

FIRST REGULAR SESSION

HOUSE BILL NO. 1179

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PORTWOOD.

Read 1st time March 27, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

2731L.011

AN ACT

To amend chapter 407, RSMo, by adding thereto fourteen new sections relating to purchased merchandise from secondhand dealers, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 407, RSMo, is amended by adding thereto fourteen new sections, to
2 be known as sections 407.1700, 407.1702, 407.1704, 407.1706, 407.1708, 407.1710, 407.1712,
3 407.1714, 407.1716, 407.1718, 407.1720, 407.1722, 407.1724, and 407.1726, to read as follows:

407.1700. As used in sections 407.1700 to 407.1726, the following words mean:

2 **(1) "Secondhand dealer", any person engaged in or conducting business for the**
3 **purchase, sale, barter, exchange, of antiques, coins, gold, silver, platinum, gems and semi-**
4 **precious stones, watches, power tools, hand tools, computers, electronic equipment,**
5 **cameras and camera equipment, including, but not limited to, film, digital and videotape**
6 **still and motion picture cameras and camcorders, and associated recording and viewing**
7 **equipment, electronic game equipment and game cartridges or discs, compact digital disks**
8 **(CDs), digital video disks (DVDs), musical instruments and equipment, sporting**
9 **equipment, bicycles, and any self-propelled device not required to be licensed by the**
10 **Missouri department of revenue, including, but not limited to, every flea market merchant,**
11 **secondhand dealer of the goods described in this section, coin dealer, jeweler, both**
12 **wholesale and retail, and every merchant dealing in used bicycles. The term engaged in**
13 **or conducting business means the purchase, sale, barter, or exchange of any item**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 mentioned in this subdivision, including the advertising and such business conducted by
15 an established dealer in a permanent location and including any temporary, transient, or
16 itinerant business;

17 (2) "Secondhand goods", tangible personal property, other than choses in action,
18 securities, or printed evidences of indebtedness, which property is deposited with or
19 otherwise actually delivered into the possession of a secondhand dealer in the course of his
20 or her business in connection with a purchase transaction;

21 (3) "Shop", the location or premises at which a secondhand dealer regularly
22 conducts business.

407.1702. 1. At the time of making any purchase of tangible personal property, the
2 secondhand dealer shall execute and deliver to the seller a receipt for and describing the
3 tangible personal property purchased and maintain a copy for the dealer's own records.
4 The receipt shall contain the following:

5 (1) The name and address of the secondhand dealer or shop;

6 (2) The name and address of the seller, the seller's description, and the driver's
7 license number, military identification number, identification certificate number, or other
8 official number capable of identifying the seller;

9 (3) The date of the transaction;

10 (4) An identification and description of the goods, including serial numbers if
11 reasonably available;

12 (5) The amount of cash given to the seller;

13 (6) The amount of the dealer charge; and

14 (7) A statement signed by the seller to the effect that the seller has the right to sell
15 the property.

16 2. The secondhand dealer may be required, in accordance with local ordinances,
17 to furnish appropriate law enforcement authorities with copies of information contained
18 in subdivisions (1) to (4) of subsection 1 of this section and information contained in
19 subdivision (2) of subsection 1 of section 407.1704. The secondhand dealer may satisfy
20 such requirements by transmitting such information electronically to a database in
21 accordance with this section, except that paper copies shall be made available for an on-site
22 inspection upon request of any appropriate law enforcement authority.

23 3. As used in this section, the following terms mean:

24 (1) "Database", a computer database established and maintained by a third party
25 engaged in the business of establishing and maintaining one or more databases;

26 (2) "Permitted user", persons authorized by law enforcement personnel to access
27 the database;

28 (3) "Reportable data", the information required to be recorded by secondhand
29 dealers for secondhand transactions under subdivisions (1) to (4) of subsection 1 of this
30 section and the information required to be recorded by secondhand dealers for purchase
31 transactions under subdivision (2) of subsection 1 of section 407.1704;

32 (4) "Reporting secondhand dealer", a secondhand dealer who chooses to transmit
33 reportable data electronically to the database;

34 (5) "Search", the accessing of a single database record.

