

NOTICE 2017 OF 2003

A draft Second-Hand Goods Bill and Regulations are hereby published for general information and comment from interested parties

Any comment must be submitted to the office of the Section Head: Legal Services, National Crime Operations, South African Police Service. The comment must reach the said office within ninety (90) days from date of publication at the following address:

For Attention: Director J A van der Walt
 Legal Services: National Crime Operations
 S A Police Service
 Private Bag X241
 PRETORIA
 0001

DEPARTMENT OF SAFETY AND SECURITY

DRAFT SECOND-HAND GOODS BILL

To regulate the business of pawnbrokers and dealers in second hand goods, to limit the trade in stolen goods, to promote ethical standards in the second-hand goods trade, and to provide for matters incidental thereto.

1 Definitions

In this Act, unless the context otherwise indicates -

"acquire" includes buying, collecting, receiving and importing into South Africa; and **"acquisition"** will have a corresponding meaning;

"Area Commissioner" means a member of the South African Police Service in charge of a specific policing area;

"certificate" means a certificate referred to in section 4;

"charity organisation" means any organisation or institution that runs or is engaged in any business, project, cause, fund raising or any similar act not for the purpose of profit making, but for societal appraisable purposes or similar purposes, including but not limited to charity, religion, art, culture, children's homes, old age homes, science, education, etc;

"communication equipment" means any item used for communication with, including cellular telephones, telephones and two-way radios;

"deal in" includes acquire, dispose of or the conducting of business therein;

"dealer" means a person who carries on a business of dealing in second hand goods, and includes a scrap metal dealer;

"dispose of" includes selling, donating, lending, supplying, distributing, exporting out of South Africa and in any manner, whether for any consideration or not, transferring, exchanging, agree to sell, or mark with a selling price, display, advertise, offer or attempt to sell, or exchange, deliver or dispose of for any consideration, or sell by auction or by way of a credit agreement as defined in the Credit Agreements Act, 1980 (Act No.75 of 1980); or delivering;

"factory" means any premises on which work is performed for the purpose of making of any new article or part of any new article;

"goods" means any jewellery including unwrought precious metal as defined by the Mining Rights Act 1967 (Act No. 20 of 1967); agricultural implement including but not limited to tractors, plows and harvesters; bicycle; office or household equipment; factory equipment and machinery; tyre of any vehicle or motorcycle; communication equipment; photographic or optical instrument or any part or accessory thereof; any non-ferrous, ferrous or precious metal, or any wrought article, or any article or substance consisting wholly or principally of one or more of such metals; any antique goods; any motor vehicle; any vehicle; any sporting equipment; any other article or substance which the Minister may under section 2(2)(a)(ii) declare to be goods for the purposes of this Act;

"household and office equipment" mean any goods normally used in an office or household including but not limited to furniture, electric and electronic equipment, electronic software, tools, gardening equipment and works of art;

"Minister" means the Minister for Safety and Security;

"motor vehicle" means any motor vehicle, as defined in the Road Traffic Act, 1996 (Act No. 93 of 1996) as well as a motor vehicle part, motor vehicle accessory, tyre, motorcycle, or any part or accessory thereof;

"non-ferrous and ferrous metals" include copper, aluminium, zinc, chrome, lead, white metal, nickel, tungsten, tin, ferrovanadium, ferrosilicon, ferrochrome, brass, bronze, or articles consisting wholly or principally of these metals;

"pawned goods" mean any movable goods subject to a pledge;

"pawner" means a person who delivers movable goods for pawn to a pawnbroker;

"pawnbroker" means a person who carries on a business of taking goods in pawn;

"pawn ticket" means a ticket referred to in section 8(1)(f);

"person" means - in the case of a natural person, that natural person or any person duly authorised by that natural person:

in the case of a partnership, any partner of the partnership or any person duly authorised by the partnership;

in the case of a juristic person-

- (a) the chief executive officer or equivalent officer of the juristic person or any person duly authorised by that officer; or
- (b) any person duly authorised by such juristic person;

