

CAYMAN ISLANDS



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THE SECONDHAND DEALERS LAW, 2014

(LAW 20 OF 2014)

THE SECONDHAND DEALERS LAW, 2014

ARRANGEMENT OF SECTIONS

PART 1 - PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Exempt persons

**PART 2 - DUTIES OF TRADE OFFICERS, POLICE OFFICERS AND
SECONDHAND DEALERS**

4. Chief Officer to assign trade officers
5. Inspections
6. Powers of a police officer
7. Information
8. Commissioner to inform secondhand dealers of stolen article
9. Obligation to report offer of articles on list
10. Suspicious activity report
11. Obligation to report possession of suspect article
12. Notice to hold

PART 3 - OPERATION OF SECONDHAND DEALING BUSINESS

13. Prohibited trade articles
14. Employee records
15. Access to employee records
16. Hours of business
17. Premises to be secured
18. No transactions with children
19. Verification of identity
20. Statement of ownership
21. Transaction records to be kept
22. Secondhand dealer to allow inspection
23. Obligation to retain article in unaltered state
24. Disposal of articles by dealers
25. Export of articles

PART 4 - MISCELLANEOUS PROVISIONS

26. Offences
27. Immunity
28. Regulations

SCHEDULE 1 - EXEMPT PERSONS

SCHEDULE 2 - PROHIBITED TRADE ARTICLES

SCHEDULE 3 - STATEMENT OF OWNERSHIP-FORM

CAYMAN ISLANDS

Law 20 of 2014.

I Assent

Franz Manderson

Acting Governor.

31st December, 2014

**A LAW TO PROVIDE FOR THE REGULATION OF SECONDHAND
DEALERS; TO DETER UNLAWFUL PROPERTY TRANSACTIONS
AND TO FACILITATE THE RECOVERY OF STOLEN PROPERTY;
AND FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

PART I - PRELIMINARY

1. (1) This Law may be cited as the Secondhand Dealers Law, 2014.

Short title and
commencement

(2) This Law shall come into force on such date as may be appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Law and in relation to different matters.

2. In this Law -

Interpretation

“article” means any item of value;

“Commissioner” means the Commissioner of Police appointed under the Police Law (2014 Revision);

(2014 Revision)

“dealer” means a secondhand dealer;

“jewellery” includes -

- (a) precious and semi-precious stones or any article in which they are inlaid; and
- (b) any article of personal use or adornment composed wholly or partly of gold, silver, platinum, gold plate or silver plate or any combination thereof, (excluding any chemical or any automotive, photographic, electrical, medical or dental material or electronic part) or any other form of precious or semi-precious metal;

“notice to hold” means a notice issued by a police officer under section 12(1);

“police list” means a list circulated by the Commissioner or the person designated by the Commissioner pursuant to section 8;

“police officer” has the same meaning as in section 2 of the Police Law (2014 Revision);

“premises of a secondhand dealer” or “premises” includes -

- (a) any land or building located at -
 - (i) in the case of a business, the address provided for the application for or renewal of the licence under any Law that provides for the licensing of trades and businesses; or
 - (ii) in the case of a company, the registered office; or
- (b) any -
 - (i) land or building (except where the building is a dwelling-house); or
 - (ii) vaults, storerooms, warehouses or other types of storage facilities,
used wholly or partly by a secondhand dealer for the conduct of business;

“scrap metal” includes -

- (a) copper in any form;
- (b) any old metal, broken metal, partly manufactured metal goods, defaced or old metal goods and metal residues from manufacturing processes; and
- (c) any item that is made entirely or substantially of metal and is no longer fit for the purpose for which it was designed or intended;

“secondhand dealer”, subject to section 3, means any person who, by way of the internet or otherwise -

- (a) conducts business within the Islands which consists wholly or partly of buying or acquiring secondhand articles for the purpose

