

Expedited Bill No. 33-08
Concerning: Secondhand Personal
Property - Amendments
Revised: March 26, 2009 Draft No. 5
Introduced: October 28, 2008
Enacted: March 31, 2009
Executive: April 7, 2009
Effective: April 7, 2009
Sunset Date: None
Ch. 6, Laws of Mont. Co. 2009

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

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

Clerk's Note:

- Line 35, the word "merchant" should be included in the bracket with the word "a" at the beginning of the line.*
- Lines 72-76, Underlining added because it is all new text.*
- Line 142, Added a comma after the word "jurisdiction" and before the bracket.*
- Line 143, Removed the comma after the word "Police".*
- Line 225, Removed the bracket before the word "County".*
- Line 231, The comma that was added after the word "fee" was bracketed out.*
- Line 253, Added a bracketed period at the end of the line.*

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

2 **44A-1. Definitions.**

3 When used in this [chapter]Chapter:

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

7 (1) an auctioneer; and

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

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

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

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

23 [(e)] *Personal property* [means] includes radios and other audio equipment;
24 televisions and other video equipment; photographic, optical and computer
25 equipment; typewriters, calculators and other electronic or electrical home or
26 office appliances, machines or equipment; firearms; bicycles; jewelry; furs,
27 leather goods; watches; paintings; fine or historic china, crystal, glass or
28 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 merchant] the manufacturer, wholesale distributor, or original retail seller,
36 acting in the ordinary course of business. [It] Secondhand personal property
37 does not 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) a copy of the written record of each transaction required in
76 subsection (b) within 7 days after the transaction.

77 **44A-4. Retention of secondhand personal property.**

- 78 (a) A person [may] must not sell, melt, change or alter (except for
79 customary testing), take apart, destroy, obliterate identification marks,
80 or dispose of any secondhand personal property purchased[, obtained,
81 acquired] or received by a dealer until [eighteen (18)] ~~[[30]]~~ 21 days
82 [have elapsed from the date of compliance with the reporting

83 requirements of section 44A-6] after the record of the transaction is
 84 submitted to the Police.

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

- 105 (c) Items may be stored at other locations in [Montgomery] the County
 106 approved by the [director] Police. The dealer [shall] must produce
 107 these items at the business location within [one (1)] 1 hour [of] after a
 108 request to do so by [a police officer] the Police. [having jurisdiction.
 109 Where compliance is impossible because of] A dealer who cannot

110 comply with a request to produce an item made after regular business
 111 hours [the close of business hours, the item shall be produced within
 112 one (1)] must produce the item within 1 hour [of] after the opening of
 113 business on the next business day.

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

120 **44A-5. [Exemption for certain dealers.] Transactions involving minors**
 121 **prohibited.**

122 [The county executive may, by regulation adopted under method (3) of section 2A-
 123 15 of this Code, modify or eliminate the licensing, holding, record keeping or
 124 reporting requirements of this chapter as they pertain to dealers who derive less
 125 than ten (10) percent of their gross personal property sales from the sale of
 126 secondhand personal property.] A dealer must not buy or receive any secondhand
 127 personal property from a person under 18 years old.

128 **44A-6. [Report to Montgomery County department of police; regulations and**
 129 **forms] Confidentiality of reports to Police.**

130 [A dealer shall deliver to the director, or his designee, on or before the first
 131 business day of each week, a complete, correct and legible copy of the information
 132 required to be kept in section 44A-3, on forms prescribed by the director for all
 133 secondhand personal property purchased, obtained, acquired or received since the
 134 date of the last report. These] The reports [shall be considered] to the Police
 135 required by Section 44A-3 are confidential information for use by law enforcement
 136 agencies for law enforcement purposes. The full physical description of reported

137 items may, however, be shown to private individuals [for the purpose of] to aid in
138 identifying stolen property.

139 **44A-7. Inspection by [Montgomery County department of] police; release of**
140 **stolen property.**

141 (a) A dealer [shall] must permit [any officer of the Montgomery County
142 department of police, or other police departments having jurisdiction,]
143 the Police to:

144 (1) examine the [books and] records required by this [chapter]
145 Chapter;

146 (2) [to] examine any personal property purchased, [obtained,
147 acquired,] received, or stored at the business location; and

148 (3) [to] require retention for an additional [eighteen (18)] 30 days
149 [beyond] after the storage retention period [specified above]
150 under Section 44A-4, of any property [known or believed by]
151 which the police know or believe to be missing or stolen.

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

155 (1) the Police have reasonable cause to believe that the item was
156 stolen;

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

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

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

162 (i) a date;

163 (ii) initials it bears;

- 164 (iii) an insurance record;
 165 (iv) a photograph;
 166 (v) a sales receipt;
 167 (vi) a serial number;
 168 (vii) specific damage;
 169 (viii) the facts that show that the item is one of a kind; or
 170 (ix) a unique engraving; or
 171 (5) the property is involved in an on-going criminal or
 172 administrative proceeding where violations of this Chapter have
 173 occurred.
- 174 (c) The Police must give the dealer a receipt for each item of secondhand
 175 personal property released to the Police pursuant to subsection (b).
 176 The receipt must:
 177 (1) describe the item; and
 178 (2) notify the dealer of the right to request a statement of charges
 179 against the individual who sold or gave the item to the dealer
 180 for theft under State law.

