



SPONSOR: Rep. Viola & Rep. George &
Rep. Buckworth & Sen. Henry; Reps.
Keeley, Maier, Spence

HOUSE OF REPRESENTATIVES

142nd GENERAL ASSEMBLY

HOUSE BILL NO. 156

AN ACT TO AMEND CHAPTER 23 OF TITLE 24 OF THE DELAWARE CODE RELATING TO PAWNBROKERS,
SECOND-HAND DEALERS, AND SCRAP METAL PROCESSORS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 23, Title 24, Delaware Code by striking sections 2301 through 2318 thereof and
2 substituting in lieu thereof the following:

3 " Subchapter I - General Provisions

4 § 2301. Definitions.

5 As used in this Chapter:

6 (1) 'Pawnbroker' means any person, company, corporation, or member or members of a partnership or firm, who
7 engages in the business of lending money on the deposit or pledge of personal property or other valuable things, other
8 than choses in action, securities, or written evidences of indebtedness, or purchases personal property with an expressed or
9 implied agreement or understanding to sell it back at a subsequent time at a stipulated price, or lends money upon goods,
10 wares or merchandise pledged, stored or deposited as collateral security.

11 (2) 'Secondhand Dealer' means any person, company, corporation, or member or members of a partnership or
12 firm whose business includes any volume of selling or receiving tangible personal properties, excluding motor vehicles,
13 previously owned, used, rented or leased. The term "Secondhand Dealer" shall not include auction houses, fleamarkets,
14 antique dealers, or motor vehicle dealers. This Chapter, as it relates to Secondhand Dealers, does not apply to: (a) the sale
15 of secondhand goods at events commonly known as 'garage sales,' 'yard sales,' or 'estate sales'; (b) the sale or receipt of
16 secondhand books, magazines, post cards, postage stamps; (c) the sale or receipt of used merchandise donated to
17 recognized non-profit, religious, or charitable organizations or any school-sponsored association for which no

18 compensation is paid; (d) the sale or receipt of secondhand furniture; or (e) the sale or receipt of secondhand clothing and
19 shoes.

20 (3) "Scrap Metal Processor" means any person, corporation, or member or members of a partnership or firm
21 engaged in the business of selling or receiving any worn-out or discarded metal, old iron, used plumbing fixtures, other
22 metals, automobiles, automobile parts, chain, copper, lead, brass, or parts of machinery.

23 (4) "Flea Markets" means any person, company, corporation, or member or members of a partnership or firm
24 who buys and sells used goods who either (i) operates less than 4 days a week from the same location or (ii) sells goods
25 from a location that is not a fixed building that they own or lease.

26 (5) "Antique Dealer" means a person, company, corporation, or member or members of a partnership or firm
27 who sells exclusively goods that are at least 50 years old.

28 § 2302. Reporting Requirements.

29 (A) Every pawnbroker and secondhand dealer, shall make a report, in electronic form using software to be
30 supplied by the Delaware State Police, to the State Police by noon each day the business is open to the public the
31 following information with respect to the following articles purchased or otherwise acquired during the preceding
32 business day:

33 (1) Any item with a unique identifier, such as a serial number, identification number, model number, owner-
34 applied identifier, engraving, monogram, or any other unique symbol of marking;

35 (2) Items containing gold, silver, platinum, or other precious metals including coins;

36 (3) Items containing diamonds, gems, and other precious metals;

37 (4) Firearms, knives, swords, and air guns;

38 (5) Electronic audio or video equipment, including television sets, compact disc players, radios, amplifiers,
39 receivers, turntables, DVDs, tape recorders, citizen's band radios, radar detectors, depth finders, CDs, video games and
40 cartridges;

41 (6) Musical instruments, excluding pianos and organs;

42 (7) Photographic or optical equipment, binoculars, cameras or watches;

43 (8) Electronic office equipment, including computers, monitors, printers, scanners and computer hardware or
44 software, typewriters, postage machines, and calculators, but excluding furniture;

45 (9) Outboard motors, inboard drives, and powered golf carts;

- (10) Cellular telephones and pagers;
- (11) Electric and gas powered yard or garden equipment and tools;
- (12) Electric, pneumatic or hydraulic powered construction or mechanic's equipment or tools;
- (13) Sporting equipment limited to bicycles, golf clubs, snow boards, skis, ski boots, fishing rods, reels and tackle; and
- (14) Jewelry, furs, leather goods, watches, paintings, fine or historic china, crystal, glass, porcelain, carpets and rugs.

