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## *PROPERTY CRIME WORKING GROUP DRAFT*

### **Pawnbrokers and Second Hand Goods Dealers Act of Ontario**

#### **PART 1: DEFINITIONS AND INTERPRETATION**

##### **Definitions**

##### **1. (1) In this Act:**

“alternate storage facility” means any place where second hand goods are stored by a second hand goods dealer other than the place where transactions are conducted by the second hand goods dealer;

“antique” means any second hand good offered for sale upon the basis, express or implied, that the value of the second hand good, in whole or substantial part, is derived from its age or its historical association and exceeds the original value of the second hand good when new;

“antique dealer” means any natural person, partnership or corporation, either principal or agent or employee thereof, or any other legal entity, however organized, whose regular business includes selling or receiving second hand goods where ninety (90) per cent, measured according to value, of the second hand goods on hand at all times, consists of antiques;

“auction dealer” means any natural person, partnership or corporation, either as principal or agent or employee thereof, or any other legal entity, however organized, who carries on the business of arranging, managing, sponsoring, or carrying out auctions or who employs auctioneers to conduct auctions or who advertises or holds himself or herself out as carrying on the business of auctioning a second hand good;

“Automated Reporting System” means an electronic system approved by the Minister and which is capable of recording, storing and providing transaction information in a suitable manner to a second hand goods dealer and the Chief of Police;

“Chief of Police” means the Chief of Police of any Regional or Municipal Police Service in the Province of Ontario or the Commissioner of the Ontario Provincial Police or any police officer designated by the Chief or Commissioner to administer or enforce the Pawnbrokers and Second Hand Dealers Act of Ontario;

“consignment” means any written agreement between a consignment dealer and a seller that enables the consignment dealer to take temporary possession of a second hand good owned by the seller for the purpose of -

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- (a) offering the second hand goods for sale to the public,
- (b) a conditional sale to the consignment dealer for the purpose of resale to the public,
- (c) displaying the second hand goods by the consignment dealer for sale to the public;

“consignment dealer” means any natural person, partnership or corporation, either as principal or agent or employee thereof, or any other legal entity, however organized, who carries on the business of accepting on consignment second hand goods for sale or who advertises or holds himself or herself out as carrying on that business;

“contract” means a written or printed agreement between a seller or pawner and a second hand goods dealer created in the prescribed form and manner for the purpose of conducting a transaction;

“employee” means any natural person who works for a second hand goods dealer whether or not that person receives remuneration for the work;

“false bidders” means any person used by an auction dealer for the purpose of manipulating the bidding process so as to compromise the integrity of the bidding process;

“flea market operator” means any natural person, partnership or corporation, either as principal or agent or employee thereof, or any other legal entity, however organized, who carries on the business of renting, leasing or otherwise providing a table, booth, stall, or other such space to flea market dealers for no more than thirty-six (36) hours of operation in any consecutive seven (7) day period, or who advertises or holds himself or herself out as carrying on that business;

“flea market dealer” means any natural person, partnership or corporation, either principal or agent or employee thereof, or any other legal entity, which purchases, exchanges, takes in trade, receives on consignment, or offers for sale second hand goods, and rents, leases or otherwise obtains a table, booth, stall or other such space from a flea market operator for no more than thirty six (36) hours of operation in any consecutive seven (7) day period;

“hold period” means the amount of time for which a second hand good must be held by a second hand goods dealer after obtaining exclusive ownership of the second hand good;

“manager” means a natural person who works for, and is responsible for the day to day business conducted at, a second hand goods business and who works at the second hand business for a minimum of twenty-four (24) hours per week for a minimum of forty (40) weeks per calendar year;

“Minister” means the Minister of Consumer and Business Services for the Province of Ontario, or his or her designate;

“Justice of the Peace” means a Justice of the Peace for the Province of Ontario;

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“municipality” means a region, city, town, village or township in the province of Ontario;  
“original lawful owner” means the person who owned a second hand good prior to the occurrence of the first unlawful act by which that person was deprived of the second hand good;

“pawn” means either of the following transactions:

- (a) a loan of money in which the pawnbroker actually receives second hand goods as security for repayment of cash advanced redeemable on certain conditions,
- (b) a buy- sell agreement in which a pawnbroker agrees to hold the second hand goods for a specified period of time to allow the pawner the exclusive right to repurchase the second hand goods on certain conditions;

“pawnbroker” means any natural person, partnership or corporation, either as principal or agent or employee thereof, or any other legal entity, however organized, who carries on the business of making pawns or who advertises or holds himself or herself out as carrying on the business but does not include banks, trust companies, credit unions or other similar institutions;

“pawner” means a natural person who delivers to a pawnbroker second hand goods as security for the repayment of cash advanced redeemable on certain conditions or delivers second hand goods to a pawnbroker in a buy-sell agreement in which the pawnbroker agrees to hold the second hand goods for a specified period of time to allow the exclusive right to the pawner to repurchase the second hand goods on certain conditions;

“precious gems” means any gem that is valued for its character, rarity, beauty or quality including diamonds, rubies, sapphires or pearls, or any other such precious gems or stones whether as separate item or in combination as a piece of jewelry or other crafted item;

“precious metals” means gold, silver, platinum, and sterling silver whether as a separate item or in combination as a piece of jewelry or other crafted item except items plated with precious metal(s) and the plating equals less than one (1) percent of the items total weight;

“redeem” means the act whereby a pawner receives the second hand goods pawned in a transaction with a pawnbroker, upon receipt by the pawnbroker from the pawner, repayment of the cash advanced and all applicable charges including interest accrued and any other charge payable to the pawnbroker;

“redemption period” in relation to pawned second hand goods, means the period of time within which the second hand goods are redeemable;

“register” means the compilation of all transaction records recorded by a second hand goods dealer and compiled in the prescribed form and manner;

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“repair business dealers” means any natural person, partnership or corporation, either principal or agent or employee thereof, or any other legal entity, however organized, where ninety (90) percent of the money received from customers is derived from repair work to items owned by the customer;

“rental business dealer” means a natural person, partnership or corporation, either principal or agent or employee thereof, or any other legal entity, however organized, where ninety (90) percent of the money received from customers, is derived from rental arrangements with their customers, including the money derived from the sale of previously rented items the rental business has owned since they were purchased from a manufacturer, wholesaler, or other such distributor of new items;

“retail” means the sale of new items obtained from a manufacturer, wholesaler or other such distributor of new items or the sale of second hand goods;

“retailers” means any natural person, partnership or corporation, either as principal or agent or employee thereof, or any other legal entity, however organized, where ninety (90) percent of the money received from customers is derived from the retail sales of new items;

“salvage yard dealer” means a natural person, partnership or corporation, either as principal or agent or employee thereof, or any other legal entity, however organized, which purchases waste paper, waste cardboard, glass, bicycles or previously used metal in any form including automobiles for the purpose of recycling or resale;

“second hand goods dealer designate” means a second hand goods dealer if the second hand goods dealer is a single natural person or the natural person appointed by second hand goods dealer to act on behalf of the second hand goods dealer, in respect to any section or regulation, when the second hand goods dealer is not a single natural person;

“second hand goods” means any new, previously owned, used, rented or leased item or items but does not include second hand goods exempted by any section or regulations;

“second hand goods business” means the premises where a second hand goods dealer conducts business and includes any yard, storage facility or other property associated with conducting the second hand goods business;

“second hand goods dealer” means any natural person, partnership or corporation, either as principal or agent or employee thereof, or any other legal entity, however organized, which purchases, or receives for the making of pawns, or receives on consignment, or receives in trade, or offers for sale, second hand goods, or who advertises or holds himself or herself out as carrying on the business, and includes pawnbrokers, antique dealers, consignment dealers, flea market dealers, repair business dealers, rental business dealers, salvage yard dealers and retailers

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who take second hand goods in trade, or any combination thereof, unless exempted by any section or regulations;

“Class A second hand goods dealer” means any second hand goods dealer conducting one hundred (100) or more transactions in any one (1) calendar year;

“Class B second hand goods dealer” means any second hand good dealer conducting less than one hundred (100) transactions in any one (1) calendar year;

“seller” means a natural person who sells or delivers for consignment or delivers for auction or delivers in trade, second hand goods to a second hand goods dealer;

“trade” means any transaction where second hand goods are received from a seller or pawner by a second hand goods dealer in exchange for all or part of any goods owned or offered for sale by a second hand goods dealer;

“transaction” means any second hand goods transaction conducted by a second hand goods dealer where any number of second hand goods are purchased, pawned, consigned or traded at any one time;

“transaction number” means the number assigned chronologically to a transaction conducted by a second hand goods dealer and is used in a transaction record;

“transaction record” means a written or printed or electronic record in the prescribed form and manner of a transaction conducted by a second hand goods dealer.

