

# SENATE BILL No. 1089

February 13, 2008, Introduced by Senator GLEASON and referred to the Committee on Economic Development and Regulatory Reform.

A bill to amend 1917 PA 350, entitled

"An act to regulate and license second hand dealers and junk dealers; and to prescribe penalties for the violation of the provisions of this act,"

by amending the title and sections 1, 2, 3, 4, 5, and 8 (MCL 445.401, 445.402, 445.403, 445.404, 445.405, and 445.408), sections 1, 2, 3, 4, 5, and 8 as amended by 2006 PA 675; and to repeal acts and parts of acts.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

### TITLE

An act to regulate and license ~~second hand~~ **SECONDHAND** dealers and junk dealers; **TO PROVIDE FOR CERTAIN POWERS AND DUTIES TO CERTAIN STATE AGENCIES AND DEPARTMENTS**; and to prescribe penalties

1 for the violation of the provisions of this act.

2       Sec. 1. (1) A person ~~, corporation, copartnership, or firm~~  
3 shall not ~~carry on~~ **ENGAGE IN** the business of dealer in second hand  
4 **SECONDHAND** goods or junk dealer in any of the counties, cities, or  
5 villages of this state without ~~having first obtained,~~ **OBTAINING**  
6 from the **DEPARTMENT OR THE** mayor of the city or the chief executive  
7 officer of the county or village where the business is to be  
8 ~~carried on,~~ **CONDUCTED** a license under this act authorizing that  
9 person ~~, corporation, copartnership, or firm to carry on~~ **ENGAGE IN**  
10 that business.

11       (2) **IN THE CASE OF A COUNTY, CITY, OR VILLAGE THAT HAS NOT**  
12 **ADOPTED AN ORDINANCE PROVIDING FOR THE LICENSURE OF SECONDHAND**  
13 **DEALERS OR JUNK DEALERS, THE DEPARTMENT IS RESPONSIBLE FOR**  
14 **LICENSURE OF ANY SECONDHAND DEALERS AND JUNK DEALERS WITHIN THAT**  
15 **COUNTY, CITY, OR VILLAGE. UNDER SUCH CIRCUMSTANCES, THE DEPARTMENT**  
16 **SHALL ACCEPT APPLICATIONS FOR LICENSURE IN A WRITTEN OR ELECTRONIC**  
17 **FORMAT AS IT DETERMINES APPROPRIATE. THE DEPARTMENT SHALL REQUIRE**  
18 **THE APPLICANT TO DEMONSTRATE COMPLIANCE WITH ANY APPLICABLE STATE**  
19 **LAWS OR LOCAL ORDINANCES REGARDING THE CONDUCT OF A BUSINESS WITHIN**  
20 **THIS STATE AND THE COUNTY, CITY, OR VILLAGE. THE DEPARTMENT IS ONLY**  
21 **REQUIRED TO ACCEPT APPLICATIONS FOR INITIAL AND RENEWAL LICENSURE**  
22 **AND ISSUE INITIAL AND RENEWAL LICENSES TO QUALIFIED APPLICANTS. ANY**  
23 **ADMINISTRATIVE, CIVIL, OR CRIMINAL PROCEEDINGS REGARDING LICENSEES**  
24 **ARE CONSIDERED TO BE WITHIN THE JURISDICTION OF THE COUNTY, CITY,**  
25 **OR VILLAGE OR THE LOCAL PROSECUTOR. THE DEPARTMENT MAY REQUEST THE**  
26 **ATTORNEY GENERAL TO PROCEED AGAINST A LICENSEE.**

27       (3) **THE DEPARTMENT MAY PROMULGATE RULES UNDER THE**

1 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO  
2 24.328, TO ENFORCE AND ADMINISTER SUBSECTION (2).

3 (4) ~~(2)~~—This subsection does not require an internet drop-off  
4 store complying with subsection ~~(3)~~ (5), or a person engaged in the  
5 sale, purchase, consignment, or trade of personal property or other  
6 valuable thing for himself or herself, to obtain a license under  
7 this act.

8 (5) ~~(3)~~—An internet drop-off store in compliance with the  
9 following conditions is exempt from licensure as a ~~second-hand~~  
10 **SECONDHAND** dealer or junk dealer under this act:

11 (a) Has a fixed place of business within this state except  
12 that he or she exclusively transacts all purchases or sales by  
13 means of the internet and the purchases and sales are not  
14 physically transacted on the premises of that fixed place of  
15 business.