(B) Every scrap metal processor shall make a report, in electronic form using software to be supplied by the Delaware State Police, to the State Police by noon each day the business is open to the public the following information with respect to the following articles purchased or otherwise acquired during the preceding business day:

- (1) Copper wire
- (2) Silver
- (3) Gold

(C) The report shall include:

(1) The name, date of birth, social security number, residential address and telephone number of the person from whom the article was acquired, and one valid government-issued photo identification of the seller or pledgor with a physical description (age, sex, race, weight and height) and ID number, such as a driver's license, age of majority card, or military ID;

(2) The hour and date of receiving the article;

(3) For scrap metal processors, the license number of any motor vehicle transporting such article or the seller thereof, and the type of identification or identification number accepted from the seller or pledgor;

(4) A full description of each article purchased including distinguishing marks, numbers, brands or unique identifiers, such as serial number, identification number, model number, owner-applied identifier or engraving, monogram, or any other unique symbol or marking.

(D) The dealers shall record the name of the person making the record entry and shall make that information available to police.

(E) The State Police will share and otherwise make accessible to other law enforcement agencies all information reported pursuant to this Chapter.

(F) In the event of a computer failure, a pawnbroker, secondhand dealer or scrap metal processor shall maintain paper records of the information required by this Chapter, and shall have 7 days to resolve the computer failure and comply with subsection (A) above.

§ 2303. Pawn Ticket and Memorandum.

(A) Any pawnbroker shall furnish to each applicant or customer a ticket on which is printed a number corresponding with the number used to identify the article placed in pawn, and also the amount given in cash, together with all charges and the total amount to be paid when the article is to be redeemed.

(B) Any pawnbroker shall, at the time the loan is made on goods or articles, deliver to the person pawning or pledging such goods or articles, a memorandum or note, signed by such person and containing an account and description of the goods or articles pawned or pledged. No charge shall be made or received by any pawnbroker for any such ticket entry, memorandum, or note.

§ 2304. Holding Period.

(A) Every pawnbroker and secondhand dealer subject to this chapter must keep for a period of eighteen (18) days, including weekends and holidays, subject to inspection by any police officer of Delaware, all goods, wares and merchandise purchased or received from any person before selling, shipping or otherwise disposing of the same. There shall be no holding period for scrap metal processors with respect to copper wire, but there shall be an 18 day holding period for gold and silver. This does not prohibit any person from securing valuable goods, wares and merchandise in a vault, safe, or safety deposit box or other similarly secured storage area on the normal business premises so long as such secured items are readily available for inspection by a police officer.

(B) Such holding periods are not applicable when the person from whom the goods were acquired or pledged desires to redeem, repurchase, or recover the goods, provided the dealer or pawnbroker can produce the record of the original transaction with verification that the customer is the person from whom the goods were originally acquired.

(C) A pawnbroker, secondhand dealer, or scrap metal processor shall not destroy, disfigure, or obliterate identification marks or cause the identity of an article to otherwise be destroyed so long as the article continues to be in that person's possession.

(D) The police of Delaware may require that an item be held for an additional thirty (30) days beyond the requirements of subparagraph (A) of this section if they know or have reason to believe that the property is missing or stolen.

§ 2305. Inspection of Premises and Records.

(A) Every pawnbroker, secondhand dealer, and Scrap metal processors subject to this chapter shall maintain at a place of business designated on the license records of all information required by this Chapter, together with a photocopy of government-issued photo identification, for a period of at least one year from the date the transaction was recorded.