"police official" means a member of the South African Police Service as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995);

"precious metals" mean precious metals as defined in the Mining Rights Act 1967 (Act 20 of 1967);

"premises" means any land, any building or structure, or any vehicle, conveyance, ship, boat or aircraft; or any part thereof from which business is conducted;

"prescribe" means prescribe by regulation;

"previous Act" means the Second-hand Goods Act, 1955 (Act No. 23 of 1955);

"registers" mean registers prescribed in terms of this Act and include a print out of registers kept by electronic means;

"second hand" mean goods, which have been used in the manner for which it had been intended by a person other than the manufacturer or producer;

"Station Commissioner" means a police official in charge of a police station;

"this Act" includes the regulations; and

"vehicle" includes all means of conveyance including but not limited to any motor vehicle, boat, trailer, aircraft, caravan, battery driven vehicle, mobile crane, bulldozer, front-end loader, earthmoving equipment or any engine or any part or accessory thereof.

2 Application of Act

(1) This Act shall not apply to -

- (a) any second hand goods sold or disposed of in terms of a warrant of execution under a judgment or order of a court of law;
- (b) the title holder of goods which had been subject to a credit agreement as defined in the Credit Agreements Act, 1980, and which were returned to him or her in terms of that Act where the purchaser has failed to comply with a term of such agreement;
- (c) any second-hand goods referred to in section 2(2)(a);
- (d) a person who immediately prior to the date of commencement of this Act carried on business as a dealer or pawnbroker in accordance with a certificate issued under the previous Act for the period of validity of such certificate;
- (e) a factory; and
- (f) any charity organisation that receives second-hand goods by way of donation in order to dispose of them for purposes of fundraising.

(2) The Minister may by notice in the *Gazette* -

- (a) exclude from the operation of any or all of the provisions of this Act any second hand goods or any class of such goods or any class of business;
- (b) declare any article or substance to be goods for the purposes of this Act or such parts of this Act as may be specified in such notice,

and may in like manner amend or repeal any such notice.

3 Certificate required to carry on business in Second Hand Goods

- (1) Subject to section 2(1)(d) no person may from the date of commencement of this Act carry on a business as a dealer except under the authority of, and to the extent specified in, a certificate granted to him or her under section 4.
- (2) Where a partnership, or private or public company carries on business as a dealer, only one certificate shall be issued in the name of that partnership or company.
- (3) Where a dealer conducts business from more than one premises, or where goods are stored on additional premises, such dealer must apply for a certificate for each of the premises.
- (4) Where a certificate has been issued in terms of section 4(3)(a) the certificate must be displayed on the premises for which the certificate has been issued, in a place clearly visible to the public.
- (5) A certificate granted under this Act, shall not exempt the holder thereof from the requirements of any other legislation.

4 Granting, amendment and withdrawal of certificates

- (1) An application for a certificate required under section 3 must be lodged in the prescribed form, with the Station Commissioner or the police official authorised thereto by him or her, in whose area the applicant intends to carry on business.
- (2) The Station Commissioner or the police official authorised thereto by him or her, must verify the information contained in the application and after the verification has been completed forward such application, together with his or her recommendations thereon, to the relevant Area Commissioner.
- (3)(a) The Area Commissioner, or the police official authorised thereto by the Area Commissioner, must, after consideration of the application and the recommendation referred to in subsection (2), and upon being satisfied that -

- (i) the applicant is a person who will conduct business in an honest and reliable manner; and
- (ii) the premises on which the business is to be conducted is suitable and adequately equipped for the purpose.

grant the application and issue the certificate in the prescribed form, authorising the applicant to deal in all classes of goods or such classes or kinds of second hand-goods as may be specified on the certificate.