## **PART 2. SECOND HAND GOODS DEALERS**

### **Licence Required**

**2. (1)** No person shall carry on the business of a second hand goods dealer without a second hand goods dealer licence issued by the Minister or without renewing the licence annually, but no licence shall be issued or renewed unless under the authority of the Minister.

**(2)** Every second hand goods dealer shall obtain a second hand goods dealer licence

**(a)** prior to beginning to conduct the business of a second hand goods dealer, and

**(b)** shall obtain a separate second hand goods dealers license for each location where the second hand goods dealer conducts transactions.

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**(3)** No application for a second hand goods dealer licence or renewal of a second hand goods dealer licence shall be refused until after the applicant has been afforded a hearing by the Minister.

**(4)** Where, within the time prescribed therefor or, if no time is prescribed, prior to the expiry of the licence, the holder of a second hand goods licence has applied for renewal and paid the prescribed fee, the licence shall be deemed to continue,

**(a)** until the renewal is granted; or

**(b)** until the application has been finally determined by the Minister or, where there is an appeal from the decision of the Minister, until the last day for launching an appeal or such later date as may be fixed by the body to whom the appeal may be taken.

**(5)** The Minister shall not grant a license to any applicant where any conviction under Parts 9 through 12 of the Criminal Code of Canada has previously been registered against any of the following persons;

**(a)** the applicant or his or her spouse when the applicant is a natural person,

**(b)** any manager and or employee of the applicant,

**(c)** any shareholder, officer or director of the applicant where the applicant is a body corporate,

**(d)** any partner, or spouse of a partner, where the applicant is a partnership or limited partnership,

**(e)** any debt instrument holder of the applicant,

**(f)** any other natural person having influence over the business of the second hand goods dealer or sharing directly or indirectly in the profits of the applicant.

**(6)** The Minister shall immediately revoke the license of any second hand goods dealer where the Minister finds that the conditions set out in section 2, subsection (5) no longer hold true and no new license shall be issued to the applicant or any alternative applicant where in the opinion of the Minister the application is being made to thwart the spirit and intention of section 2, subsection (5).

**(7)** The Minister may suspend a second hand goods dealer's license for the period prescribed in the regulations, and in accordance with the regulations, where it appears on a balance of probabilities that the license holder has breached any part of this Act, or may revoke the license permanently.

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(8) For purposes of greater clarification and judicial interpretation, the act of carrying on business as a second hand goods dealer is a privilege and not a right within the meaning of any law, Act or common law principle.

## Licensing Exceptions

**3.(1)** No license is required for a antique dealer, auction dealer, consignment dealer, flea market dealer, repair business dealer, or rental business dealer that does not conduct more than one hundred (100) transactions in any calender year.

(2) No license is required for second hand dealers that hold what are commonly known as “garage sales”, “yard sales”, or “estate sales” where all of the following are present;

- (a) the sale is held on property occupied as a dwelling by the seller or owned, rented or leased by a charitable or political organization,
- (b) the second hand goods dealer owns the second hand goods offered for sale and none of the second hand goods offered for sale have been purchased for resale or received on consignment for the purpose of resale,
- (c) the owner of the second hand goods conducts the sale and receives all proceeds from the sale, and
- (d) that no sale exceeds a period of seventy-two (72) consecutive hours, and that no more than two (2) such sales are held in any twelve (12) month period at a residential dwelling.

(3) Every person who, without a licence, holds any sale referred to in section 3, subsection (2) and contravenes any of clauses (a), (b), (c) or (d) , commits an offence.

(4) Despite any other provision of this Act, no license shall be required by persons engaged in the sale of second hand goods for patriotic or charitable purposes.

## Second Hand Goods Register

**4. (1)** Every second hand goods dealer conducting a transaction shall make a transaction record and shall record the information for each transaction in a register in the form and manner prescribed by the regulations and transaction records shall include all of the following;

- (a) the day, month, year and time of the second hand goods transaction,
- (b) the name, address, phone number, date of birth and a photograph of the person selling or pawning the second hand goods,

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- (c) a description of the person selling or pawning the second hand goods, including height, weight, gender, hair colour, and eye colour of the person,
  - (d) the full particulars of the seller's or pawnor's identification as prescribed by section 6,
  - (e) a detailed description of each second hand good that shall be reasonably sufficient to identify it, including make, model, serial numbers and identifying marks and titles, where applicable,
  - (f) the price paid or the amount given for a second hand goods received in trade or the amount loaned on pawn or the agreed selling price for consignment or the reserve bid for a second hand good received for sale at auction, and
  - (g) the identity of the person conducting the second hand transaction.
- (2) Notwithstanding section 4, subsection (1), clause (e) a second hand goods dealer;
- (a) for the purpose of identifying coins, shall record the exact number of coins received, and a description of the ten (10) most valuable coins if more than ten (10) coins are received,
  - (b) for the purpose of identifying collector cards, shall record the exact number of cards received, and a description of the ten (10) most valuable cards if more than ten (10) cards are received,
  - (c) for the purpose of identifying pre-recorded audio tapes, compact discs and DVD's shall record the exact number of pre-recorded audio tapes, compact discs, DVD's, and any unique identifying marks, where applicable, but shall not be required to record each artist and title.
- (3) A second hand goods dealer shall not alter or remove all or any part of the register or any entry in the register.
- (4) The register shall be preserved and made available by a second hand goods dealer for a minimum of two (2) years after a transaction record entry is made in the register.
- (5) Where second hand goods are purchased, traded or otherwise obtained at an event described in section 3, subsection (2), the second hand goods dealer shall record;
- (a) the date the sale was held, and
  - (b) the address where the sale was held.
- (6) Where new or used goods are purchased from a merchant, manufacturer, retailer or wholesaler having an established permanent place of business the second hand goods dealer shall



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obtain a receipt from the merchant, manufacturer, retailer or wholesaler or make a record in the register which shall contain:

- (a) the name and address and phone number of the merchant, manufacturer, retailer or wholesaler,
- (b) the date the items were obtained by the second hand goods dealer, and
- (c) a list of the items obtained from the merchant, manufacturer, retailer or wholesaler.

(7) The Chief of Police may give written exemption to any second hand goods dealer designate for any of the requirements of section 4, subsections (1) through (6) if the Chief of Police believes it would not thwart the spirit and intention of the Act and is reasonable in the particular circumstances and such a written exemption will be deemed a defense to prosecution under any such section for which the written exemption is given.

(8) Every seller or pawner who sells, pawns, trades, or offers for consignment second hand goods to a second hand goods dealer shall provide current and accurate information to the second hand goods dealer as is required by the second hand goods dealer for a transaction record.

(9) Prior to completing a transaction a second hand goods dealer shall provide two (2) copies of a contract which shall include all the elements prescribed by the regulations, and

- (a) one copy of the contract shall be provided to the seller or pawner,
- (b) one copy of the contract shall be signed by the seller or pawner and the second hand goods dealer conducting the transaction, and
- (c) the signed contract shall be retained by the second hand goods dealer for a minimum of two (2) years.