- of trade, sale or exchange or otherwise dealing in secondhand articles, including scrap metal or jewellery;
- (b) conducts business within the Islands and contracts with persons or entities outside of the Islands to purchase or sell any secondhand articles, including scrap metal or jewellery; or
 - (c) carries on the business of taking goods and chattels in pawn within the meaning of sections 2 and 3 of the Pawnbrokers Law (1998 Revision) and as an adjunct to the pawnbroking business acquires, exchanges and disposes of secondhand articles including scrap metal and jewellery, (1998 Revision)

whether he is or is not licensed as a secondhand dealer under any Law providing for the licensing of trades or businesses, incorporated under the Companies Law (2013 Revision) or licensed as a pawnbroker under the Pawnbrokers Law (1998 Revision) or operates by virtue of any other Law; and (2013 Revision)

“trade officer” means a person appointed as a trade officer under any Law that provides for the licensing of trades and businesses and assigned to carry out duties under this Law.

3. (1) The categories of persons listed in Schedule 1 are not secondhand dealers for the purposes of this Law. Exempt persons

(2) The Cabinet may by Order amend Schedule 1. Schedule 1

PART 2 - DUTIES OF TRADE OFFICERS, POLICE OFFICERS AND SECONDHAND DEALERS

4. (1) The Chief Officer of the Ministry with responsibility for commerce or his designate shall assign such trade officers of the Department of Commerce and Investment as he considers necessary, to perform the duties under sections 4 and 5 and inspections as may be required otherwise under this Law for such periods of time as he considers appropriate. Chief Officer to assign trade officers

(2) The Chief Officer or the designate under subsection (1), shall appoint an administrator who shall -

- (a) be charged with the overall responsibility for monitoring the secondhand trade and the activities of secondhand dealers;
- (b) cause regular inspections of premises to be carried out by the assigned trade officers to ensure compliance with this Law; and
- (c) co-ordinate the duties of the assigned trade officers with regard to the inspections of premises of secondhand dealers.

(3) The administrator and each trade officer assigned under subsection (1) shall be provided with an identification card prepared and signed by the Chief Officer or his designate under subsection (1), and the identification card shall contain the photograph of the respective officer.

(4) Subject to subsection (5), a trade officer shall, when discharging his duties under this Law, have all the rights, powers, privileges and immunities of a constable and, for that purpose, may on identifying himself -

- (a) enter and search any premises;
- (b) examine, inspect, and make copies of any article;
- (c) photograph, seize or remove any document or record; and
- (d) seize any article found on the premises in the course of an inspection that the trade officer has reasonable grounds to believe is a prohibited article under section 13 and deliver it to the nearest police station.

(5) A trade officer shall have the authority and power to carry out such instructions as may be given by the Director of the Department of Commerce and Investment in relation to this Law and may exercise on behalf of the Department of Commerce and Investment, any powers granted to a trade officer by this Law or any other Law.

(6) The Director of the Department of Commerce and Investment shall have the same rights, powers, privileges, and immunities as are conferred on a trade officer under subsections (4) and (5) when discharging his duties under this Law.

Inspections

5. A trade officer shall carry out inspections in accordance with this Law and may, during business hours and after giving at least twenty-four hours' notice to the secondhand dealer, carry out inspections of premises of any secondhand dealer to ensure there is compliance with this Law, including ensuring that -

- (a) premises are secured;
- (b) surveillance equipment is in working order;
- (c) articles that are subject to a notice to hold are being held in accordance with this Law; and
- (d) records of transactions are being made.

Powers of a police officer

6. A police officer acting on reasonable suspicion may, without a warrant -

- (a) enter the premises of a secondhand dealer and request the production of any or all articles in the possession of the dealer;
- (b) inspect any articles produced by the secondhand dealer or otherwise found on the premises;

- (c) request the production of the records required to be kept by this Law;
- (d) request the reproduction of the records referred to in paragraph (c) in any format available to the secondhand dealer on his premises; and
- (e) take such copies of the records as are made available under paragraph (d) or the original records in order that the police officer may make such copies as may be necessary to facilitate the carrying out of an investigation.