181 **44A-8. Application for license; license fee.**

- 182 (a) [Each application for a license must be made on the form that the] The
 183 Office of Consumer Protection [requires. The] must make available an
 184 application form for a dealer's license that requires an applicant
 185 [must] to certify that the information given is correct under the
 186 penalties of perjury.
- 187 (b) [The annual license fee for each license shall be established by the
 188 County] The Executive, by [written] regulation adopted under method
 189 (3) [of Section 2A-15 of this Code], must set a license fee in an

190 amount that does not [to] exceed the estimated costs of administering
 191 and enforcing this Chapter.

192 (c) [Each] The dealer must agree in the application [for a dealer's license
 193 shall contain a statement] to:

194 (1) [that the applicant authorizes] authorize the [Montgomery
 195 County Department of] Police [or other police departments
 196 having jurisdiction] to inspect the [books,] records, inventory,
 197 and premises of the business during normal business hours[,
 198 and a statement that the dealer agrees];

199 (2) [to] pay for the purchase of any secondhand personal property
 200 by check; and

201 (3) not [to] cash any [such] check, except a check issued by the
 202 dealer to pay for secondhand personal property or as permitted
 203 by [executive] regulation adopted [by the County Executive]
 204 under method (3)[of Section 2A-15 of this Code].

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

206 (1) [If an] A license application [for a license is made] on behalf of
 207 a corporation or limited partnership[, the license shall] must be
 208 applied for by and issued to the president of the corporation or
 209 one or more members of the partnership who are authorized to
 210 act for it.

211 (2) [If the application is made] A license application on behalf of a
 212 partnership[, the license shall] must be applied for by and
 213 issued to all of the partners who are authorized to act for the
 214 partnership. [Where any partner is a corporation or limited
 215 partnership, the application shall be made by and issued to the

216 president of the corporation or members of the limited
217 partnership who are authorized to act for it.]

218 (3) Each individual who applies for a dealer's license under this
219 Section assumes, as an individual, all responsibilities of the
220 dealer and, as an individual, is subject to all conditions,
221 restrictions and requirements imposed on dealers.

222 **44A-9. Payments by check.**

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

226 * * *

227 **44A-11. Expiration and renewal of license; prohibition on transfer.**

228 (a) Each license issued under this [chapter] Chapter expires July 30 of
229 each year.

230 (b) A license issued under this [chapter] Chapter may be renewed on
231 application and payment of a fee [[,]] established by [the county
232 executive by] regulation [adopted] under method (3)[of section 2A-15
233 of this Code, which shall not exceed the estimated costs of
234 administration and enforcement].

235 (c) A license [may] must not be transferred or assigned.

236 * * *

237 **44A-13. Hearing; appeals.**

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

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

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

277 **44A-14. Return of licenses on suspension or revocation.**

- 278 (a) If the license of [any employee or] a dealer is suspended, revoked or
 279 not renewed, the [employee or] dealer must immediately return the
 280 license to the Office of Consumer Protection.
- 281 (b) At the end of a suspension, the Office must return the license [shall be
 282 returned] to the [employee or] dealer.

283 **44A-15. Computer reporting of information.**

- 284 (a) The [Montgomery County department of police is authorized to
 285 transfer] Police may maintain the information received [pursuant to]
 286 under this [chapter] Chapter [into] in a computer [information system]
 287 program [and to report the information in such forms as] in a form
 288 that [the department of police may determine] is useful in [department
 289 of] police investigations.
- 290 (b) The [department is encouraged to] Police should coordinate the form
 291 and content of the information required by Section 44A-3 in order to:
 292 (1) [and]share [such] the information with [cognizant] law
 293 enforcement agencies [and] in neighboring jurisdictions;
 294 (2) [to] maximize the usefulness of [such] the recordkeeping; and
 295 (3) make [uniform] the requirements on dealers uniform in each
 296 jurisdiction.

297 **44A-16. Regulations; restitution.**

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

304 **44A-17. Penalties.**

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

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

312 **Sec. 2. Expedited Effective Date.**

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

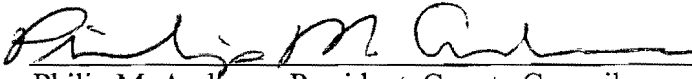
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319 *Approved:*

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April 2, 2009

322 Philip M. Andrews, President, County Council

Date

323 *Approved:*

324

325 

April 7, 2009

326 Isiah Leggett, County Executive

Date

327 *This is a correct copy of Council action.*

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329 

April 8, 2009

330 Linda M. Lauer, Clerk of the Council

Date