## **Tracking Second Hand Goods.**

5. A second hand goods dealer shall attach a tag to every item offered for sale, trade, or on consignment, or purchased, or received on pawn, or received in trade by a second hand goods dealer so as to identify the transaction record in the register which corresponds to the acquisition of that item and the sticker must remain on the item until the item is sold, traded or otherwise legally disposed of by the second hand goods dealer.

## **Identification Required.**

6. (1) Prior to conducting any transaction a second hand goods dealer shall require from the seller or pawner of the second hand goods, for the purpose of verifying the identity of the seller or pawner, two (2) pieces of identification, one (1) of which shall be one (1) of the types of identification prescribed by the regulations and provided that piece of identification is integrated with a photograph of the seller or pawner.

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## **Report to the Police**

**7. (1)** A second hand goods dealer shall provide to the Chief of Police of the jurisdiction within which the second hand goods dealer conducts transactions an accurate and legible transaction record from each transaction conducted by the second hand goods dealer in the form and manner prescribed by the regulations of this Act.

**(2)** The record referred to in section 7, subsection (1) shall be delivered to the Chief of Police within seven (7) days of the date of a transaction unless otherwise specified in writing to the second hand goods dealer by the Chief of Police.

## **Reporting Suspicious Items to the Chief of Police.**

**8. (1)** Every second hand goods dealer shall forthwith report to the Chief of Police of the jurisdiction in which the second hand goods dealer conducts transactions the particulars of any second hand goods that are offered for sale, on pawn, or on consignment to the second hand goods dealer where a second hand goods dealer has reasonable cause to suspect the second hand goods so offered are stolen or otherwise unlawfully obtained and shall keep a record of the name of the Chief of Police to which the report is made and the date on which the report is made.

**(2)** Every second hand good the serial number of which has been removed, altered or damaged shall not be received by a second hand goods dealer.

## **Possession of Goods.**

**9. (1)** Second hand goods dealers shall maintain actual physical possession of all second hand goods received in a second hand goods transaction and must not accept title or any other form of security in lieu of actual physical possession.

**(2)** All second hand goods subject to the hold period referred to in section 10, subsection (1) or being held on pawn shall be stored at the location where the second hand goods were obtained from a seller or pawner, separate and apart from second hand goods which the second hand dealer is legally offering for sale, trade, rent or on consignment and that storage area shall not be accessible to members of the public.

**(3)** A second hand goods dealer may, in accordance with the Act and the regulations, store second hand goods at an alternate storage facility other than where the second hand goods are obtained from a seller or pawner if the size, value or quantity of the second hand goods requires such alternate storage.

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(4) A second hand goods dealer shall notify the Minister and the Chief of Police of the use of alternate storage facilities if the second hand goods dealer uses alternate storage facilities not identified in a license application under the Act.

## **Retention of Second Hand Goods.**

**10. (1)** Every second hand goods dealers shall hold all second hand goods acquired in a transaction until the expiration of thirty (30) days from the date of obtaining exclusive ownership of the second hand goods and shall not, within the prescribed hold period, melt, alter the form of, sell, trade, rent or otherwise dispose of, or attempt to melt, alter the form of, sell, trade, rent or otherwise dispose of, that second hand good.

(2) Where second hand goods are received by a pawnbroker, in pawn, the pawnbroker is deemed to have obtained exclusive ownership as referred to in section 10, subsection (1) on the day following the due date by which the pawn must be redeemed by the pawner.

(3) Notwithstanding section 10, subsection (1), when second hand goods are received by a pawnbroker on pawn the second hand goods may be returned to the pawner at any time upon redemption of the pawn by the pawner.

(4) Notwithstanding section 10, subsection (1), when a seller who has provided second hand goods to a second hand goods dealer on consignment the second hand goods dealer may return the second hand goods to the seller at any time upon the request of the seller.

(5) Notwithstanding section 10, subsection (1), upon the request from a second hand goods dealer, the Chief of Police may provide a written exemption for all or part of the hold period, at the discretion of the Chief of Police, if the need for such written exemption is unique and reasonable and the second hand dealer given such exemption may be required, by the Chief of Police in writing, to record the full name, address and phone number of the person to whom the second hand goods are sold and when required by the Chief of Police to so, failure to record the full name, address and phone number of the person to whom the second hand goods are sold is an offence.

## **Investigative Hold and Investigative Removal.**

**11. (1)** Investigative Hold. Where the Chief of Police reasonably suspects that second hand goods in the possession of a second hand goods dealer are stolen or otherwise unlawfully obtained the Chief of Police may extend the hold period by up to sixty (60) days by providing such notification in writing to the second hand goods dealer. If the Chief of Police is unable to notify the second hand goods dealer in writing immediately and once the Chief of Police has verbally notified the second hand goods dealer of the hold period extension the Chief of Police shall deliver the written notification within three (3) days of the verbal notification. The Chief of Police shall immediately notify the second hand goods dealer in writing as soon as the investigative hold period is no longer necessary.

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(2) **Investigative Removal.** Where the Chief of Police reasonably believes that second hand goods in the possession of a second hand goods dealer are stolen or otherwise illegally obtained and requires the removal of the second hand goods for expert examination for the purpose of confirming such belief the Chief of Police may remove such second hand goods for a period of up to seven (7) days after providing written notification of the removal to the second hand goods dealer. The Chief of Police may renew the investigative removal for subsequent seven (7) day periods provided the Chief of Police provides a new written notification of removal to the second hand goods dealer and such extended investigative removal is required to complete the investigation and the Chief of Police shall return the second hand goods at the first reasonable opportunity once the examination is completed.

(3) For the written notification for an investigative hold or an investigative removal the Chief of Police shall provide the second hand goods dealer their name, organization name, case number, if applicable, a contact phone number, and a description of the second hand goods which are to be held or removed and the second hand goods dealer shall provide that information to a pawner who has delivered second hand goods on pawn or a seller who has delivered second hand goods for consignment and is asking the second hand goods dealer to return their second hand goods.

(4) Once notified in accordance with section 11, subsections (1) and (3) a second hand goods dealer shall comply with the investigative hold.

(5) Once notified in accordance with section 11, subsections (2) and (3) a second hand goods dealer shall surrender, to the Chief of Police, second hand goods for investigative removal.

## **General Business Restrictions**

**12. (1)** A second hand goods dealer shall not conduct a transaction with any of the following:

- (a) any person under eighteen (18) years of age, or
- (b) any person appearing to be under the influence of alcohol or drugs, or
- (c) any person appearing to be of unsound mind.

## **PART 3. PAWNBROKERS**

### **Disclosure to the Public**

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**13.** A pawnbroker shall display on a sign in the form and manner prescribed by the regulations in a conspicuous place in the business premise that is readily visible to the public, the terms and conditions of pawning.

## **Pawner Entitled to Redeem Pawn.**

**14. (1)** If at any time during the redemption period, a pawner

(a) pays the full amount of cash advanced and all applicable interest and charges, and

(b) produces identification in accordance with the requirements of section 6,

the pawnbroker shall allow the pawner to redeem the pawn and the second hand goods referred to in the pawn contract must be delivered to the pawner.

(2) For purposes of section 14, subsection (1), where it has been indicated on a pawn contract that a person other than the pawner may redeem the pawn the other person identified by the pawner shall identify themselves to the pawnbroker by means of the identification required in section 6 before the pawn can be redeemed by such other person.

(3) The signed contract, referred to in section 4, subsection (9) shall be signed by the pawner upon redemption of the pawn indicating that the pawner has received the second hand goods referred to in the contract and where a person is redeeming the pawn as per section 14, subsection (2) the pawnbroker shall require the person redeeming the pawn to sign the contract indicating that they have received the second hand goods referred to in the contract and the pawnbroker shall record the particulars of the identification presented by that person, and a pawnbroker using the Automated Reporting System shall indicate the redemption of a pawned second hand good in the Automated Reporting System.