35 4. The database shall provide appropriate law enforcement officials with the
36 information contained in subdivisions (1) to (4) of subsection 1 of this section and other
37 useful information to facilitate the investigation of alleged property crimes while protecting
38 the privacy rights of secondhand dealers and customers with regard to their transactions.

39 5. The database shall contain purchase transaction information recorded by
40 reporting secondhand dealers under this section and section 407.1704 and shall be updated
41 as requested. The database shall also contain such security features and protections as may
42 be necessary to ensure that the reportable data maintained in the database can only be
43 accessed by permitted users in accordance with the provisions of this section.

44 6. The third-party's charge for the database shall be based on the number of
45 permitted users. Law enforcement agencies shall be charged directly for access to the
46 database, and the charge shall be reasonable in relation to the costs of the third party in
47 establishing and maintaining the database. No reporting secondhand dealer or customer
48 of a reporting secondhand dealer shall be charged any costs for the creation or utilization
49 of the database.

50 7. (1) The information in the database shall only be accessible through the Internet
51 to permitted users who have provided a secure identification or access code to the database
52 but shall allow such permitted users to access database information from any jurisdiction
53 transmitting such information to that database. Such permitted users shall provide the
54 database with an identifier number of a criminal action for which the identity of the
55 secondhand or purchase transaction customer is needed and a representation that the
56 information is connected to an inquiry or to the investigation of a complaint or alleged
57 crime involving goods delivered by that customer in that transaction. The database shall
58 record, for each search, the identity of the permitted user, purchase transaction involved
59 in the search, and the identity of any customer accessed through the search. Each search
60 record shall be made available to other permitted users regardless of their jurisdiction.

61 The database shall enable reporting secondhand dealers to transmit to the database
62 through the Internet reportable data for each secondhand and purchase transaction.

63 (2) Any person who gains access to information in the database through fraud or
64 false pretenses shall be guilty of a class C felony. Any third party providing services to law
65 enforcement agencies shall provide full disclosure of ownership of the company, including
66 officers, trust funds, and other companies to which the officers, trustees, and company
67 itself maintain an ownership interest, as well as identifying information of principles to
68 facilitate criminal background checks. Any third party which is a publicly traded
69 company shall be considered to have met this requirement. Disclosure of ownership shall
70 be required before any contract can be signed by law enforcement and shall be made
71 available for public review. The law enforcement agency shall determine to which third
72 party the secondhand dealer shall report.

73 8. Any secondhand dealer shall meet the following requirements:

74 (1) Provide all reportable data to appropriate users by transmitting it through the
75 Internet to the database;

76 (2) Transmit all reportable data for one business day to the database prior to the
77 end of the following business day;

78 (3) Make available for on-site inspection to any appropriate law enforcement
79 official, upon request, paper copies of any secondhand or purchase transaction documents.

80 9. If a reporting secondhand dealer or permitted user discovers any error in the
81 reportable data, notice of such error shall be given to the database, which shall have a
82 period of thirty days in which to correct the error. Any reporting secondhand dealer
83 experiencing a computer malfunction preventing the transmission of reportable data or
84 receipt of search requests shall be allowed a period of at least thirty but no more than sixty
85 days to repair such malfunction, and during such period such secondhand dealer shall not
86 be deemed to be in violation of this section if good faith efforts are made to correct the
87 malfunction. During the periods specified in this subsection, the reporting secondhand
88 dealer and permitted user shall arrange an alternative method or methods by which the
89 reportable data shall be made available.

90 10. No reporting secondhand dealer shall be obligated to incur any cost, other than
91 Internet service costs, in preparing, converting, or delivering its reportable data to the
92 database.