- (b) If the Area Commissioner is not satisfied as contemplated in paragraph (a) he or she must refuse or reject the application.
- (c) The Area Commissioner, or the police official authorised by him or her, may -
 - (i) when considering an application contemplated in this section take cognisance of whether the applicant or his duly authorised agent has prior convictions;
 - (ii) require from the applicant such further information as may, in his or her opinion, be relevant.
- (4) The Area Commissioner or the police official authorised thereto by him or her may issue the certificate subject to such conditions that he or she may deem necessary.
- (5) The Area Commissioner or the police official authorised thereto by him or her may:
 - (b) amend a certificate to correct an error therein;
 - (c) on a certificate, amend, withdraw or add any condition;
- (6) If an Area Commissioner, at any time during the period of validity of a certificate, have reasonable grounds to believe that a dealer to whom a certificate has been issued:
 - (a) fails to comply with any condition of such certificate;
 - (b) was issued with the certificate on the basis of incorrect or false information;
 - (c) was convicted of an offence of which dishonesty is an element; or
 - (d) fails to comply with any of the provisions of this Act,such an Area Commissioner must inform the dealer of his or her intention to withdraw the certificate and the reasons for such withdrawal. The dealer may submit written representation within 30 days to show cause why the certificate should not be withdrawn.
- (7) If after consideration of the representations, if any, and/or all relevant facts the Area Commissioner is satisfied that the dealer no longer complies with any of the requirements of this Act, he or she must withdraw the certificate.
- (8) The Area Commissioner or the police official authorised by him or her must notify the dealer or pawnbroker in writing of any decision taken under this section.

5 Period of validity of certificates

A certificate shall expire on 31st day of December of the year for which it was issued.

6 Appeals

- (1) A dealer or pawnbroker who is aggrieved by a decision taken in terms of sections 4 may, within 30 days of receiving the notice referred to in section 4(8), appeal in writing to the Minister against that decision.
- (2) The Minister may -
 - (a) confirm, set aside, or amend the decision taken by the Area Commissioner; or
 - (b) make such order with regard thereto as he or she may deem expedient.

7 Records by dealer

- (1) A dealer must keep record in the prescribed format and registers of every transaction in second-hand goods.
- (2) Separate registers must be kept in respect of acquisition and disposal of second-hand goods and, if the certificate is issued under such a condition, in respect of different classes of goods.
- (3) Any person acquiring second hand goods from, or disposing of second hand goods to a dealer must furnish such dealer with his or her full name, address and the original of an identity document, or passport as proof of his or her identity.
- (4) A dealer must obtain a copy of the document referred to in subsection (3) and in the case of a motor vehicle the original certificate of registration or deregistration.
- (5) A dealer must retain a register referred to in subsection (2) and a copy of the document(s) referred to in subsection (4), for a period of five years calculated from the date of the transaction to which it relates.
- (6) Every entry in a register in respect of an acquisition or disposal of second hand goods must be effected at the time such acquisition or disposal takes place.
- (7) Where a dealer keeps registers by way of electronic data storing, such as a computer, printouts must be made on a daily basis and retained subject to the provisions of subsection (5).

8 Additional provisions relating to pawnbrokers**(1) Records by pawnbrokers**

- (a) A pawnbroker must keep a register in the prescribed form in respect of all goods taken in pawn by him or her.
- (b) A person pawning goods must furnish the pawnbroker with his or her full name, address, original identity document or passport.
- (c) A pawnbroker must obtain a copy of the identity document or passport and in the case of a motor vehicle, a copy of the original registration document.
- (d) A pawnbroker must retain a register referred to in (a); and a copy of a document referred to in (c), for a period of five years from the date of the transaction to which it relates.
- (e) An entry to be made under subsection (1) in respect of any goods taken in pawn or disposed of by a pawnbroker must be effected at the time such goods are taken in pawn by him or her.
- (f) A pawn ticket shall be issued by the pawnbroker to the pawner at the time of taking the goods in question in pawn stating the chronological number.

- (2) A pawnbroker may not purchase or take in pawn a pawn ticket issued by himself or herself or any other pawnbroker.