(4) If, on application to a Justice of the Peace, the Justice of the Peace is satisfied that during the redemption period the pawner or the person the pawner authorized to redeem the pawn, presented the pawn contract to the pawnbroker together with the full amount owing for the cash advanced and all applicable interest fees and other charges but the pawnbroker refused without reasonable cause to deliver the pawned second hand goods, the Justice of the Peace may order the pawnbroker to

(a) deliver the second hand goods to the pawner

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(b) deliver the second hand goods to the pawner on his or her repayment of the full amount owing, or

(c) pay the pawner the value of the second hand goods in accordance with section 14, subsection 6.

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(5) Every pawnbroker who fails to comply with the order of a Justice of the Peace, referred to in section 14, subsection (4), commits an offence.

(6) For purposes of section 14, subsection (4), clause (c), the value of the second hand goods shall be four (4) times the amount loaned less the amount loaned and all due interest fees and other applicable charges.

(7) Section 14, subsection (4), clause (c), is in addition to a remedy available in section 34.

(8) If a pawner dies, a pawnbroker shall return the second hand goods to the representative of the pawner if the representative;

(a) produces the pawn contract to the pawnbroker during the redemption period,

(b) produces proof of his or her representation of the deceased pawner, and

(c) produces proof that the pawner is deceased.

## **Minimum Redemption Period**

15. If a second hand good is received on pawn by a pawnbroker, the pawnbroker shall not set, agree to set or in any way require a redemption period that is less than thirty (30) days.

## **Forfeiture of Pawned Second Hand Goods**

16. If a pawned second hand good is not redeemed within the redemption period, the second hand good is forfeited to the pawnbroker and is the pawnbroker's absolute property to dispose of as the pawnbroker wishes after the expiration of the prescribed hold period.

## **Procedure for Lost Pawn Contracts.**

17. (1) Subject to this section, a pawnbroker is not required to return pawned second hand goods until the pawn contract is returned to the pawnbroker.

(2) On request by a person claiming to be entitled to redeem a pawned second hand good but not holding the pawn contract, the pawnbroker shall provide the person with a copy of the pawn contract and an affidavit in the prescribed form, upon payment of the charge thereof.

(3) If the claimant proves to the satisfaction of a Justice of the Peace the right to redeem the second hand goods and before the expiry of three (3) days the claimant returns to the pawnbroker the affidavit duly sworn and endorsed with a certificate of the Justice of the Peace that such proof has been made, the claimant has, subject to the limitation set out in subsection (4), the rights and remedies that the claimant would have had if the claimant would have

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produced the pawn contract, including, without limitation, the rights and remedies afforded in section 14, subsection (4).

(4) Upon receipt of the affidavit and certificate referred to in section 17, subsection (3), a pawnbroker shall deliver the second hand goods listed in the pawn contract to the claimant.

(5) The pawnbroker is not required to deliver the pawned second hand goods to any person, including the claimant, for three (3) days from the day that the claimant returns the affidavit and certificate to the pawnbroker under subsection (3).

(6) For purpose of section 17, subsections (3) and (5), if the redemption period expires before the end of the three (3) days referred to in those subsections, section 15 does not apply until the end of those three (3) days.

(7) The pawnbroker is not liable to pay for any loss or damage suffered because of delivering the pawned second hand goods to a claimant in accordance with this section or and shall act in conformity with the affidavit and certificate, unless the pawnbroker has reasonable grounds to believe the affidavit and certificate are fraudulent or false.

## **Liability For Lost, Stolen, Damaged, or Destroyed Items.**

**18. (1)** If pawned second hand goods are lost, stolen, damaged, or destroyed, the pawnbroker is liable and shall, on request of the second hand goods by the pawner during the redemption period, pay the pawner the value of the second hand goods after deducting the amount of cash advanced and all applicable interest and charges.

(2) If a pawnbroker is unable to return pawned second hand goods to a pawner during the redemption period due to the loss, theft, damage or destruction of the second hand goods, the pawnbroker shall make a police report to the police agency in the jurisdiction in which the pawnbroker conducts business and the pawnbroker shall report the circumstances of the loss, theft, damage or destruction whether it be due to a break and enter and theft, theft, fire, vandalism or other such circumstance, and shall provide such police report number to the pawner upon the pawner's request.

(3) For purposes of section 18, subsection (1) the value of the pawned second hand good is deemed to be two (2) times the amount of the cash advanced on the item.

(4) Section 18, subsection (1) is in addition to a remedy available in section 34.

## **Advertising.**

**19. (1)** A pawnbroker shall not publish or advertise or cause to be published or advertised whether by circular, pamphlet or other printed material used in connection with the pawnbroker's business or by newspaper, radio, television, Internet or other means of communication,

(a) any representation of a charge for, or condition of, obtaining a cash advance from the

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pawnbroker if the representation does not prominently, clearly and truthfully disclose the full cost of borrowing, or

- (b) any false, misleading or deceptive statement relating to the obtaining of a cash advance from the pawnbroker.

## **General Business Restrictions**

**20. (1)** A pawnbroker shall not acquire, take in pawn or exchange a pawn contract issued by the pawnbroker or another pawnbroker.

**(2)** A pawner shall not sell, trade or exchange a pawn contract.

## **PART 4. CONSIGNMENT DEALERS**

### **Consignment Agreement**

**21. (1)** At the time of accepting second hand goods on consignment a consignment dealer shall prepare a consignment agreement and shall provide the seller with a copy of the consignment agreement which shall contain;

- (a) the purchase price agreed to by the consignment dealer and the seller and, if applicable, the minimum price the seller will accept for the sale of the second hand goods,

- (b) the amount payable to the consignment dealer, for the services provided by the consignment dealer, expressed as

- (i) a fixed amount payable only if the second hand goods are sold, or

- (ii) a fee for service that is

- (A) a fixed amount payable whether or not the second hand goods are sold,

- (B) a percentage of the actual selling price of the second hand goods only if the second hand goods are sold, or

- (C) an amount that exceeds an agreed upon minimum selling price of the second hand goods only if the second hand goods are sold, or

- (iii) any combination of the fee for services under subparagraph (ii) (A),(B), or (C),

- (c) the duration of the consignment agreement,



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- (d) a description of any warranty or guarantee assignable by the seller,
- (e) a description of how the seller will be notified of the sale of the second hand goods,
- (f) a description of how the consignment dealer will pay the seller,
- (g) a statement of how long the second hand goods will be held after the end of the consignment agreement for the seller to collect the second hand goods, and
- (h) a statement of how second hand goods not collected at the end of the period in (g) will be disposed of.

## **Liability For Lost, Stolen, Damaged or Destroyed Items**

**22. (1)** If second hand goods received by a consignment dealer are lost, stolen, damaged, or destroyed, the consignment dealer is liable and shall pay the seller the value of the second hand goods.

**(2)** If a consignment dealer is unable to return second hand goods to a seller due to the loss, theft, damage or destruction of the second hand goods, the consignment dealer shall make a police report to the police agency in the jurisdiction in which the consignment dealer conducts business, and the consignment dealer shall report the circumstances for the loss, theft, damage or destruction whether it be due to a break and enter, theft, fire, vandalism or other such circumstance, and shall provide such police report number to the seller upon the seller's request.

**(3)** For purposes of section 22, subsection (1) the minimum agreed sale price on a consigned second hand good shall be considered the value of the second hand good if the second hand good is lost, stolen, damaged, or destroyed while in the possession of a consignment dealer.