16 (b) Has the personal property or other valuable thing  
17 available on a website for viewing by photograph, if available, by  
18 the general public at no charge, which website shall be searchable  
19 by zip code or state, or both. The website viewing shall include,  
20 as applicable, serial number, make, model, and other unique  
21 identifying marks, numbers, names, or letters appearing on the  
22 personal property or other valuable thing.

23 (c) Maintains records of the sale, purchase, consignment, or  
24 trade of the personal property or other valuable thing for at least  
25 2 years, which records shall contain a description, including a  
26 photograph, if available, and, if applicable, serial number, make,  
27 model, and other unique identifying marks, numbers, names, or

1 letters appearing on the personal property or other valuable thing.

2 (d) Provide the local law enforcement agency with any name  
3 under which it conducts business on the website and access to the  
4 business premises at any time during normal business hours for  
5 purposes of inspection.

6 (e) Within 24 hours after a request from a local law  
7 enforcement agency, provide an electronic copy of the seller's or  
8 consignor's name, address, telephone number, driver license number  
9 and issuing state, the buyer's name and address if applicable, and  
10 a description of the personal property or other valuable thing as  
11 described in subdivision (c). The provision of information shall be  
12 in a format acceptable to the local law enforcement agency but  
13 shall at least be in a legible format and in the English language.

14 (f) Provide that payment for the personal property or other  
15 valuable thing is executed by means of check or other electronic  
16 payment system, so long as the payment is not made in cash. No  
17 payment shall be provided to the seller until the item is sold.

18 (g) Immediately remove the personal property or other valuable  
19 thing from the website if the local law enforcement agency  
20 determines that the personal property or other valuable thing is  
21 stolen.

22 Sec. 2. (1) The **DEPARTMENT OR THE** mayor of a city or chief  
23 executive officer of a county or village may grant to any person ~~7~~  
24 ~~corporation, copartnership, or firm,~~ a license authorizing that  
25 person ~~, corporation, copartnership, or firm to carry on~~ **ENGAGE IN**  
26 the business of a ~~second hand~~ **SECONDHAND** dealer or junk dealer  
27 ~~subject to~~ **IN COMPLIANCE WITH** the provisions of this act **IF THAT**

1 PERSON QUALIFIES FOR LICENSURE UNDER THIS ACT.

2 (2) The license shall designate the particular place where  
3 that person ~~, corporation, copartnership, or firm shall carry on~~  
4 **ENGAGES IN** that business. The business shall be conducted only in  
5 the place designated in the license. **A LICENSE SHALL NOT BE ISSUED**  
6 **TO AN APPLICANT NOT DEMONSTRATING AN ACTUAL LOCATION WITHIN WHICH**  
7 **HE OR SHE PROPOSES TO ENGAGE IN THE BUSINESS REGULATED BY THIS ACT.**

8 (3) A license shall not be issued to any person ~~, firm, or~~  
9 ~~corporation~~ desiring to conduct a junk business in any residential  
10 community where 65% or more of the property owners within a radius  
11 of 1 city block of the contemplated junk business petition the  
12 **DEPARTMENT OR THE** issuing officer not to do so.

13 (4) The license shall be for the period of 1 year from date of  
14 issuance unless sooner revoked for cause and is not transferable **AS**  
15 **TO OWNERSHIP OR LOCATION.** The legislative body of any city, or the  
16 trustees and chief executive officer of any county or village,  
17 shall establish the fee for the processing and issuance of the  
18 license in accordance with its charter or local ordinance, based  
19 upon the cost of issuance and administration of that license. **THE**  
20 **DEPARTMENT SHALL CHARGE A FEE OF NOT MORE THAN \$50.00, BASED UPON**  
21 **THE ACTUAL COST OF THE DEPARTMENT IN ISSUING THE LICENSE. THE**  
22 **DEPARTMENT MAY CHARGE AN INITIAL APPLICATION FEE OF \$50.00 TO COVER**  
23 **THE COST OF PROCESSING THE APPLICATION.**

24 (5) The city, village, or county may inspect the premises of a  
25 licensed ~~second hand~~ **SECONDHAND** or junk dealer during normal  
26 business hours.

27 Sec. 3. As used in this act:

(a) "Automotive recycler" means a person who engages in business primarily for the purpose of selling retail salvage vehicle parts and secondarily for the purpose of selling retail salvage motor vehicles or manufacturing or selling a product of gradable scrap metal or a person employed as a salvage vehicle agent as that term is defined in section 56c of the Michigan vehicle code, 1949 PA 300, MCL 257.56c.