7. Information acquired by a trade officer in the course of his duties under this Law may be supplied to a customs officer or a police officer in furtherance of an investigation under this Law.

Information

8. The Commissioner or his designate shall circulate to all trade officers, secondhand dealers and to such persons or websites, as he thinks fit, a police list with information, detailed descriptions and photographs, where available, of any article reported as lost or stolen or otherwise fraudulently acquired or disposed of, as soon as possible after a report is made of the loss, theft or fraud.

Commissioner to inform secondhand dealers of stolen article

9. (1) A secondhand dealer who is offered or shown any article appearing to match the information, description or appearance of an article on a police list shall, without delay, give information on this occurrence to the nearest police station or to a police officer, with the name and address or the location of the person who offered or showed the article.

Obligation to report offer of articles on list

(2) A secondhand dealer who fails to comply with any of the requirements of subsection (1) commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of two years, or to both.

10. A secondhand dealer who is offered, shown or otherwise informed about an article -

Suspicious activity report

- (a) that is being sold at a price that is significantly less than its value;
- (b) for which the seller is unable to provide proof of ownership as required by this Law; or
- (c) that is being sold in circumstances that should lead him to suspect that the article is stolen,

shall make a report to the nearest police station or to a police officer without delay.

Obligation to report possession of suspect article	<p>11. (1) A secondhand dealer who has possession of any article that is on a police list, or has possession of any article that he suspects to be stolen, or ought reasonably to suspect is stolen, shall -</p> <ul style="list-style-type: none">(a) report the fact of the possession to the nearest police station or to a police officer without delay and provide the name and address of the person with whom he transacted for the article; and(b) hold the article for fourteen days from the date of the report to the police station or police officer. <p>(2) A secondhand dealer may dispose of an article referred to in subsection (1) after holding it for the requisite fourteen-day period unless, before the expiry of that period, the Commissioner issues a notice to hold under section 12 with respect to the article.</p> <p>(3) Where a secondhand dealer is required to hold an article under this Law, he shall not display or advertise the article for sale and shall take such steps to protect and secure the item as may be practicable.</p> <p>(4) A secondhand dealer who contravenes the provisions of this section commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of two years, or to both.</p>
Notice to hold	<p>12. (1) A police officer who has reasonable grounds to suspect that an article in the possession of a secondhand dealer is stolen may issue a “notice to hold” to that secondhand dealer describing the article and instructing the secondhand dealer to refrain from disposing of the article before the expiration of twenty-eight days from the date of the notice and to keep the article in accordance with section 11(3).</p> <p>(2) Where any article referred to under subsection (1) is required as evidence in any prosecution for an offence under this Law, that article may be seized by a police officer and may be liable to forfeiture.</p> <p>(3) An article seized and retained by a police officer under this Law shall be -</p> <ul style="list-style-type: none">(a) clearly labelled by the secondhand dealer with details as to the date of acquisition and the person from whom the article was acquired and such other information as the police officer may request;(b) acknowledged by way of a signed receipt in the prescribed form by the police officer receiving it; and(c) taken by the police officer to a secure place designated by the Commissioner for these purposes.

(4) A secondhand dealer who, within twenty-eight days of the issue of a notice to hold, disposes of an article that is identified in that notice without lawful authority, commits an offence and is liable on summary conviction to a fine of ten thousand dollars or fifty percent of the value of the article disposed of, whichever is greater, or to imprisonment for a term of two years, or to both.

(5) An article that has been seized under this section but has not been subject to forfeiture or any other order of the court, shall be returned to the secondhand dealer after the conclusion of any criminal proceedings.

PART 3 - OPERATION OF SECONDHAND DEALING BUSINESS

13. (1) A secondhand dealer shall not deal in any article listed in Schedule 2. Prohibited trade articles

(2) A secondhand dealer who deals in any article listed in Schedule 2 commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of two years, or to both.

