 26](#), § 1; [2009 L.M.C., ch. 6](#), § 1.)

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

(a) If the license of a dealer is suspended, revoked or not renewed, the dealer must immediately return the license to the Office of Consumer Protection.

(b) At the end of a suspension, the Office must return the license to the dealer. (1981 L.M.C., ch. 27, § 1; 1983 L.M.C., ch. 28, § 1; 1996 L.M.C., ch. 13, § 1; [2005 L.M.C., ch. 26](#), § 1; [2009 L.M.C., ch. 6](#), § 1.)

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#### **Sec. 44A-15. Computer reporting of information.**

(a) The Police may maintain the information received under this Chapter in a computer program in a form that is useful in police investigations.

(b) The Police should coordinate the form and content of the information required by Section 44A-3 in order to:

(1) share the information with law enforcement agencies in neighboring jurisdictions;

(2) maximize the usefulness of the recordkeeping; and

(3) make the requirements on dealers uniform in each jurisdiction. (1981 L.M.C., ch. 27, § 1; 1983 L.M.C., ch. 28, § 1; [2009 L.M.C., ch. 6](#), § 1.)

#### **Sec. 44A-16. Automated Purchasing Machines.**

(a) *General Prohibition.* Except as otherwise provided in this Section, a person must not purchase or offer to purchase any personal property by means of an automated purchasing machine.

(b) *Exception for recyclable materials.* This Section does not prohibit the use of an automated purchasing machine exclusively to collect recyclable materials under a government-operated or -approved recycling program. ([2014 L.M.C., ch. 13](#), § 1.)

#### **Sec. 44A-17. Regulations; restitution.**

The Executive must adopt reasonable and necessary regulations under method (3) to implement and administer this Chapter which may authorize the County to obtain restitution on behalf of an injured party. (1981 L.M.C., ch. 27, § 1; 1983 L.M.C., ch. 28, § 1; 1984 L.M.C., ch. 24, § 45A; [2009 L.M.C., ch. 6](#), § 1; [2014 L.M.C., ch. 13](#), § 1.)

#### **Sec. 44A-18. Penalties.**

(a) Any person who violates this Chapter is subject to punishment for a class A violation. Each day that a violation continues is a separate offense.

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

(c) A citation for a violation of this law may be issued by the:

(1) Chief of Police or the Chief's designee; or

(2) Director of the Office of Consumer Protection or the Director's designee. (1981 L.M.C., ch. 27, § 1; 1983 L.M.C., ch. 22, § 50; 1983 L.M.C., ch. 28, § 1; [2009 L.M.C., ch. 6](#), § 1; [2014 L.M.C., ch. 13](#), § 1; [2019 L.M.C., ch. 3](#), § 1.)

**Editor's note**—Section 44A-18, relating to the application of this chapter in municipalities, derived from 1981 L.M.C., ch. 27, § 1, and 1983 L.M.C., ch. 28, § 1, was repealed by § 26 of 1985 L.M.C., ch. 31. See § 2-96.