(B) "CONSTRUCTION MATERIALS" MEANS WIRE, CABLE, BARS, INGOTS, WIRE SCRAPS, PIECES, PELLETS, CLAMPS, AIRCRAFT PARTS, PIPES, SIDING, OR CONNECTORS MADE OF ALUMINUM; CATALYTIC CONVERTERS CONTAINING PLATINUM, PALLADIUM, OR RHODIUM; COPPER, TITANIUM, TUNGSTEN, AND NICKEL IN ANY FORM; AND ANY MATERIALS NORMALLY ASSOCIATED WITH THE CONSTRUCTION OR RENOVATION OF A HOUSE OR A BUILDING THAT MAY BE FOUND AT A NEW CONSTRUCTION SITE OR A DEMOLITION SITE OR IN AN EXISTING OCCUPIED OR UNOCCUPIED BUILDING OR HOUSE.

(C) "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND ECONOMIC GROWTH.

(D) ~~(b)~~ "Industrial scrap" means materials that are a direct product or by-product of any form of manufacturing, shaping, or cutting process from a person ~~, company, corporation,~~ ~~partnership, or firm~~ whose principal business is the manufacturing, shaping, or cutting of materials at a fixed place of business.

(E) ~~(c)~~ "Internet drop-off store" means a person ~~, corporation, or firm~~ that contracts with other persons ~~, corporations, or firms~~ to offer its personal property or other

1 valuable thing for sale, purchase, consignment, or trade through  
 2 means of an internet website and meets the conditions described in  
 3 section 1(3).

4 (F) ~~(d)~~—"Local law enforcement agency" means the police agency  
 5 of the city, village, or township, or if none, the county sheriff  
 6 of the county in which the internet drop-off store conducts  
 7 business.

8 (G) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, PARTNERSHIP,  
 9 COPARTNERSHIP, LIMITED LIABILITY COMPANY, OR OTHER LEGAL ENTITY.

10 (H) ~~(e)~~—"Scrap processor" means a person, utilizing machinery  
 11 and equipment and operating from a fixed location, whose principal  
 12 business is the processing and manufacturing of iron, steel,  
 13 nonferrous metals, paper, plastic, or glass, into prepared grades  
 14 of products suitable for consumption by recycling mills, foundries,  
 15 and other scrap processors.

16 (I) ~~(f)~~—"Second hand" **SECONDHAND** dealer" or "junk dealer"  
 17 means any person ~~, corporation, or member or members of a~~  
 18 ~~copartnership or firm~~ whose principal business is that of  
 19 purchasing, selling, exchanging, storing, or receiving ~~second hand~~  
 20 **SECONDHAND** articles of any kind, scrap metals, cast iron, old iron,  
 21 old steel, tool steel, aluminum, copper, brass, lead pipe or tools,  
 22 **CONSTRUCTION MATERIALS**, or lighting and plumbing fixtures. ~~Second~~  
 23 ~~hand~~ **SECONDHAND** dealer or junk dealer does not include a scrap  
 24 processor, an automotive recycler, or a junkyard that deals  
 25 principally in industrial scrap and ~~THAT~~ is **SPECIFICALLY** licensed  
 26 by a city, village, or county **AS A JUNKYARD**.

27 Sec. 4. (1) A ~~second hand~~ **SECONDHAND** dealer or junk dealer

1 shall post in a conspicuous place in or upon its place of business  
2 a sign having its name and occupation.

3 (2) A ~~second hand~~ **SECONDHAND** or junk dealer shall keep a  
4 separate book or other record, **WRITTEN OR ELECTRONIC IN A FORMAT**  
5 **ACCEPTABLE TO THE LOCAL LAW ENFORCEMENT AGENCY**, open to inspection  
6 by a member of a local law enforcement agency, in which shall be  
7 written or entered in the English language at the time of the  
8 purchase or exchange of any article a description of the article  
9 **AND THE WEIGHT, AMOUNT, AND NUMBER OF THOSE ARTICLES REGARDING THE**  
10 **TRANSACTION**, the name, description, fingerprint, operator's or  
11 chauffeur's license or state identification number, registration  
12 plate number, and address of the person from whom the article was  
13 purchased and received, **THE PERSON OR PLACE FROM WHICH THE ARTICLE**  
14 **WAS OBTAINED**, and the day and hour when the purchase or exchange  
15 was made as well as the location from which the item was obtained.  
16 ~~, if applicable. THE RECORD SHALL INDICATE THE METHOD OF PAYMENT.~~  
17 Each entry shall be numbered consecutively.