(3) The Cabinet may by Order amend Schedule 2.

14. (1) A secondhand dealer shall keep a record of every person who is employed by him in the secondhand dealing business. Employee records

(2) An employee's record shall include -

- (a) the employee's full name, date of birth, address and telephone number; and
- (b) the date on which each employee commenced employment with the secondhand dealer.

(3) The employee record shall be kept securely at the dealer's principal place of business or such other place as may be prescribed.

(4) The secondhand dealer shall retain the employee record for at least two years from the date on which an employee ceases employment with him.

(5) A secondhand dealer who -

- (a) fails to keep an employee record;
- (b) fails to record the information required by this section;
- (c) falsifies an employee's record; or
- (d) fails to keep the employee record at the place and for the period of time required by this Law,

commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of twelve months, or to both.

Access to employee
records

15. (1) A secondhand dealer shall, when required to do so -
- (a) by a trade officer in furtherance of an inspection show him, without delay, the employee records and any information contained in the records;
 - (b) by a police officer in furtherance of an investigation show him, without delay, the employee records and any information contained in the records; and
 - (c) make a copy of all or any specified parts of the record and give the copy to the trade officer or police officer, as the case may be, and, where it is impracticable to make a copy, hand over to the trade officer or the police officer the employee record or specified parts of it.
- (2) Where a secondhand dealer hands over an employee's record to a trade officer or a police officer, the recipient shall -
- (a) give a receipt for the document; and
 - (b) return it within twelve hours.
- (3) A secondhand dealer who fails to comply with the provisions in this section without reasonable excuse commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of twelve months, or to both.

Hours of business

16. (1) A secondhand dealer may carry on business at his premises only during normal working hours.
- (2) For the purposes of this Law, "normal working hours" means hours within the band of 7:00 a.m. and 7:00 p.m.

Premises to be secured

17. (1) Every secondhand dealer shall ensure that his premises are -
- (a) adequately secured by one or more security systems sufficient to detect and signal to the secondhand dealer, or to such other person as he may designate, any unauthorised entry to the premises;
 - (b) kept under surveillance by cameras that are -
 - (i) capable of providing visual recordings of all transactions carried out;
 - (ii) capable of producing discernible images of facial features and clothing of persons carrying out transactions;

- (iii) so positioned that they are able to provide visual recordings of the interior and the exterior of the premises and all entry and exit points;
- (c) adequately lit in the vicinity of the cameras to facilitate visual recordings that are clear; and
- (d) equipped with such other measures as may be prescribed by Regulations.

(2) Every secondhand dealer shall retain recordings made in accordance with subsection (1) for at least fourteen days.

18. A secondhand dealer shall not conduct any transactions with a person who -

No transactions with children

- (a) is under eighteen years of age; or
- (b) appears to be of unsound mind or under the influence of drugs or alcohol.

19. (1) A secondhand dealer shall verify the identity of every person with whom he conducts a transaction by -

Verification of identity

- (a) requesting photographic identification and retaining a copy of it;
- (b) logging in his records that he has personal knowledge of the person with whom he is transacting business where he has such knowledge; or
- (c) any other prescribed method.

(2) A secondhand dealer shall in addition to requiring photographic identification, take a photograph in digital format of the person with whom he is transacting business where the value of the article is more than two hundred dollars and he has no personal knowledge of the person with whom he is transacting.

(3) For the purposes of this section, “to have personal knowledge of a person” means to know the full name and address of the person.

(4) A secondhand dealer who -

- (a) verifies the identity of a person in accordance with subsection (1) and knowingly records information that is incorrect or false; or
- (b) fails to verify the identity of a person in accordance with subsection (1),

commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of two years, or to both.