9 Restrictions on dealing in second hand goods and taking goods in pawn

No dealer or pawnbroker may-

- (a) Except with the written permission of the Station Commissioner in whose area he or she carries on business, store any second hand or pawned goods, as the case may be, elsewhere than on the premises for which a certificate has been issued in terms of section 3(3);
- (b) Receive or deliver second-hand goods or pawned goods between sunset and sunrise except in the case of emergency and with the written permission of the Station Commissioner in whose area he or she carries on business;
- (c) Take into his or her possession any goods before he or she has convinced himself or herself that the seller or the pawner of the items is the owner or titleholder thereof or duly authorised to dispose thereof; or
- (d) Deliver goods acquired by him or her to any person or change the form or alter the appearance thereof until after the expiration date of a period of seven (7) days from the date of acquisition thereof, except after notice in writing to the Station Commissioner in whose area he or she carries on business.

10 Exemptions

Second-hand motor vehicle dealers shall be exempted from complying with the provisions of section 9(b) and (e), only when:

- (a) the vehicle is accompanied by a roadworthy certificate issued under the National Road Traffic Act 1996 (Act No. 93 of 1996); and
- (b) the vehicle has been registered in the name of the dealer for the purpose of resale.

11 False information and stolen goods

If a dealer or pawnbroker suspects that -

- (a) any name, address or document furnished to him or her under the provisions of this Act is false or incorrect;
- (b) second-hand goods or goods for pawn, as the case may be, offered to him or her are stolen goods; or
- (c) the appearance of an item has been tampered with or there was an attempt to alter the appearance thereof in order to conceal the identity of the item;

such dealer or pawnbroker must immediately report the matter to the Station Commissioner in whose area he or she carries on business.

12 Provisions relating to non-ferrous and precious metals

- (1) No dealer or pawnbroker may smelt, melt or granulate or cause to be smelted, melted or granulated any non-ferrous and precious metal or any article or substance containing non-ferrous or precious metal, or have in his possession any apparatus which can be used for the smelting, melting or granulating of metal or any such article or substance. Unless in the case of precious metals, such a person is in possession of a permit in terms of section 145 of the Mining Rights Act, Act 20 of 1967.

- (2) No dealer or pawnbroker may be in possession, acquire or dispose of any copper or aluminium cable of which the plastic covering has been burnt or melted down.

13 Powers of police

- (1) A police official may at all reasonable times -

- (a) enter any premises occupied by a person who is or is on reasonable grounds believed to be a dealer or a pawnbroker or upon which there are or are suspected to be any second-hand goods;
- (b) inspect any goods found in any such premises and any register, book, record, document or any other item, which is suspected to contain any information relating to such goods and require copies thereof;
- (c) require from the owner or any person in charge of such premises information in regard to any such goods;
- (d) require from the owner, any person in charge or employee of such premises to explain any entry in any register, book, record or document found therein or thereon;
- (e) seize any goods, records, books, records, documents or any object that may afford evidence of a contravention of any provision of this Act.

- (2) A dealer, pawnbroker, owner, employee or person in charge of a premises referred to in subsection (1) must on demand afford any police official such assistance and facilities as such police official may require in connection with the performance of his or her functions under this section.

14 Transfer of certificate

A dealer or pawnbroker (including the executor, trustee or other administrator of the estate of such dealer or pawnbroker) may not transfer to another person a certificate issued to such dealer or pawnbroker, unless that Area Commissioner approves such transfer in writing upon being satisfied that the person to whom the transfer is intended complies with the provisions of section 4(3).