## **PART 5. AUCTION DEALERS**

### **Auction Agreement**

**23. (1)** At the time of accepting second hand goods for auction, an auction dealer shall prepare an auction agreement and shall provide the seller with a copy of the auction agreement which shall contain;

- (a) the reserve bid agreed to by the auction dealer and the seller for the sale of the second hand goods,
- (b) the amount payable to the auction dealer, for the services provided by the auction dealer, expressed as
  - (i) a fixed amount payable only if the second hand goods are sold, or

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- (ii) a fee for service that is
  - (A) a fixed amount payable whether or not the second hand goods are sold,
  - (B) a percentage of the actual selling price of the second hand goods only if the second hand goods are sold, or
  - (C) an amount that exceeds an agreed upon minimum selling price of the second hand goods only if the second hand goods are sold, or
- (iii) any combination of the fee for services under subparagraph (ii) (A),(B), or (C),
- (c) the duration of the auction agreement,
- (d) a description of any warranty or guarantee assignable by the client,
- (e) a description of how the seller will be notified of the sale of the second hand goods,
- (f) a description of how the auction dealer will pay the seller,
- (g) a statement of how long the second hand goods will be held after the end of the auction agreement for the seller to collect the second hand goods,
- (h) a statement of how second hand goods not collected at the end of the period in (g) will be disposed of.

## **Liability For Lost, Stolen, Damaged or Destroyed Items**

- 24. (1)** If second hand goods received by an auction dealer are lost, stolen, damaged, or destroyed, the auction dealer is liable and shall pay the seller the value of the second hand goods.
- (2)** If an auction dealer is unable to return second hand goods to a seller due to the loss, theft, damage or destruction of the second hand goods, the auction dealer shall make a police report to the police agency in the jurisdiction in which the auction dealer conducts business, and the auction dealer shall report the circumstances for the loss, theft, damage or destruction whether it be due to a break and enter, theft, fire, vandalism or other such circumstance, and shall provide such police report number to the seller upon the seller's request.
- (3)** For purposes of section 24, subsection (1) the reserved bid on a second hand good shall be considered the value of the second hand good if the second hand good is lost, stolen, damaged, or destroyed while in the possession of an auction dealer.

## **Payment Held in Trust**

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**25. (1)** If the selling price of second hand goods sold at auction is one thousand dollars (\$1,000.00) or greater, the payment received from the purchaser is deemed to be held in trust for the client.

**(2)** Money held by an auction dealer in trust under subsection 1

**(a)** continues to be the beneficial property of the client,

**(b)** shall not be used as collateral by the auction dealer, and

**(c)** is not subject to attachment or execution against the auction dealer.

## **Use of False Bidders**

**26.** An auction dealer shall not use or permit the use of false bidders.

## **PART 6. GENERAL**

### **Appointment of a Second Hand Goods Dealer Designate**

**27. (1)** Every second hand goods dealer shall appoint a second hand dealer designate when the second hand goods dealer is not a single natural person and the second hand goods dealer designate shall be considered, and responsible, to act on behalf of the second hand goods dealer in all the appropriate matters as pertains to this Act, when the matters do not pertain to any other natural person.

**(2)** When a second hand goods dealer designate has been appointed by a second hand goods dealer the second hand goods dealer's name, address, date of birth, and phone number shall be provided to the Minister in any application and every second hand goods dealer shall notify the Minister and the Chief of Police, in writing within fourteen (14) days of any change of the second hand dealer designate or for any change in the information required for the second hand goods dealer designate.

### **Swearing on Oath**

**28.** On every occasion when the Chief of Police serves any Request for Suspension and the accompanying rationale, Request for Prohibition, Notice of Suspension, Notice of Prohibition, Final Notice of Suspension or Final Notice of Prohibition, on a second hand goods dealer designate a Proof of Service shall be sworn to before a commissioner of oath and the sworn Proof of Service shall be maintained by the Chief of Police for a period of two (2) years after the Request or Notice is no longer in force and a copy of the Proof of Service shall be forwarded to the Minister.

## **Interpretation for Periods of Time**

**29.** Any reference to periods of time, stated in numbers of days, shall be deemed applicable on the first business day after a Sunday or Statutory holiday if the expiration of the time period occurs on a Sunday or Statutory holiday.

## **Inspection of Premises, Records and Second Hand Goods.**

**30. (1).** The Minister or the Chief of Police is authorized to inspect during regular business hours;

(a) as much of a place or premise as is used for carrying on the business of a second hand goods dealer including alternate storage facilities, and

(b) any second hand goods, wares, merchandise, articles, books, records or other documents of or relating to the business of a second hand goods dealer.

(2) No person shall obstruct, hinder or otherwise interfere with any of the inspections referred to in section 30, subsection (1).

## **Title to Property**

**31. (1)** Notwithstanding any other provision in this or any other Act, where it has been determined by the Chief of Police that a second hand good is stolen or otherwise unlawfully obtained by the unlawful act(s) of any person, the original lawful owner of the second hand good retains an absolute right of ownership over the second hand good.

(2) If a person mentioned in section 1 has received compensation under any insurance policy of the second hand good,

(a) the insurer shall be deemed the original lawful owner of the second hand good, or

(b) the person who was the original lawful owner prior to the insurer, may become the most recent lawful owner of the second hand good if the person pays the insurer the amount compensated within ninety (90) days of receiving notification that the second hand good has been recovered by the Chief of Police.

(3) The Chief of Police shall return the second hand good referred to in section 31, subsection (1) to the original lawful owner as soon as is practicable.

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(4) Notwithstanding section 31, subsection (3), where a second hand good has been retained by the Chief of Police for the purpose of the use of the second hand good for evidence in a court proceeding, the second hand good shall be returned to the original lawful owner when the second hand good is no longer required to be held as evidence.

(5) Where an insurance policy provides for any other procedure, other than the procedure referred to in section 31, subsection 2 (b), the insurance policy procedure is of no force or effect.

(6) A second hand goods dealer from whom a second hand good is seized by the Chief of Police, and the second hand good is returned to the original lawful owner of the second hand good by the Chief of Police, is stopped from seeking to recover the second hand goods dealer's losses from any party other than the seller or pawner from whom the second hand good was directly obtained.

## Offences.

**32. (1)** Every second hand goods dealer who contravenes section 2(1), 3(3), 4(1)(a), (b), (c), (d), (e), (f) or (g), 4(2)(a), (b), or (c), 4(3), 4(4), 4(5)(a) or (b), 4(6)(a), (b) or (c), 4(9)(a), (b) or (c), 5, 6(1), 7(2), 8(1), 8(2), 9(1), 9(2), (9) (4), 10(1), 10(5), 11(3), 11(4), 11(5), 12(1)(a), (b) or (c), 13, 14(1), 14(3), 14(5), 14(8), 15, 17(4), 18(1), 18(2), 19(1)(a) or (b), 20, 21(1), 21(1)(a), (b), (c), (d), (e), (f), (g) or (h), 22(1), 22(2), 24(1), 24(2), 25(2)(b), 26, 27(1), 27(2) or 30(2), or the regulations, commits an offence. **\*\*needs to be reviewed once all sections finalized and regulation offences may need to be spelled out\*\***

(2) Every person who contravenes section 4(8) commits an offence.

(3) Every person who commits an offence under this Act or the regulations is liable on conviction to a fine of not more than one hundred thousand dollars (\$100,000.00) or to imprisonment for not more than one (1) year, or both.

(4) An act or thing done or omitted by an officer, director, employee or agent of a second hand goods dealer, within the scope of the individual's authority to act on behalf of the second hand goods dealer, is deemed to be an act or thing done or omitted by the second hand goods dealer.

(5) If a second hand goods dealer commits an offence under this Act or the regulations, an officer, director, employee or agent of the second hand goods dealer who authorizes, permits or acquiesces in the offence commits the same offence, whether or not the second hand goods dealer is convicted of that offence.

(6) If a corporation commits an offence under this Act or the regulations, every director and officer of the corporation who authorizes, permits or acquiesces in the offence also commits an offence and, even though the corporation is convicted, is liable on conviction to a fine of not more than one hundred thousand dollars (\$100,000.00) or to imprisonment for not more than one year, or to both.