18 (3) **WITHIN 24 HOURS AFTER A REQUEST FROM A LOCAL LAW**  
19 **ENFORCEMENT AGENCY, A LICENSEE SHALL PROVIDE A COPY OF THE**  
20 **INFORMATION RECORDED IN SUBSECTION (1).**

21 Sec. 5. (1) The articles purchased or exchanged shall be  
22 retained by the purchaser **OR LICENSEE** for at least 15 days before  
23 disposing of them, in an accessible place in the building where the  
24 articles are purchased and received. A tag shall be attached to the  
25 articles in some visible and convenient place, with the number  
26 written thereupon, to correspond with the entry number in the book  
27 or other record. **PAYMENT FOR AN ITEM SHALL BE MADE ONLY BY A CHECK**



1 **OR AN ELECTRONIC PAYMENT SYSTEM.**

2 (2) The purchaser **OR LICENSEE** shall prepare and deliver on  
 3 Monday of each week to the chief of police or chief law enforcement  
 4 officer of the local unit of government in which such business is  
 5 carried on, before ~~12 o'clock~~ **12 noon**, a legible and correct copy  
 6 written in the English language from the book or other record,  
 7 containing a description of each article purchased or received  
 8 during the preceding week, the hour and day when the purchase was  
 9 made, ~~and the description of the person from whom it was purchased,~~  
 10 **AND THE AMOUNT, WEIGHT, AND NUMBER OF ARTICLES REGARDING THE**  
 11 **TRANSACTION.** The statement shall be verified by the person  
 12 subscribing his or her name ~~thereto~~ **TO THE STATEMENT.**

13 (3) This section does not apply to old rags, waste paper, and  
 14 household goods except radios, televisions, record players, and  
 15 electrical appliances and does not require the purchaser to retain  
 16 articles purchased from ~~individuals, firms, or corporations~~ **A**  
 17 **PERSON** having a fixed place of business after those articles ~~shall~~  
 18 have been reported.

19 Sec. 8. (1) Except as otherwise provided for in this section,  
 20 a person who violates this act is guilty of a misdemeanor and shall  
 21 be imprisoned for not more than 6 months and shall be fined not  
 22 less than \$500.00 or more than \$1,000.00.

23 (2) A ~~second-hand~~ **SECONDHAND** or junk dealer who buys or sells  
 24 scrap metal, knowing that it is stolen, is guilty of a felony  
 25 punishable by imprisonment for not more than 3 years or a fine of  
 26 not more than \$2,000.00, or both.

27 (3) A ~~second-hand~~ **SECONDHAND** or junk dealer who ~~buys~~ **DOES**

1 EITHER OR BOTH OF THE FOLLOWING IS GUILTY OF A FELONY PUNISHABLE BY  
2 IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR A FINE OF NOT MORE THAN  
3 \$10,000.00, OR BOTH:

4 (A) BUYS or sells stolen scrap metal that he or she has reason  
5 to believe was unlawfully removed from a utility pole,  
6 telecommunication company property, government property, or utility  
7 property or jobsite. ~~is guilty of a felony punishable by~~  
8 ~~imprisonment for not more than 5 years or a fine of not more than~~  
9 ~~\$10,000.00, or both.~~

10 (B) BUYS OR SELLS STOLEN CONSTRUCTION MATERIALS THAT HE OR SHE  
11 HAS REASON TO BELIEVE WAS UNLAWFULLY REMOVED FROM A BUILDING OR  
12 HOUSE.

13 (4) The license of a person ~~, corporation, copartnership, or~~  
14 ~~firm~~ that is found guilty of violating any of the provisions of  
15 this act ~~shall be~~ **IS** considered ~~to be~~ **AUTOMATICALLY** revoked upon  
16 entry of a conviction and ~~such~~ **THAT** person ~~, corporation,~~  
17 ~~copartnership, or firm~~ shall not be permitted to carry on **ENGAGE IN**  
18 the business of being a ~~second hand~~ **SECONDHAND** or junk dealer  
19 within this state for a period of 1 year after **THE DATE OF** that  
20 conviction.

21 (5) The remedies under this act are independent and  
22 cumulative. The use of 1 remedy by a person does not bar the use of  
23 other lawful remedies by that person or the use of a lawful remedy  
24 by another person.

25 Enacting section 1. Section 6 of 1917 PA 350, MCL 445.406, is  
26 repealed.

27 Enacting section 2. Section 5 of 1917 PA 350, MCL 445.405, as

- 1 amended by this amendatory act, takes effect 90 days after the date
- 2 this amendatory act is enacted.