407.1704. 1. A secondhand dealer shall not:

2 (1) Make any agreement requiring the personal liability of a seller in connection
3 with a secondhand transaction; or

4 **(2) Purchase or take in trade used or secondhand personal property unless a record**
5 **is established that contains:**

6 **(a) The name, address, physical description, and the driver's license number,**
7 **military identification number, identification certificate number, or other official number**
8 **capable of identifying the seller;**

9 **(b) A complete description of the property, including the serial number if**
10 **reasonably available, or other identifying characteristic; and**

11 **(c) A signed document from the seller providing that the seller has the right to sell**
12 **the property.**

13 **2. Each secondhand dealer shall keep, consistent with accepted accounting**
14 **practices, adequate books and records relating to the dealer's purchase transactions, which**
15 **shall be preserved for a period of at least two years from the date of the last transaction**
16 **recorded therein.**

407.1706. 1. As used in sections 407.1706 to 407.1726, the following terms mean:

2 **(1) "Claimant", a person who claims that property in the possession of a**
3 **secondhand dealer is misappropriated from the claimant and fraudulently pledged or sold**
4 **to the secondhand dealer;**

5 **(2) "Conveying customer", a person who delivers property into the possession of**
6 **a secondhand dealer, either through a sale or trade, which property is later claimed to be**
7 **misappropriated;**

8 **(3) "Hold order", a written legal instrument issued to a secondhand dealer by a law**
9 **enforcement officer commissioned by the law enforcement agency of the municipality or**
10 **county within which the secondhand dealer conducts business ordering the secondhand**
11 **dealer to retain physical possession of property purchased by and in the possession of a**
12 **secondhand dealer and not to return, sell or otherwise dispose of such property as such**
13 **property is believed to be misappropriated goods;**

14 **(4) "Law enforcement officer", the sheriff or sheriff's deputy designated by the**
15 **sheriff of the county in which the secondhand dealer's shop is located, or when secondhand**
16 **dealer's shop is located within a municipality, the police chief or police officer designated**
17 **by the police chief of the municipality in which the secondhand dealer's shop is located;**

18 **(5) "Misappropriated", stolen, embezzled, converted, or otherwise wrongfully**
19 **appropriated or pledged against the will of the rightful owner or party holding a perfected**
20 **security interest;**

21 **(6) "Purchaser", a person who purchases property from a secondhand dealer;**

22 **(7) "Seller", a person who sells property to a secondhand dealer.**

23 **2. A secondhand dealer shall have no recourse against the seller for payment on a**
24 **transaction except the goods themselves, unless the goods are found to have been**
25 **misappropriated.**

26 **3. A secondhand dealer shall require of every person from whom the secondhand**
27 **dealer receives sold property proof of identification which includes a current address and,**
28 **if applicable, telephone number, and a current picture identification issued by state or**
29 **federal government.**

30 **4. If any seller fails to provide a secondhand dealer with proof of identification, the**
31 **secondhand dealer shall hold such property for a period of thirty days prior to selling or**
32 **otherwise transferring such property, provided, the seller has submitted a signed statement**
33 **that the seller is the legal owner of the property and stating when or from whom such**
34 **property was acquired by the seller.**

35 **5. To obtain possession of tangible personal property held by a secondhand dealer**
36 **which a claimant claims to be misappropriated, the claimant shall provide the secondhand**
37 **dealer with a written demand for the return of such property, a copy of a police or sheriff's**
38 **report wherein claimant reported the misappropriation or theft of said property and which**
39 **contains a particularized description of the property or applicable serial number, and a**
40 **signed affidavit made under oath setting forth they are the true owner of the property, the**
41 **name and address of the claimant, a description of the property being claimed, the fact that**
42 **such property was taken from the claimant without the claimant's consent, permission or**
43 **knowledge, the fact that the claimant has reported the theft to the police, the fact that the**
44 **claimant will assist in any prosecution relating to such property, the promise that the**
45 **claimant will respond to court process in any criminal prosecution relating to said property**
46 **and will testify truthfully as to all facts within the claimant's knowledge and not claim any**
47 **testimonial privilege with respect to said facts. These documents shall be presented to the**
48 **secondhand dealer concurrently.**

49 **6. Upon being served with a proper demand by a claimant for the return of**
50 **property under subsection 5 of this section, the secondhand dealer shall return the**
51 **property to the claimant, in the presence of a law enforcement officer, within seven days**
52 **unless the secondhand dealer has good reason to believe that any of the matters set forth**
53 **in the claimant's affidavit are false or if there is a hold order on the property under section**
54 **407.1726. If a secondhand dealer refuses to deliver property to a claimant upon a proper**
55 **demand as described in subsection 5 of this section, the claimant may file a petition in a**
56 **court of competent jurisdiction seeking the return of said property. The nonprevailing**
57 **party shall be responsible for the costs of said action and the attorney fees of the prevailing**

58 party. The provisions of section 482.305, RSMo, to the contrary notwithstanding, a court
59 of competent jurisdiction shall include a small claims court, even if the value of the
60 property named in the petition is greater than three thousand dollars.