(7) A prosecution under this Act or the regulations must be commenced within two (2) years of

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the time when the subject matter of the prosecution arose.

## **Due diligence defense.**

**33.** A person is not guilty of an offence under this Act or the regulations if the person proves that the person exercised due diligence to prevent the commission of the offence.

## **Civil Remedy**

**34.** If a person has suffered loss, damage or inconvenience as a result of a contravention of this Act or the regulations the person has a cause of action against the person who contravened this Act or the regulations and is entitled, if the court finds that the person has suffered loss, damage or inconvenience to a judgement for the loss or damages suffered or two hundred dollars (\$200.00), whichever is greater.

## **Power to Make Regulations**

**35. (1)** Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

**\*\*\*\*\* to be completed once regulations completed\*\*\*\*\***

## **Separability**

**36.** Should any section, subsection, or clause or other provision of this Act or the regulations be declared by a court of competent jurisdiction to be invalid such decision shall not effect the validity of the Act or the regulations as a whole or any other part other than the part so declared invalid.

## **Repeal**

**37.** The Pawnbrokers Act, R.S.O. 1990, P-6 is repealed.

## **Commencement**

**38.** This Act and the regulations come into force upon the proclamation of the Lieutenant Governor in Council.

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## REGULATIONS

### Regulation 1: Definitions

#### Exceptions:

“second hand goods” does not include, unless obtained by a second hand dealer by way of pawn;

(1) any second hand goods obtained through any of the following manners, if:

- (a) in the course of a genuine retail sales transaction, the item is returned to the retailer by a dissatisfied customer for the purpose of a refund or exchange for other merchandise or credit,
- (b) the second hand goods are acquired from a law enforcement agency or officer acting in an official capacity,
- (c) the second hand goods are acquired from a trustee in bankruptcy, executor, administrator, or receiver who has presented to the second hand goods dealer proof of such status,
- (d) the second hand goods are acquired from any public official acting under judicial process or authority and who has presented to the second hand dealer proof of such status,

(2) any second hand goods for which the Chief of Police, of the jurisdiction in which the second hand dealer is located, has provided an exemption in writing, for those second hand goods,

(3) any of the following second hand goods regardless of how they are obtained:

- (a) second hand books, magazines, journals, periodicals, or other such printed materials,
- (b) postage stamps,
- (c) second hand appliances including fridges, freezers, stoves, washers, dryers, dishwashers, garbage compactors,
- (d) second hand infant’s, toddler’s or children’s clothing, shoes, appliances, furniture, or safety devices,

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- (e) adult clothing or shoes, except leather jackets and coats,
  - (e) second hand furniture,
  - (f) second hand cookware, glassware, and eating utensils that do not contain precious metals,
  - (g) manually operated lawn or garden equipment and tools,
  - (h) motor vehicles except for salvage purposes,
- (4) Any of the following second hand goods unless the second hand goods dealer paid twenty-five dollars (\$25.00) or more, in cash or other consideration, or which the second hand goods dealer intends to offer for sale, or broker, for fifty dollars (\$50.00) or more:
- (a) household appliances including toasters, toaster ovens, kettles, popcorn makers, blenders, food processors,
  - (b) any sporting goods except golf clubs and golf bags, skis, snowboards, roller blades, and goalie pads,
  - (c) tents or other camping equipment,
  - (d) electric or gas powered yard or garden equipment and tools,
  - (e) china, stone or metal figurines,
- (5) Any of the following second hand goods unless the second hand goods dealer paid fifty dollars (\$50.00) or more in cash or other consideration or which the second hand goods dealer intends to offer for sale, or broker, for one hundred dollars (\$100.00) or more:
- (a) costume jewelry which does not contain precious metals,
  - (b) architectural elements, lighting fixtures, or lamps that are, or contain, stained, etched, leaded, beveled or art glass,
  - (c) artist signed or artist attributed works of art.

## **Regulation 2. Conditions For Licensing.**

(1) Every applicant for a second hand goods dealer license shall submit a complete and accurate application on forms provided by the Minister. All applicants, in addition to a general personal and criminal history, shall be required to submit adequate information to enable a fair determination of their eligibility to hold the license for which they are applying including:



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- (a) whether the applicant holds a current second hand dealers licence or pawnbrokers license from this or any other government unit,
  - (b) whether the applicant has previously been denied or had revoked or suspended a second hand goods dealers license or pawnbrokers license from this or any other government unit,
  - (c) the location of the business premise and any alternate storage facilities,
  - (d) a certificate from the municipality in which the second hand goods business is located certifying that the second hand goods business meets the requirements of the governing jurisdiction for conducting a second hand goods business in relation to building standards, zoning and health and safety requirements,
  - (e) a Canadian Police Certificate certifying that the applicant does not have a criminal conviction for offences under Parts 9 through 12 of the Criminal Code of Canada.
  - (f) when a second hand goods dealer places a manager in charge of a second hand goods business the full name, address, date of birth and phone number of the manager must be submitted with the application to the Minister,
  - (g) the document and copy of the questionnaire referred to in regulation 10 for each employee who conducts transactions,
  - (h) the full name, street address, date of birth and phone number of the applicant, any natural person associated with the second hand goods dealer, and of the second hand goods dealer designate.
- (2) Before a second hand goods license will be issued to a second hand goods dealer every Class A second hand goods dealer applicant shall submit a five thousand dollar (\$5,000.00) bond to the Minister on the forms provided by the Minister and all bonds must be conditioned that the principal will observe all laws in relation to second hand goods dealers and will conduct business in conformity thereto and the bond shall contain a provision that no bond may be canceled except upon thirty (30) days written notice to the Minister, and shall be served upon the Minister.
- (3) The cost for a second hand goods license or the renewal thereof shall be five hundred dollars (\$500.00) and the payment shall be by certified cheque made out to the Minister of Consumer and Business Relations and shall be dated for the date of the application.
- (4) If the named manager(s) in charge of a second hand goods business or the designate changes and when a new employee who conducts transactions is hired or an existing employee who conducts transactions quits or is terminated the second hand goods dealer shall notify, and provide the required information to, the Minister and the Chief of Police within thirty (30) days.

### **Regulation 3. License Suspension, Revocation and Prohibition.**

(1) For the purposes of this regulation, a Justice of the Peace shall view or hear all evidence as pertains to suspensions or prohibitions and make decisions with respect to suspensions and prohibitions.

(2) Where the Chief of Police has reasonable grounds to believe the suspension of a second hand goods dealer's licence would advance the cause of justice, the Chief of Police may apply to the Minister for an Order of Suspension for a licenced second hand goods dealer for cause, and without limiting the generality of the foregoing, for:

- (a) a breach of the law,
- (b) anything which may be adverse to the public interest,
- (c) any violation of the provisions of section 4 of the Act, or
- (d) any repeated violations of any section of the Act,

and the Chief of Police shall submit to the Minister a written rationale containing the grounds for such application and the Chief of Police shall indicate the length of the suspension period requested.

(3) After reviewing the application for an Order of Suspension, the Minister may order a hearing before a Justice of the Peace by directing service of a Notice of Suspension Hearing upon a licenced second hand goods dealer by the Chief of Police and the Chief of Police shall indicate the date of first appearance upon the service of the Notice of Suspension Hearing.

(4) On the date of the first appearance on the Notice of Suspension Hearing, the second hand goods dealer may request subsequent hearings as reasonably required to present the second hand goods dealer's evidence if the second hand goods dealer does not agree to the Order of Suspension or the length of the Order of Suspension requested by the Chief of Police.

(5) The Chief of Police shall not request a suspension period greater than ninety (90) days.

(6) If, after all Notice of Suspension Hearings are completed, the Justice of the Peace finds that an Order of Suspension is warranted, and determines the appropriate length of the suspension, the Justice of the Peace shall issue an Order of Suspension

(7) The Order of Suspension shall include the start date of the suspension period and shall

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include the date the Order of Suspension is terminated.