20. (1) A secondhand dealer shall not carry out a transaction where the value of the article is less than two hundred dollars without receiving and recording a

Statement of ownership

Schedule 3	<p>signed statement in the form in Schedule 3 that the person with whom he is transacting business -</p> <ul style="list-style-type: none">(a) is in fact the owner of the article; or(b) has the power or the owner's written authority to sell, such power or authority detailing the full name and address of the owner. <p>(2) A secondhand dealer shall not carry out a transaction where the article is valued at two hundred dollars or more without receiving and recording -</p> <ul style="list-style-type: none">(a) the full name and address of the owner;(b) proof of ownership of the article; and(c) where the person with whom he is transacting is not the owner, the power or written authority to sell from the owner. <p>(3) A secondhand dealer who fails to comply with any of the requirements of this section commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of three years, or to both.</p>
(1998 Revision)	<p>(4) For the purposes of this section, "proof of ownership" means the title, a receipt, any other proof of purchase detailing the name of the owner and the date on which the article was acquired, a declaration by the owner under the Voluntary Declarations Law (1998 Revision) or such other document as may be prescribed.</p>
Transaction records to be kept	<p>21. (1) A secondhand dealer shall keep and maintain electronic records with -</p> <ul style="list-style-type: none">(a) the full name and address of every seller or purchaser with whom he transacts business;(b) the date, time and description of every transaction; and(c) any other particulars as may be prescribed, <p>for a period of five years after the completion of the transaction.</p> <p>(2) A secondhand dealer shall take photographs, in digital format, of every article acquired during the course of business, and clearly caption the photographs with the following information -</p> <ul style="list-style-type: none">(a) the name, address of the person from whom the article was acquired and the date and time of the acquisition of the article;(b) the serial numbers or any identification marks or documents relied on; and(c) any other particulars as may be prescribed.
Secondhand dealer to allow inspection	<p>22. (1) A secondhand dealer shall upon request from a trade officer, present -</p> <ul style="list-style-type: none">(a) any records required to be kept under this Law; and

- (b) any or all of the articles in the possession of the dealer,

and he shall allow access to the premises as the trade officer requires in furtherance of an inspection.

(2) A secondhand dealer who prevents the carrying out of inspections or otherwise contravenes the provisions of this section commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of two years, or to both.

23. (1) A secondhand dealer shall retain in his possession, in its original or unaltered state, every article acquired during the course of his dealings for a period of fourteen days from the date of his gaining possession of the article unless before the expiration of that period a notice to hold under section 12 is issued.

Obligation to retain
article in unaltered state

(2) Every article retained under subsection (1) shall be stored in a safe place from which it can be easily retrieved for inspection.

(3) For the purposes of this Part, “unaltered state” includes where -

- (a) no physical changes are made to the appearance or to the make-up of an article;
- (b) the precious metal or semi-precious metal is not melted, worked or manipulated into another shape or form;
- (c) the precious stones or semi-precious stones are not -
 - (i) removed from their settings nor are additional stones included in the setting; and
 - (ii) otherwise altered to change their appearance.

24. Notwithstanding section 23, a secondhand dealer is not required to retain an article for the minimum period of fourteen days where the article is being sold in its original or unaltered state by the dealer as agent for the owner and the dealer includes in his record -

Disposal of articles by
dealers

- (a) the full name, date of birth, address, telephone number, and email address (if any) of the principal for whom he acts;
- (b) the full name, date of birth, address, telephone number, and email address (if any) of the purchaser;
- (c) sharply focused photographs of the article including the brand, serial numbers or other identifying marks;
- (d) the manner in which the dealer verified the identity of the purchaser; and
- (e) a signed undertaking by the purchaser to retain the article in his possession in its original or unaltered state for a minimum of

fourteen days from the date of his gaining possession of the article.

Export of articles

25. Where a secondhand dealer is desirous of exporting an article after the expiry of the retention period, whether in its original state or in an altered state, that dealer shall keep and maintain photographs and records pertaining to the article in documentary and electronic form.