(B) The records required to be maintained in paragraph (A) of this section shall, during regular business hours, be subject to inspection by a law enforcement officer of Delaware, or by the Attorney General or any Deputy Attorney General, if they have good cause to believe that the business is in violation of this Chapter.

(C) Such inspection shall consist of an examination on the premises of the inventory and required records to determine whether the records and inventory are being maintained on the premises as required by this Chapter.

§ 2306. Stolen goods; Notice to Police.

Any pawnbroker, secondhand dealer or scrap metal processor may seize and take into possession any goods offered to such person for sale or as a pledge or pawn, which such person has reason to believe have been stolen. Such person shall immediately notify the law enforcement agency with jurisdiction over the premises where the sale or offer or pledge took place or where the goods are currently located. Any person acting in compliance with this section shall be immune from civil or criminal penalties if he or she acts in good faith.

§ 2307. Prohibited Transactions.

(A) No pawnbroker, secondhand dealer, or scrap metal processor subject to this Chapter shall knowingly purchase or acquire any article, ware or merchandise:

(1) from any person or persons under the age of eighteen (18) unless that person is either (i) recycling aluminum cans, or (ii) accompanied by a parent, grandparent or guardian;

(2) from any person under the influence of any intoxicating liquor or drug when such condition is visible or apparent; or

(3) which has an altered, obliterated or otherwise tampered with serial number or identifying marking.

(B) No pawnbroker subject to this Chapter shall:

(1) Sell any goods or articles pawned or pledged until the same shall have remained at least thirty days after the expiration of the original contract; or

(2) Take or receive as a pledge or pawn any artificial limb or wheelchair.

§ 2308. Penalties.

Whoever violates this subchapter, except where another penalty is provided, shall be guilty of a misdemeanor and, if convicted, may be fined not more than \$5,000.00 and, in default of the payment of any fine imposed under this section, shall be imprisoned not less than one (1) month nor more than one (1) year for each and every offense.

§ 2309. Local Regulations.

Nothing in this Chapter shall preclude political subdivisions of the State and municipalities from enacting laws more restrictive than the provisions of this chapter, but such laws shall be in addition to, not in lieu of, the regulations set forth in this Chapter.

Subchapter II - Licensing.

§2310. License required.

No person shall carry on the business of a pawnbroker, secondhand dealer or scrap metal processor without first having taken out a license and duly qualified as provided in this Chapter.

§ 2311. Licenses; qualifications; issuance by State Police.

The State Police shall annually on or before the 15th day of March grant licenses to such persons, citizens of this State and companies existing under the laws of this State to engage in and carry on the business of pawnbroker, secondhand dealer or scrap metal processor.

The licenses shall designate the building in which the person or company shall carry on the business. No person or company shall engage in or carry on the business of pawnbroker, secondhand dealer or scrap metal processor in any other building than the one designated in the license. This prohibition does not apply to the acquisition of goods by a pawnbroker, second -hand dealer or scrap metal processor.

The State Police may revoke a license for violations of this Chapter in accordance with standards set by the Secretary of the Department of Public Safety. The Secretary of Public Safety shall also promulgate rules and regulations governing the revocation of a license, an appeal process and reinstatement.

§2312. License fees.

Every person receiving a license for conducting the business of pawnbroker shall pay therefor to the State Police \$50 for the State's general fund.

Every person receiving a license for conducting the business of secondhand dealer shall pay therefor to the State Police \$50 for the State's general fund.

Every person receiving a license for conducting the business of scrap metal processor shall pay therefor to the State Police \$50 for the State's general fund.

§ 2313. Pawnbroker's bond.

Every person licensed to carry on the business of pawnbroker shall at the time of receiving such license, or before the same shall become operative, enter with sufficient surety into a joint and several bond with a warrant of attorney for the confession of judgment thereto attached to this State, in the penal sum of \$1,000, conditioned for the due observance of all such laws of this State as may be passed or enforced respecting pawnbrokers at any time during the continuance of such license. The bond shall be filed with the Prothonotary of the Superior Court in the county where the pawnbroker is licensed.