**(8)** If the second hand dealer is not present at the issuance of the Order of Suspension by the Justice of the Peace, the Order of Suspension shall be served upon the second hand goods dealer by the Chief of Police and such service shall be sworn to by the Chief of Police to a Commissioner of Oaths for the Province of Ontario.

**(9)** Where the Chief of Police has reasonable grounds to believe the suspension of a second hand goods dealer's licence would advance the cause of justice, the Chief of Police may apply to the Minister for an Order of Prohibition for a licenced second hand goods dealer for cause, and without limiting the generality of the foregoing, for:

- (a)** a breach of the law,
- (b)** anything which may be adverse to the public interest,
- (c)** any violation of the provisions of section 4 of the Act, or
- (d)** any repeated violations of any section of the Act,

and the Chief of Police shall submit to the Minister a written rationale containing the grounds for such application.

**(10)** After reviewing the application for an Order of Prohibition, the Minister may order a hearing before a Justice of the Peace by directing service of a Notice of Prohibition Hearing upon a licenced second hand goods dealer by the Chief of Police and the Chief of Police shall indicate the date of first appearance upon the service of the Notice of Prohibition Hearing.

**(11)** On the date of the first appearance on the Notice of Prohibition Hearing, the second hand goods dealer may request a date for subsequent hearings as reasonably required to present the second hand goods dealer's evidence if the second hand goods dealer does not agree to the Order of Prohibition.

**(12)** If, after all Notice of Prohibition Hearings are completed, the Justice of the Peace finds that an Order of Prohibition is warranted the Justice of the Peace shall issue an Order of Prohibition.

**(13)** The Order of Prohibition shall include the start date of the prohibition period.

**(14)** If the second hand dealer is not present at the issuance of the Order of Prohibition by the Justice of the Peace, the Order of Prohibition shall be served upon the second hand goods dealer by the Chief of Police and such service shall be sworn to by the Chief of Police to a Commissioner of Oaths for the Province of Ontario.

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(15) No second hand goods dealer shall conduct the business of a second hand goods dealer, in the province of Ontario after a Order of Suspension is issued and properly served and the suspension shall continue for the length of time prescribed in the Order of Suspension.

(16) No second hand goods dealer shall conduct the business of a second hand goods dealer, in the province of Ontario after a Order of Prohibition is issued and properly served.

(17) Every second hand goods dealer who has been issued and properly served an Order of Prohibition shall apply to the Minister for a Revocation of Prohibition, and must receive such written Notice of Revocation of Prohibition, before conducting the business of a second hand goods dealer in the Province of Ontario.

(18) The Minister may issue a Notice of Revocation of Prohibition after reviewing such application if the Minister determines that such revocation will not thwart to cause of justice and the Minister may request the assistance of any Chief of Police in making such a determination and the decision of the Minister shall be final.

(19) Where the second hand goods dealer is a pawnbroker, and has been served an Order of Suspension or Order of Prohibition, the second hand goods dealer may continue to conduct the business of a pawnbroker during the period prescribed in the Order of Suspension or Prohibition, only for the purpose of redeeming existing pawns until all existing pawns are redeemed or have passed their due date.

(20) Where a Order of Prohibition has been issued by the Minister on a second hand goods license holder the second hand goods license will be deemed to be revoked and the second hand dealer must apply for a new license after obtaining a Notice of Revocation of Prohibition.

## **Regulation 4. Transaction Records.**

(1) Every Class A second hand goods dealer shall use the Automated Reporting System in accordance with the regulations once the Automated Reporting System has been approved by the Minister.

(2) Every Class B second hand goods dealer not using the Automated Reporting System shall legibly, in the English language, in chronological order, in ink or other indelible medium, in a book, on forms, or in a computerized record, approved by the Chief of Police, record and maintain a transaction record of each transaction.

(3) The signed contract, referred to in section 10, of part 3 of this Act, shall include the following, when second hand goods are received from a seller:

(a) the year, month, date and time of the transaction,

(b) the name, address and phone number of the second hand goods dealer,

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- (c) the full name, address, date of birth, and phone number of the seller,
- (d) the transaction number which corresponds to the transaction number recorded in the second hand goods dealer's register,
- (e) a list of the second hand goods received by the second hand goods dealer,
- (f) the amount paid or the value of the items traded for the second hand goods,
- (g) a statement which shall read " I hereby accept the conditions and contents of this agreement contained herein and authorize the use of this information for investigative purposes. I certify that I am the sole and lawful owner of the above mentioned item(s) and that they are clear of all liens and all notes. I certify that the information contained in this contract is accurate and true."

4. The signed contract referred to in section 4, subsection (9) shall include the following when second hand goods are received on pawn from a pawner:

- (a) all the requirements in section (3), subsections (a), (b), (d), (e) and (g) of regulation (4),
- (b) the full name, address, date of birth, and phone number of the pawner,
- (c) the amount loaned on pawn,
- (d) the amount due for the pawner to redeem the pawn,
- (e) the due date by which the pawner must redeem the pawn,
- (f) a statement of the amount of interest charged on the amount loaned, and the amount of all other charges which make up the amount due, over and above the amount loaned,
- (g) a statement which shall read " All the items are deemed to have been sold to **(name of second hand goods business)** the day following the due date if the amount due has not been paid by the due date."

(5) Every pawnbroker shall obtain the signature of the person redeeming a pawn and shall make the appropriate change of status notation in the recording system used by the pawnbroker.

## **Regulation 5. Automated Reporting System.**

In this Regulation,

"billable transaction" means a transaction conducted by a second hand goods dealer using the Automated Reporting System except when a pawnbroker conducts renewals, redemptions, or

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extensions of existing pawns on second hand goods previously reported and continuously in the second hand goods dealer's possession.

“Company” means the company which provides the Automated Reporting System.

“transmission fee” means the amount of money charged for a billable transaction.

(1) A second hand goods dealer shall provide the computer hardware, printer, any other necessary equipment and Internet capability as per the Company's specifications for the purpose of operating the Automated Reporting System.

(2) A second hand goods dealer shall make every employee who conducts transactions available for training on the Automated Reporting System, as per the Company's specifications, sufficient for that person to operate the Automated Reporting System and once the Automated Reporting System is operational in a second hand goods business, the second hand goods dealer shall be responsible for training new employees to use the Automated Reporting System.

(3) A second hand goods dealer shall collect the transmission fee from each seller or pawner and shall remit the collected transmission fee to the Company within sixty (60) days of billing for billable transactions by the Company.

(4) Every second hand goods dealer using the Automated Reporting System shall enter the required transaction information to conduct a purchase or pawn transaction and shall enter the required information to process a redemption of a pawned item when a pawner redeems a pawned item.

(5) Every second hand goods dealer using the Automated Reporting System shall take a photograph of the seller or pawner at the time of a billable transaction as per the procedure established by the Company for this purpose.

(6) Every Class C second hand goods dealer not using the Automated Reporting System shall take a Polaroid picture of the seller or pawner at the time of the transaction and shall record the date, transaction number and name of the seller or pawner and shall sign and obtain the signature of the seller or pawner on the rear of the picture and attach the picture to the copy of the contract which the seller or pawner signs and the second hand goods dealer retains.

(7) Every second hand goods dealer using the Automated Reporting System shall use a handwritten contract when the Internet Service is interrupted or the second hand goods dealer's equipment fails and shall comply with section 7 of regulation 5 during the interruption and shall enter the transaction information in the Automated Reporting System once the Internet Service is restored or the second hand dealer's equipment is functioning again.

(8) The Company shall provide a user's guide for the Automated Reporting System, approved by the Minister, to the second hand goods dealer and the Chief of Police and the user's guide shall document instruction for respective use of the system and all the computer hardware, equipment,

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specifications for training, protocols for maintenance and help desk support, and a clear indication of the responsibilities of each involved party, required to operate the Automated Reporting System.