61 7. If a secondhand dealer returns property to a claimant relying on the veracity of
62 the affidavit described in subsection 5 of this section, and later learns that the information
63 contained in said affidavit is false or that the claimant has failed to assist in prosecution or
64 otherwise testify truthfully with respect to the facts within the claimant's knowledge, the
65 secondhand dealer shall have a cause of action against the claimant for the value of the
66 property. The nonprevailing party shall be responsible for the cost of said action and the
67 attorney fees of the prevailing party.

68 8. Nothing contained in this section shall limit a secondhand dealer from bringing
69 the conveying customer into a suit as a third party, nor limit a secondhand dealer from
70 recovering from a conveying customer repayment of the full amount received from the
71 secondhand dealer from the sales transaction, including all applicable fees and interest
72 charged, attorney's fees and the cost of the action.

407.1708. 1. When the tangible personal property subject to the sales transaction
2 has been delivered or awarded to a claimant under section 407.1706, and within ten
3 business days after a written demand for payment and notice is deposited by the
4 secondhand dealer as certified or registered mail in the United States mail and addressed
5 to the conveying customer, the conveying customer fails to repay the secondhand dealer
6 the full amount incurred by the secondhand dealer in connection with such property and
7 the procedure described in section 407.1706, the conveying customer shall have committed
8 the crime of fraudulently selling misappropriated property.

9 2. Fraudulently selling property is a class B misdemeanor if the amount received
10 by the conveying customer from the secondhand dealer was less than fifty dollars.
11 Fraudulently selling property is a class A misdemeanor if the amount received by the
12 conveying customer from the pawnbroker or secondhand dealer was more than fifty
13 dollars and less than one hundred fifty dollars. Fraudulently selling property is a class C
14 felony if the amount received by the conveying customer from the pawnbroker or
15 secondhand dealer was one hundred fifty dollars or more.

407.1710. 1. To obtain from a secondhand dealer the amount of purchase for
2 tangible personal property which a purchaser claims was misappropriated prior to the
3 purchase, the purchaser shall file a petition in a court of competent jurisdiction in the
4 county where the secondhand dealer's shop is located, requesting the return of the
5 purchase amount, naming the secondhand dealer as a defendant and serving the

6 secondhand dealer with the petition. The provisions of section 482.305, RSMo, to the
7 contrary notwithstanding, a court of competent jurisdiction shall include a small claims
8 court, even if the purchase amount named in the petition is greater than three thousand
9 dollars. Upon receiving notice that a petition has been filed by a purchaser for the amount
10 of purchase, the purchaser shall hold the purchased property until the right to possession
11 is resolved by the parties or by a court of competent jurisdiction, unless such property is
12 subject to a hold order for law enforcement purposes and a law enforcement officer has
13 provided written acknowledgment that the property has been released to the officer.

14 2. Upon being served notice that a petition has been filed under this section, the
15 secondhand dealer may return the amount of purchase to the purchaser prior to a decision
16 being rendered on the purchaser's petition by the court. The secondhand dealer shall
17 return the amount of purchase to the purchaser conditioned only upon the purchaser
18 withdrawing the petition filed with a court of competent jurisdiction seeking the
19 disposition of such property. The provisions of this section to the contrary
20 notwithstanding, the secondhand dealer shall not be required to pay any costs incurred by
21 the purchaser and the purchaser shall not be required to pay any costs incurred by the
22 secondhand dealer when the amount of purchase is returned to the purchaser under this
23 subsection.

24 3. When a purchaser files a petition under this section, the secondhand dealer may
25 bring the conveying customer of the alleged misappropriated property into the action as
26 a third-party defendant. If after notice to the secondhand dealer and an opportunity to
27 add the conveying customer as a defendant, the purchased property is found by a court to
28 have been misappropriated and purchased by the purchaser in good faith, then:

29 (1) The prevailing purchaser may recover from the secondhand dealer the cost of
30 the action, including attorney's fees; and

31 (2) The conveying customer shall be liable to repay the secondhand dealer the full
32 amount received from the pawn or sales transaction, including all applicable fees and
33 interest charged and the costs incurred by the pawnbroker in pursuing the procedure
34 described in this section, including attorney's fees.