15 Acts or omissions of manager, agent or employee

- (1) Whenever any manager, agent or employee of a dealer does or omits to do any act which would be an offence under this Act for such dealer to do or omit to do, then, the dealer shall be deemed to have done or omitted to do that act and be liable to be convicted and sentenced in respect thereof, and the fact that he issued instructions forbidding an act or omission of the kind in question shall not of itself be accepted as sufficient proof that he took all reasonable steps to prevent the act or omission.
- (2) Whenever any manager, agent or employee of a dealer does or omits to do an act which it would be an offence under this Act for the dealer to do or omit to do, he shall be liable to be convicted and sentenced in respect thereof as if he were the dealer.
- (3) Any such manager, agent or employee may be so convicted and sentenced in addition to the dealer.

16 Regulations

- (1) The Minister may make regulations as to -

- (a) the form and manner in which any application required under this Act may be made;
- (b) the form of a certificate, which may be issued under this Act;
- (c) the conditions to which a certificate shall be subject, and different conditions that may be

prescribed with regard to dealing in different classes or kinds of second hand goods;

- (d) any fees payable for any application or certificate;
- (e) the withdrawal or amendment of any certificate;
- (f) the format of registers;

and, generally, any matter which is required by this Act to be prescribed or which the Minister considers necessary or expedient to prescribe.

17 Offences and Penalties

(1) A person is guilty of an offence if he or she contravenes or fails to comply with any provision of this Act.

(2) It is an offence to -

- (a) furnish any information required under this Act, which is false;
- (b) carry on a business as a dealer except under the authority of, and to the extent specified in, a certificate issued to him or her in terms of section 4(3)(a);
- (c) conduct business from more than one premises, or store goods without a certificate issued to him or her in terms of section 4(3)(a), for each of the premises;
- (d) fail to comply with any condition of a certificate issued to him or her in terms of section 4(3)(a);
- (e) fail to display a certificate issued to him or her in terms of section 4(3)(a) in a place clearly visible to the public;
- (f) fail to keep record in the prescribed format and registers of every transaction in second-hand goods;
- (g) fail to keep the prescribed separate registers in respect of acquisition and disposal of second-hand goods;
- (h) fail to keep the prescribed separate registers in respect of acquisition and disposal of second-hand goods if the certificate issued to him or her in terms of section 4(3)(a) is issued on the condition that separate registers must be kept in respect of different classes of goods;
- (i) acquire second hand goods from a person without obtaining the full name, address and the original of an identity document, drivers license or passport of that person;
- (j) acquire a second-hand vehicle without obtaining a copy of the original certificate of registration of a vehicle;
- (k) fail to retain a register referred to in section 7(2) and a copy of a document referred to in section 7(4), for a period of five years calculated from the date of the transaction to which it relates;
- (l) fail to effect an entry in a register in respect of an acquisition or disposal of second hand goods at the time such acquisition or disposal takes place;
- (m) fail to, where the prescribed register is kept by way of electronic data storing, such as a computer, make printouts on a daily basis;
- (n) store any second hand or pawned goods, as the case may be, elsewhere than on the premises for which a certificate has been issued in terms of section 3(3) without the written permission

of the Station Commissioner in whose area he or she carries on business:

- (o) receive or deliver second-hand goods or pawned goods between sunset and sunrise without the written permission of the Station Commissioner in whose area he or she carries on business;
- (p) take into his or her possession any goods before he or she has convinced himself or herself that the seller or the pawner of the items is the owner or titleholder thereof or duly authorised to dispose thereof;
- (q) dispose of goods acquired by him or her to any person or change the form or alter the appearance thereof until after the expiration date of a period of seven (7) days from the date of acquisition thereof, except after notice in writing to the Station Commissioner in whose area he or she carries on business;
- (r) smelt, melt or granulate or cause to be smelted, melted or granulated any non-ferrous metal or any article or substance containing non-ferrous metal, or have in his possession any apparatus which can be used for the smelting, melting or granulating of metal or any such article or substance;
- (s) hinder or obstruct a police official in the performance of his or her functions or duties under this Act;
- (t) refuse or fail to answer to the best of his or her ability any question which a police official in the performance of his or her functions has put to him or her, or makes a statement to such member which is false, or misleading; or
- (u) refuse or fail to afford to any police official, any assistance or facilities lawfully required by him/her in terms of this Act.