PART 4 - MISCELLANEOUS PROVISIONS

Offences

26. (1) A person who -

- (a) carries on business on his premises outside of normal working hours in contravention of section 16;
- (b) fails to adequately secure premises in contravention of section 17(1);
- (c) fails to provide surveillance for premises in contravention of section 17(1);
- (d) fails to keep or retain a recording as required by section 17(2);
- (e) conducts business with persons who are under eighteen years of age, of unsound mind or under the influence of drugs or alcohol in contravention of section 18;
- (f) fails to keep or retain a record in contravention of section 21(1);
or
- (g) fails to retain any article for the minimum period or in an unaltered state in contravention of sections 23 or 24,

commits an offence and is liable on summary conviction to a fine of fifty thousand dollars or to imprisonment for a term of five years, or to both.

(2) Where an offence under this Law has been committed by a body corporate and it is proved to have been committed with the consent or collusion of, or to be attributable to any negligence on the part of any director, manager, secretary or other officer of the body corporate, the director, manager, secretary or other officer of the body corporate as well as the body corporate shall be liable to be proceeded against and punished accordingly.

Immunity

27. Neither the Commissioner nor any person acting under his direction nor the Chief Officer of the Ministry with responsibility for commerce nor any person acting under his direction shall be liable in damages for anything done or omitted in the discharge or purported discharge of their respective functions, responsibilities, powers and duties under this Law, unless it is shown that the act or omission was in bad faith.

Regulations

28. The Cabinet may make regulations -

- (a) prescribing or amending any forms to be used for the purposes of this Law;
- (b) prescribing the manner of the verification of identity for the purposes of this Law;
- (c) prescribing the manner in which records are to be kept and the particulars to be recorded;
- (d) providing for the regulation of the secondhand dealings in scrap metal, jewellery or any other specific article;
- (e) providing for the amendment of the definitions of the words “article”, “jewellery”, “premises of a secondhand dealer”, “scrap metal” and “secondhand dealer”;
- (f) providing for the regulation of secondhand dealers carrying out business by way of the internet; or
- (g) generally for the better carrying out of the objects and purposes of this Law.

SCHEDULE 1

(Section 3)

EXEMPT PERSONS

1. Registered non-profit, religious or charitable organizations or any school-sponsored organizations that sell secondhand articles or scrap metal, but only where -
 - (a) none of the scrap metal sold is acquired by the organization by purchase or for valuable consideration; and
 - (b) the proceeds of sale are used solely for the purposes of the organization.
2. Trustees in bankruptcy, executors, administrators or receivers.
3. Public officials acting under judicial process or authority who present proof of such status.
4. Persons acting pursuant to any process issued by a court and who present proof of such status.
5. Householders holding garage sales in their homes at which clothing, household furnishings, appliances or other personal or household effects belonging to the householders are sold.
6. Persons whose business consists wholly of buying or acquiring antiques, paintings or other artefacts from outside of the Islands for sale in the Islands.
7. Persons whose business consists wholly of trading in used -
 - (a) motor cars, buses, trucks or other motor vehicles within the meaning of the Traffic Law, 2011, except motorcycles and all-terrain cycles; and
 - (b) special vehicles within the meaning of the Traffic Law, 2011.

SCHEDULE 2

(Section 13)

PROHIBITED TRADE ARTICLES

1. Firearms
2. Prohibited goods specified under the Customs Law (2012 Revision)
3. Any article or substance the possession of which is prohibited under any Law
4. Ammunition
5. Explosives

SCHEDULE 3

(Section 20)

STATEMENT OF OWNERSHIP FORM

I, _____ of
(Name)

(Address)

am the owner of _____
(Detailed description of article)

_____ and I am

offering the article described above for sale to _____
(Name of secondhand dealership)

(Address of secondhand dealership)

for the price of _____.

(Signature)

(Date)

(Time)

Identification No.: _____ (Drivers Licence/Passport/Electors Registration Card)

(Attach a copy of any power or written authority to this form.)

Passed by the Legislative Assembly the 27th day of November, 2014.

J. O'Connor-Connolly

Speaker.

Zena Merren-Chin

Clerk of the Legislative Assembly.