407.1712. 1. Upon written notice from a law enforcement officer indicating that
2 property in the possession of a secondhand dealer and subject to a hold order is needed for
3 the purpose of furthering a criminal investigation and prosecution, the secondhand dealer
4 shall release the property subject to the hold order to the custody of the law enforcement
5 officer for such purpose and the officer shall provide a written acknowledgment that the
6 property has been released to the officer. The release of the property to the custody of the

7 law enforcement officer shall not be considered a waiver or release of the secondhand
8 dealer's property rights or interest in the property. Upon completion of the criminal
9 investigation, the property shall be returned to the secondhand dealer who consented to
10 its release; except that if the law enforcement officer has not completed the criminal
11 investigation within one hundred twenty days after its release, the officer shall immediately
12 return the property to the secondhand dealer or obtain and furnish to the secondhand
13 dealer a warrant for the continued custody of the property.

14 2. Except as provided in subsection 1 of this section, the secondhand dealer shall
15 not release or dispose of the property except under a court order or the expiration of the
16 holding period of the hold order, including all extensions.

407.1714. 1. The prosecuting attorney or the circuit attorney shall notify the
2 secondhand dealer in writing in cases where criminal charges have been filed and the
3 property may be needed as evidence. The notice shall contain the case number, the style
4 of the case and a description of the property.

5 2. The secondhand dealer shall hold such property until receiving notice of the
6 disposition of the case from the prosecuting attorney or the circuit attorney. The
7 prosecuting attorney or the circuit attorney shall notify the secondhand dealer and
8 claimant in writing within fifteen days of the disposition of the case.

407.1716. A secondhand dealer, or agent or employee of the secondhand dealer,
2 who acts, under the provisions of sections 407.1700 to 407.1726, in good faith, exercises due
3 care and follows the provisions of the law, shall not be subject to criminal or civil liability
4 for any such act.

407.1718. In addition to any other penalty which may be applicable, any person
2 who operates a secondhand business under the provisions of sections 407.1700 to 407.1726,
3 who willfully makes a false entry in any records specifically required by sections 407.1700
4 to 407.1726 shall be guilty of a misdemeanor and upon conviction thereof shall be
5 punishable by a fine not in excess of five thousand dollars, or by confinement in the county
6 jail for not more than six months, or by both such fine and imprisonment; except that there
7 shall be no penalty for a violation resulting from an accidental and bona fide error, where
8 such error is corrected upon discovery.

407.1720. The sale of tangible personal property by any person shall be deemed:

2 (1) An agreement by the person who sells that the person shall be subject to the
3 jurisdiction of the courts of the state in all civil actions and proceedings, arising out of the
4 sale transaction, filed either by a resident or nonresident plaintiff;

5 (2) An appointment by a nonresident of the secretary of state as the person's lawful
6 attorney and agent upon whom may be served all process in suits pertaining to the actions
7 and proceedings out of the pledge or sale; and

8 (3) An agreement by any nonresident that any process in any suit so served shall
9 be the same legal force and validity as if personally served in this state.

407.1722. When an item of property is the subject of a lease, rental transaction or
2 retail installment contract with a company domiciled in the state, between the claimant and
3 the claimant's lease or rental customer at the time it is delivered into the possession of the
4 secondhand dealer, the property shall not be deemed misappropriated unless it bears a
5 conspicuous permanent label or marking identifying it as the claimant's property.
6 Evidence of defacing or the removal of identification marking of leased or rented property
7 shall be treated as marked and identified and therefore deemed to be misappropriated.
8 Property subject to a lease, rental transaction or retail installment contract with a company
9 domiciled in the state, which is not marked as provided in this subsection may be recovered
10 by the claimant upon payment to the secondhand dealer of all moneys owing to or
11 advanced by the secondhand dealer in the purchase transaction, and upon producing
12 evidence identifying the property as having been the property of the claimant and leased
13 or rented at the time the property was placed in the secondhand dealer's possession. The
14 secondhand dealer shall be free from liability in connection with the recovery of leased or
15 rental property under this section.

