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

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 233, Added a bracketed period at the end of the line.
Sec. 1. Chapter 44A is amended as follows:

44A-1. Definitions.

When used in this 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;
and any item serialized, marked for [personal] identification purposes, or engraved.

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

[(f) Secondhand personal property] means previously owned personal property [which is] offered for sale or as collateral by any person, other than [a merchant] the manufacturer, wholesale distributor, or original retail seller, acting in the ordinary course of business. [It] Secondhand personal property does not include personal property purchased at a public sale.

[(g) Public sale] means a sale open to the public and held in a location open and accessible to the public, [pursuant to] with sufficient public notice of the time and place of the sale [such as will afford] to give the public a reasonable opportunity to participate [in the sale].

* * *

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

(a) A dealer [shall] must keep all [business books] records and receipts required by this section at the business location for a minimum of [one (1)] 1 year from the date of the latest [transaction] recorded transaction [in said book].

(b) A dealer [shall cause a written] must keep an electronic record, in [the] English [language], [to be made] of each [transaction involving a] purchase[, acquisition] or receipt by or on behalf of the dealer [of secondhand personal property] at the time of the transaction. Each transaction [shall] must be recorded in [a] an electronic format specified by [executive] regulation[, adopted by the county executive] under method (3), [of section 2A-15 of this Code, and shall contain] which contains the following information:
(1) The name, date of birth, address, [[social security number,]]
race, sex [and], 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[, obtained,
acquired] or received by the dealer, including but not limited to,
shape, size, color, and a [listing] 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 [for which
a separate price was negotiated].
(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.
44A-4. Retention of secondhand personal property.
(a) A person [may] 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[, obtained,
acquired] or received by a dealer until [eighteen (18)] [[30]] 21 days
have elapsed from the date of compliance with the reporting
requirements of section 44A-6] after the record of the transaction is submitted to the Police.

(b) All secondhand personal property purchased[, obtained, acquired] or received by a dealer [shall] must be stored at the dealer’s business location until [eighteen (18)] [[30]] 21 days [have elapsed from the date of compliance with the reporting requirements of section 44A-6] after the record of the transaction is submitted to the Police, or for such additional time [as to] per any specific item [or items] as [may be directed by the director or his designee] the Police require. All stored items [being so stored shall] must be identified by a tag attached to the property numbered [in a manner] to correspond with the number of the transaction [description in the business records required to be kept by section 44A-3] record. Items purchased in bulk may be tagged in bulk. The storage requirements in this subsection do not apply to a [Consignees] consignee who: [need not comply with the foregoing storage requirements, provided they]

[(i) operate] (1) operates from a fixed place of business[,] ;

[(ii) comply] (2) complies with the tagging requirements of this subsection[,] ; and

[(iii) withhold] (3) withholds payment for consignments for at least [eighteen (18)] 30 days [from the date they are] after each item is received.

(c) Items may be stored at other locations in [Montgomery] the County approved by the [director] Police. The dealer [shall] must produce 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), (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 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 [for the purpose of] to aid in identifying stolen property.


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

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

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

(3) [to] require retention for an additional [eighteen (18)] 30 days [beyond] after the storage retention period [specified above] under Section 44A-4, of any property [known or believed by] 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 [of the dealer] 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.

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

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

(b) [The annual license fee for each license shall be established by the County] The Executive, by [written] regulation adopted under method (3) [of Section 2A-15 of this Code], must set a license fee in an
amount that does not [to] exceed the estimated costs of administering and enforcing this Chapter.

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

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

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

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

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

(1) [If an] A license application [for a license is made] on behalf of a corporation or limited partnership[, the license shall] 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) [If the application is made] A license application on behalf of a partnership[, the license shall] must be applied for by and issued to all of the partners who are authorized to act for the partnership. [Where any partner is a corporation or limited partnership, the application shall be made by and issued to the
president of the corporation or members of the limited partnership who are authorized to act for it.]

(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.


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

* * *

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

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

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

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

* * *


(a) [Before revoking, suspending or refusing to renew any license, the] The Office of Consumer Protection must offer [the dealer] an applicant or licensee an opportunity for a hearing [to show cause why a license should not be revoked, suspended or refused] before denying, revoking, suspending, or refusing to renew a license. The
Director of the Office of Consumer Protection may serve as hearing officer [at the hearing,] or the Director may appoint a hearing officer. The Director of the Office of Consumer Protection must give the applicant or licensee [must receive at least 15 days] 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, upon finding a violation of this Chapter, or the violation of any of the provisions of Chapter 11 of this Code, or the violation of any other applicable provision of law or regulation relating to conducting business as a dealer, shall have the power to 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) Any decision to deny, revoke, suspend, or refuse to renew a license [shall] must be in writing and [shall include a statement of]
specify the facts [upon] on which it is based. [Decisions shall] Each decision must be served [upon] on the dealer by personal service or [by] certified mail. [Any] A dealer aggrieved by [any] 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.

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

(a) If the license of [any employee or] a dealer is suspended, revoked or not renewed, the [employee or] 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 [shall be returned] to the [employee or] dealer.


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

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

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

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

(3) make [uniform] the requirements on dealers uniform in each jurisdiction.
44A-16. Regulations; restitution.

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

44A-17. Penalties.

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

Sec. 2. Expedited Effective Date.

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

Philip M. Andrews, President, County Council

Isiah Leggett, County Executive

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council