If any person is damaged by the misconduct of any licensed pawnbroker and recovers judgment against such licensed pawnbroker therefor, such person may, after the return unsatisfied, either in whole or in part, of any execution issued upon such judgment, maintain an action in the person's own name upon the bond of such pawnbroker in any court having jurisdiction of the amount claimed, provided, such court, upon application made for the purpose, grants such leave to prosecute.

§ 2314. Pawnbroker's insurance.

Every person applying for a license to conduct the business of a pawnbroker shall first effect an insurance against fire for \$50,000, for the protection of goods, pawned or pledged.

§ 2315. Annual State Report. The State Police shall issue an annual report setting forth the list of licensed pawnbrokers, secondhand dealers and scrap metal processors in this State and their respective addresses and contact information.”

Section 2. This Act shall go into effect six months following passage as law except that enforcement of §2302 shall be 365 days from date of passage, and until that date, all local and municipal reporting requirements shall remain effective.

SYNOPSIS

For years, law enforcement agencies in Delaware have been frustrated in their attempts to recover stolen property. Well-known conduits for stolen goods are pawnshops, secondhand dealers, and scrap metal processors (junk dealers) that have no idea or way of knowing that the goods may be stolen.

First, this Act does not apply to auctions, antique dealers who sell only antiques, flea markets, car dealers, garage or yard sales, the sale of used books, the sale of goods to nonprofits or schools or religious organizations, the sale of used furniture or clothes.

Second, this Act requires pawnbrokers, secondhand dealers, and scrap metal processors to report via electronic mail on a daily basis the sale, pledge or pawn of certain kinds of goods that have a higher risk of being stolen, so that information can be accessed at a central computerized source by law enforcement agencies around the State as part of a criminal investigation of stolen property.

Third, this Act imposes an 18-day waiting period on pawnbrokers and secondhand dealers to hold goods before selling or disposing of the goods. Scrap metal processors must hold gold and silver for 18 days but there is no holding period for copper wire. This time period will allow police a reasonable amount of time to track stolen goods before they are sold by the pawnbroker or secondhand dealer.

Fourth, this Act requires records to be kept for 1 year and allows Delaware police to inspect the records and premises of inventory.

Fifth, this Act allows a pawnbroker, secondhand dealer or scrap metal processor to seize any goods brought before them which they believe have been stolen.

Sixth, this Act prohibits a pawnbroker, secondhand dealer or scrap metal processor from buying goods from (i) children under 18, except for the sale of aluminum cans for recycling, unless the child is accompanied by a parent, grandparent or guardian, (ii) someone who is apparently under the influence of alcohol or drugs, or (iii) someone when the serial or id number of the good has been tampered with.

Seventh, this Act requires a pawnbroker to hold goods that have truly been pawned or pledged, not sold, for one month after the contract has expired before they are sold or disposed of.

Eighth, any violation of this Act will result in a fine of up to \$5,000 and upon failure to pay, imprisonment from one month to one year.

Ninth, this Act permits a county or municipality to enact additional laws that impose stricter requirements regarding reporting, holding periods, and the like, but makes clear that everyone must abide by the requirements of this Act.

Tenth, this Act requires pawnbrokers, secondhand dealers and scrap metal processors in New Castle, Kent and Sussex Counties to obtain a license. New Castle County pawnbrokers and scrap metal processors are currently subject to this requirement. License fees will go to the State's General Fund. State police have the discretion to revoke a business license for violations of this Chapter. The Secretary of the Department of Public Safety will establish rules governing the revocation of a license, appeal process and reinstatement. License fees shall be \$50 each.

Eleventh, this Act increases from \$1,000 to \$50,000 the amount of fire insurance that a pawnbroker is required to maintain.

Twelfth, this Act eliminates the requirement that the Finance Department of New Castle County audit the records relating to pawnbroker/Scrap metal processors licensing and instead imposes a requirement that the State Police make an annual report of licensed pawnbrokers, secondhand dealers and scrap metal processors.

Finally, this Act will take effect six months following passage as law, except that the requirement of electronic reporting will take effect one year from passage as law.