407.1724. Upon purchase of property by a secondhand dealer, any title license, or
2 permit shall pass to the secondhand dealer, who shall retitle, relicense, or repermit such
3 goods, as otherwise provided by law.

407.1726. 1. Upon request of a law enforcement officer to inspect property that is
2 described in information furnished by the secondhand dealer under subdivisions (1) to (4)
3 of subsection 1 of section 407.1702, the law enforcement officer shall be entitled to inspect
4 the property described, without prior notice or the necessity of obtaining a search warrant
5 during regular business hours in a manner so as to minimize interference with or delay to
6 the secondhand dealer's business operation. When a law enforcement officer has probable
7 cause to believe that goods or property in the possession of a pawnbroker are
8 misappropriated, the officer may place a hold order on the property. The hold order shall
9 contain the following:

10 (1) The name of the secondhand dealer;

11 (2) The name and mailing address of the shop where the property is held;

12 **(3) The name, title and identification number of the law enforcement officer placing**
13 **the hold order;**

14 **(4) The name and address of the agency to which the law enforcement officer is**
15 **attached and the claim or case number, if any, assigned by the agency to the claim**
16 **regarding the property;**

17 **(5) A complete description of the property to be held including model and serial**
18 **numbers;**

19 **(6) The expiration date of the holding period.**

20

21 **The hold order shall be signed and dated by the issuing officer and signed and dated by the**
22 **secondhand dealer or the secondhand dealer's designee as evidence of the hold order's**
23 **issuance by the officer, receipt by the secondhand dealer and the beginning of the initial**
24 **holding period. The officer issuing the hold order shall provide an executed copy of the**
25 **hold order to the secondhand dealer for the secondhand dealer's record-keeping purposes**
26 **at no cost to the pawnbroker or secondhand dealer.**

27 **2. Upon receiving the hold order, and subject to the provisions of section 407.1712,**
28 **the secondhand dealer shall retain physical possession of the property subject to the order**
29 **in a secured area. The initial holding period of the hold order shall not exceed two months,**
30 **except that the hold order may be extended for up to two successive one-month holding**
31 **periods upon written notification prior to the expiration of the immediately preceding**
32 **holding period. A hold order may be released prior to the expiration of any holding period**
33 **or extension thereof by written release from the agency placing the initial hold order. The**
34 **initial hold order shall be deemed expired upon the expiration date if the holding period**
35 **is not extended under this subsection.**

36 **3. Upon the expiration of the initial holding period or any extension thereof, the**
37 **secondhand dealer shall deliver written notice to the law enforcement officer issuing the**
38 **hold order that such order has expired and that title to the property subject to the hold**
39 **order will vest in the secondhand dealer in ten business days. Ownership shall only vest**
40 **in the secondhand dealer upon the expiration of the ten-day waiting period subject to any**
41 **restriction contained in the pawn contract and subject to the provisions of sections**
42 **407.1706 to 407.1724. Vesting of title and ownership shall be subject to any claim asserted**
43 **by a claimant under section 407.1706.**

44 **4. A county or municipality may enact orders or ordinances to license or regulate**
45 **the operations of secondhand dealers which are consistent with and not more restrictive**
46 **than the provisions of sections 407.1700 to 407.1726.**

47 **5. All records and information that relate to a secondhand dealer's purchase or**
48 **trade transactions and that are delivered to or otherwise obtained by an appropriate law**
49 **enforcement officer under sections 407.1702 and 407.1704 are confidential and may be used**
50 **only by such appropriate law enforcement officer and only for the following official law**
51 **enforcement purposes:**

52 **(1) The investigation of a crime specifically involving the item of property delivered**
53 **to the secondhand dealer's purchase or trade transaction;**

54 **(2) The investigation of a secondhand dealer's possible specific violation of the**
55 **record-keeping or reporting requirements of sections 407.1702 and 407.1704, but only**
56 **when the appropriate law enforcement officer, based on a review of the records and the**
57 **information received, has probable cause to believe that such a violation occurred; and**

58 **(3) The notification of property crime victims of where property that has been**
59 **reported misappropriated can be located.**

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