**\*\*\* \* To be refined and completed once all the protocols of an ARS are fully known \*\*\*\*\***

## **Regulation 6. Types of Photo Identification**

- (a) a valid driver's license, issued by a Canadian province or territory, or issued by a state in the United States of America,
- (b) a passport issued by the government of origin,
- (c) a B.Y.I.D. (Bring Your Identification) Card issued by the Liquor Control Board of Ontario,
- (d) a Certificate of Indian Status Card issued by the Government of Canada,
- (e) a Certificate of Citizenship Card issued by the Government of Canada, or
- (f) a Conditional Release Card issued by Correctional Services of Canada.

## **Regulation 7. Reporting To The Chief of Police.**

(1) Every second hand goods dealer shall provide the record required in section 7 of this Act by delivering by hand to the Chief of Police:

- (a) a legible copy of all transactions conducted by the second hand goods dealer, or
- (b) a legible copy of the transaction register containing all transaction records conducted by the second hand goods dealer.

(2) Any second hand dealer using the Automated Reporting System, referred to in regulation 5 of this Act, shall be deemed to have complied with section 7 of this Act.

## **Regulation 8. Required Signage.**

(1) The sign required by section 13 must contain the following:

- (a) the rate or rates of interest and any other fee or charge, applicable, upon redemption, to the cash advanced by the pawnbroker, and
- (b) the redemption period for the pawn, and
- (c) a statement that the second hand goods become the property of the pawnbroker, without further notice, upon the expiration of the redemption period, if the item has

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not been redeemed or repurchased and there is no agreement to extend the advance of the cash, and

- (d) a statement indicating that the information required for a transaction, is provided to the police and available for investigative purposes.
- (2) The sign shall be of sufficient size so as to accommodate letters and numbers which are no smaller than 13 mm. or one half inch (1/2") in size.

## **Regulation 9. Affidavits For Lost Pawn Contracts**

- (1) The affidavit referred to in section 17 of the Act shall contain the following;
  - (a) the date the affidavit was given to the claimant,
  - (b) the date by which the form must be returned,
  - (c) the full name and address of the claimant,
  - (d) a description of the claimant including height, weight, age, gender, hair colour, eye colour and any visible identifying marks,
  - (e) a complete and accurate description of the second hand goods pawned including any serial numbers, model numbers, or other identifying marks,
  - (f) a list of the types of persons who are commissioners of oath for taking affidavits,
  - (g) a space to enter the date the affidavit was signed before the commissioner,
  - (h) a space for the signature of the claimant, and
  - (i) a space for the signature of the commissioner.

## **Regulation 10. Training Employees**

In this Regulation,

“questionnaire” means a number of questions on a form provided by the Inspector for the purpose of determining that an employee, of a second hand goods dealer, who conducts transactions is familiarized with the appropriate sections and regulations of the Act.

- (1) Every second hand goods dealer shall provide training to each employee who conducts transactions sufficient to familiarize the employee with the requirements of the Act and the regulations and the use of the Automated Reporting System if the Automated Reporting System is used by the second hand goods dealer and shall require the employee to satisfactorily fill out a questionnaire.



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(2) Prior to hiring an employee who will conduct transactions on behalf of the second hand goods dealer, every second hand goods dealer shall provide training to such potential employees sufficient to familiarize the employee with the requirements of the Act and regulations and the use of the Automated Reporting System if the Automated Reporting System is used by the second hand goods dealer and shall require the employee to satisfactorily fill out a questionnaire.

(3) Every Second hand goods dealer shall obtain the signature of each employee trained in accordance with section (1) and (2) on four (4) written or printed documents each of which shall contain;

(a) The full name, date of birth, address, and phone number of the employee;

(b) The date the document is signed,

(c) The location where the document was signed, and

(d) A statement which reads “ I, the undersigned, agree and confirm that I have received sufficient training with respect to conducting transactions in accordance with the Pawnbrokers and Second Hand Goods Dealers Act of Ontario and I understand that I will be liable to prosecution for the contravention of any section or regulation of the Act, and that all the information contained in this document is true and can be used in any court or other proceeding as required.”.

(4) Every second hand goods dealer shall provide one (1) of the documents referred to in section (2) to each of the Inspector, the Chief of Police and the employee and shall retain the fourth document while the employee remains employed by the second hand goods dealer and for a period of two (2) years after the employee quits or is terminated.

(5) Every second hand goods dealer shall provide a copy of the questionnaire referred to in section (1) to each of the Inspector, the Chief of Police and shall retain the original questionnaire for the period of time the employee remains employed by the second hand goods dealer and for two (2) years after the employee quits or is terminated.

## **Regulation 11. Grandfathering Provisions.**

In this Regulation:

“Automated Recording System” means an electronic system which a second hand dealer uses to conduct business prior to the commencement of the Act;

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“interface” means a electronic capability for an automated recording system to satisfactorily communicate with the Automated Reporting System.

(1) Notwithstanding section 2, subsections (1) and (2) of the Act, any second hand goods dealer who is currently licenced as a second hand goods dealer or pawnbroker in the Province of Ontario shall be allowed to continue to operate under their current licence until the expiration of the licence or for a period of ninety (90) days from the commencement of the Act, whichever comes first.

(2) Notwithstanding section 2, subsection 2 of the Act and regulation 2(1)(e) any applicant against whom any conviction under Parts 9 through 12 of the Criminal Code of Canada has previously been registered may apply for a license if the applicant has a second hand goods business in the Province of Ontario at the commencement of the Act, provided the applicant submits proof of the existence of the second hand goods business and applies within ninety days (90) days of the commencement of the Act.

(3) Notwithstanding section 5, a second hand goods dealer shall attach a sticker to every item offered for sale, trade, or on consignment, or purchased, or received on pawn, or received in trade by a second hand goods dealer prior to the commencement of the Act if the sticker referred to in section 5 is not already attached to such item and the sticker must remain on the item until the item is sold, traded or otherwise legally disposed of and the sticker shall indicate that such item was received previous to the commencement of the Act.

(4) Notwithstanding the requirements of regulation 5, a second hand goods dealer required to use the Automated Reporting System and who has an Automated Recording System for which an interface can be designed may continue to use their Automated Recording System provided the second hand goods dealer pays for the design and implementation of such an interface and provided the Chief of Police has provided approval of such an alternative in writing.

**\*\*\*\*\* maybe more grand fathering sections required\*\*\*\*\***

\*\*\*\*\*

**Refining This Legislation:** This draft is a work in progress. There are numerous areas which require refinement such as the regulations pertaining to suspension and prohibition, the Automated Reporting System and grandfathering provisions. Any of the sections where time frames are mentioned should be reviewed to achieve consensus. Some of the wording needs improvement and areas like exceptions to the definition of what constitutes a reportable second hand good must be reviewed in light of what the police have the resources and ability to effectively investigate. As stated in the document the numbering and structure of the regulations probably requires improvement. Some areas of the regulations may need to be moved to the main body of the Act and vice versa.

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It is important to remember the balance between all that police officers may think is a good idea to include and what can be reasonably expected from these businesses. The legislation must be comprehensive while at the same time remain reasonable.

An example may be the fact that finger print taking is not included while photo capture of the seller or pawner is included. Finger printing is closely associated to the processing of a criminal and while photographing a person may have that feel, it can be more readily defended on the basis of confirming and updating the photo identification already required, the fact that people's pictures are being taken at ATM machines, banks, casinos, convenience stores, etc. (However, arguments for fingerprinting will be included in information presented to any decision making bodies).

Just some things to consider when reviewing this draft. Any suggestions are welcome as we continue to refine the draft of potential legislation. Please forward these suggestion to Det. Tom Dovgalev, Ottawa Police Service. (613)236-1222 Fax (613) 760-8005 or E-mail me at [dovgalevt@ottawapolice.ca](mailto:dovgalevt@ottawapolice.ca)