



SPONSOR: Rep. Lee & Sen. Vaughn
Rep. Wagner

HOUSE OF REPRESENTATIVES

143rd GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1 FOR
HOUSE BILL NO. 243
AS AMENDED BY
HOUSE AMENDMENT NOS. 2,3 & 4
AND
SENATE AMENDMENT NO. 2

AN ACT TO AMEND CHAPTER 23 OF TITLE 24 OF THE DELAWARE CODE RELATING TO PAWNBROKERS AND JUNK DEALERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

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

“Subchapter I – General Provisions.

§ 2301. Definitions.

As used in this Chapter:

(1) ‘Pawnbroker’ means any person, company, corporation, or member or members of a partnership or firm who:

(a) engages in the business of lending money on the deposit or pledge of personal property or other valuable things, other than causes in action, securities, or written evidences of indebtedness; or

(b) purchases personal property with an expressed or implied agreement or understanding to sell it back at a subsequent time at a stipulated price; or

(c) lends money upon goods, wares or merchandise pledged, stored or deposited as collateral security.

(2) ‘Second-hand Dealer’ means any person, company, corporation, or member or members of a partnership or firm whose storefront business includes any volume of selling or receiving previously owned, used, rented or leased tangible personal property excluding motor vehicles. The term ‘Second-hand Dealer’ shall not include auction houses, flea markets, antique dealers or motor vehicle dealers. This Chapter, as it relates to Second-hand Dealers, does not apply to: (a) the sale of

second-hand goods at events commonly known as ‘garage sales’, ‘yard sales’, or ‘estate sales’; (b) the sale or receipt of second-hand books, magazines, post cards, postage stamps; (c) the sale or receipt of used merchandise donated to recognized non-profit, religious, or charitable organizations or any school-sponsored association for which no compensation is paid; (d) the sale or receipt of second-hand furniture; (e) the sale or receipt of second-hand clothing and shoes; or (f) the sale of goods exclusively via the internet that meet the definition of Exempted Internet Sales set forth below.

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

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

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

(6) ‘Exempted Internet Sales’ means offers for sale of items of secondhand personal property available on a website where the items listed for sale (a) may be viewed by any member of the general public at no charge, (b) may be searched by any member of the general public, at no charge, by the zip code or state in which the secondhand personal property offered for sale is located, (c) are assigned a unique item listing number by the website, and (d) are provided, in a timely manner, at no additional charge to the Secondhand Dealer, to a unified, nationally available database, that is searchable by item description and by seller, that may be accessed by a law enforcement agency with adequate security features and privacy protections, upon confirmation that such access is reasonably necessary for an ongoing investigation of a crime. Exempted Internet Sales by a Secondhand Dealer that would otherwise be subject to this section are not exempt from the requirements of §§2305, 2306, and 2307 and the Secondhand Dealer must provide law enforcement agencies that have jurisdiction over the location of the dealer’s business premises with the names under which it conducts business on the websites where the items are listed for sale and must record and preserve for inspection the information that would be required to be collected and reported under §2302.

§ 2302. Reporting Requirements.

(a) Every pawnbroker and second-hand dealer shall create a record and provide information on a form to be supplied. The bond shall be filed with the Prothonotary of the Superior Court in the county where the pawnbroker is licensed.

(b) Every scrap metal processor shall create a record and provide information on a form to be supplied by the Delaware State Police with respect to the following articles purchased or otherwise acquired:

- (1) Copper;
- (2) Silver;
- (3) Gold; or
- (4) Brass.

(c) Pawnbrokers, second-hand dealers, and scrap metal processors shall complete and provide information on forms provided by the Delaware State Police immediately after any articles or goods have been purchased or acquired.

(d) Pawnbrokers, second-hand dealers and scrap metal processors shall record the name of the person making the record entry and shall make that information available to police.

(e) The information provided on the forms under this Section shall be stored and maintained by the pawnbroker, second-hand dealer or scrap metal processor for a period of one (1) year and shall be provided to police immediately upon request.

(f) The Secretary of the Department of Safety and Homeland Security may promulgate rules and regulations that allow for the completion and filing of electronic forms and information.

§ 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 second-hand 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 eighteen (18) day holding period for gold, silver and brass. 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, second-hand 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) Law enforcement officers 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, second-hand dealer and scrap metal processor 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 (1) 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.

(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, second-hand dealer or scrap metal processor may seize 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, second-hand 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 or person is (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 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.

§ 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, second-hand 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, second-hand 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, second-hand 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 Safety and Homeland Security. The Secretary of the Department of Safety and Homeland

Security shall also promulgate rules and regulations governing the revocation of a license, an appeal process and reinstatement.

§ 2312. License Fees.

(a) Every person receiving a license for conducting the business of pawnbroker shall pay the State Police \$50 to go to the State's General Fund.

(b) Every person receiving a license for conducting the business of second-hand dealer shall pay the State Police \$50 to go to the State's General Fund.

(c) Every person receiving a license for conducting the business of scrap metal processor shall pay the State Police \$50 to go to the State's General Fund.

§ 2313. Pawnbroker's Insurance.

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

§ 2314. Annual State Report.

The State Police shall maintain an annual report setting forth the list of licensed pawnbrokers, second-hand dealers and scrap metal processors in this State and their respective addresses and contact information.

§2316 Rate of interest.

No person conducting the business of a pawnbroker shall ask, demand or receive a greater rate of interest than 3 percent per month on any loans secured by pledge of personal property.”.

Section 2. This Act shall go into effect January 1, 2007.