(3) It is an offence for a pawnbroker to -

- (a) fail to keep the prescribed register in respect of all goods taken in pawn by him or her;
- (b) accept goods in pawn without obtaining the full name, address, original identity document, drivers license card or passport of a person offering goods in pawn;
- (c) fail to obtain a copy of the original certificate of registration of a vehicle offered in pawn;
- (d) retain a register referred to in section 8(1); and a copy of a document referred to in section 8(3), for a period of five years from the date of the transaction to which it relates;
- (e) fail to effect an entry in a register in respect of goods taken in pawn or disposed of, at the time such goods are taken in pawn by him or her;
- (f) fail to issue a pawn ticket to the person offering goods in pawn;
- (g) fail to issue a pawn ticket to the person offering goods in pawn without stating the chronological number; or
- (h) purchase or take in pawn a pawn ticket issued by himself or herself or any other pawnbroker.

(4) A regulation may provide for a fine or penalty for any contravention thereof or failure to comply therewith, of a fine or imprisonment for a period not exceeding 12 months, or both a fine and imprisonment.

(5) A person convicted of a contravention or a failure to comply with any section mentioned in column 1 of Schedule 1, may be sentenced to a fine or imprisonment for a period not exceeding the period mentioned in column 2 of that Schedule opposite the number of that section, or both.

(6) A court may in addition to any other penalty imposed upon conviction of a person of any of the offences under this Act -

- (a) suspend or cancel any exemption granted in terms of section 2(2)(b); or
- (b) suspend or cancel any certificate.

18 Jurisdiction of Magistrates' Courts

Notwithstanding anything to the contrary in any other law contained, a magistrates' court shall have jurisdiction to impose any penalty provided for under this Act.

19 Transitional provisions

- (1) Any person who immediately prior to the date of commencement of this Act carried on a business as a dealer or pawnbroker shall, within a period of 90 days from such date or such longer period as may on good cause shown be allowed by the Area Commissioner in writing, enter in a transitional register all the second-hand goods or pawned goods, as the case may be, held by such person for such business purposes during the period from the date of commencement of this Act and up to and including the last day of the said period or extended period as the case may be.
- (2) An entry referred to in subsection (1) shall set out a full description of goods in question, indicating the quantity and colour thereof, any identification marks and any other distinguishing features thereon and, in the case of non ferrous and precious metal, its description and weight and the value thereof as estimated by the dealer or pawnbroker concerned.
- (3) The Station Commissioner or the police official authorised by him or her shall endorse the last entry in such register and on each page thereof.
- (4) From the date of commencement of this Act the provisions of this Act shall apply to-
 - (a) A dealer who disposes of goods referred to in subsection (2) of this section, or
 - (b) A pawnbroker who redeems a pawn ticket or otherwise disposes of pawned goods in terms of subsection 2.
- (5) A person referred to in subsection (1) who contravenes or fails to comply with any of the provisions of this section shall be guilty of an offence and on conviction be liable to a fine or imprisonment not exceeding 3 years imprisonment or both such fine and imprisonment.

20 Repeal

The Second-hand Goods Act, Act 23 of 1955, is hereby repealed.

21 Short title and commencement

This Act shall be called the Second Hand Goods Act 2003 and shall come into operation on a date to be determined by the President by notice in the *Gazette*.

SCHEDULE 1

SECTION	MAXIMUM PERIOD OF IMPRISONMENT
2(a): 2(f): 2(g): 2(h): 2(k): 2(l): 2(m): 3(a): 3(d): 3(e): 3(f): 3(g): 3(h)	Three years imprisonment
2(b): 2(c): 2(d): 2(e): 2(n)	Five years imprisonment
2(i): 2(j): 2(o): 2(p): 2(q): 2(r): 2(s); 2(t): 2(u): 3(b): 3(c)	Ten years imprisonment