

Chapter 195

SECONDHAND DEALERS

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[HISTORY: Adopted by the Legislature of the County of Putnam 7-7-1983 by L.L. No. 4-1983; amended in its entirety 7-2-2013 by L.L. No. 6-2013.¹ Subsequent amendments noted where applicable.]

§ 195-1. Legislative intent.

It is hereby declared and found that, because of the increase of incidents of property theft, the increase in the price of precious metals and gems and the ease with which some secondhand dealers buy and sell precious metals and gems without requiring identification or proof of ownership, these secondhand dealers represent to persons involved in crime an opportunity to dispose of stolen property. For business enterprises to be allowed to continue to operate without laws to control and regulate the purchase of such articles not only jeopardizes the property rights of many people, but also extremely hampers law enforcement agencies in their efforts to recover stolen property and identify suspects. If law enforcement agencies are to function in this area, a local law regulating secondhand dealers is necessary. Thereby, the public health, morals and general welfare of the County of Putnam will be protected and promoted and the best interests of the people would be served by control and regulation of secondhand dealers. It is the intention of the Legislature of Putnam County that this chapter be established and shall constitute the complete law in relation to the control and regulation of secondhand dealers for the County of Putnam.

§ 195-2. Definitions; applicability.

- A. Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

¹ Editor's Note: This local law also provided for an effective date of 10-1-2013.

DEPARTMENT — The Department of Consumer Affairs.

DIRECTOR — The Director of Consumer Affairs.

GEMS or PRECIOUS STONES — Shall include, but is not limited to mean, diamonds, alexandrite, cymphophane, ruby, sapphire, opal, amethyst, smoky quartz, citrine, rose quartz, spinel, malachite, turquoise, emerald, aquamarine, morganite, garnet, lapis lazuli, jadeite, kunzite, topaz, tourmaline, zircon, amber, jet, pearl, coral, tanzanite.

PRECIOUS METALS — Gold, silver, platinum, iridium, ruthenium, osmium, or any alloys of any one or more of said metals.

SECONDHAND DEALERS — Any person, corporation, partnership, unincorporated association and the agents or employees of such entities, engaged in the commercial exchange, purchase and/or sale of secondhand articles for any purpose and whatever nature, including and limited to any person dealing in the purchase or sale of any secondhand manufactured article composed wholly or in part of gold, silver, platinum or other metal, or in the purchase or sale of gold, silver or platinum, or dealing in the purchase of articles or things comprised of gold, silver or platinum for the purpose of melting or refining, or engaged in melting precious metals for the purpose of selling, or in the purchase or sale of pawnbrokers' tickets or other evidence of pledged articles or, not being a pawnbroker, who deals in the redemption or sale of pledged articles.

B. This chapter shall not apply to or include the following:

- (1) Sales:
 - (a) The sale is held on property occupied as a dwelling by the seller or owner or rented or leased by a charitable or nonprofit organization (e.g., yard sale, moving sale, garage sale, and the like); and
 - (b) The items offered for sale are owned by the occupant or seller; and
 - (c) That no sale exceeds a period of 96 consecutive hours; and
 - (d) That no more than three sales are held in any twelve-month period; and
 - (e) That none of the items offered for sale shall have been purchased for resale or received on consignment for purpose of resale.
- (2) The sale of goods at an auction held by a licensed auctioneer, provided the auctioneer complies with all requirements of Article 3 of the New York State General Business Law and any other applicable statutes, rules and regulations pertaining to auctions and auctioneers.
- (3) Goods sold as bona fide antique, with the exception of antique jewelry, or used furniture (i.e., a business in which at least 75% of the business' revenue is derived through the sale of antiques, or used furniture).
- (4) Any not-for-profit or charitable organization that receives or sells secondhand articles.

- (5) Any junk dealer or scrap processor licensed pursuant to Article 6 and/or Article 6-C of the New York General Business Law.
- (6) Coin shows, where:
 - (a) The term "coin show" is defined as a gathering of coin dealers and collectors with the purpose of dealers displaying their merchandise for the general public to view and/or purchase;
 - (b) Where the coin show is conducted by a New York State coin club, such as the Empire State Numismatic Association;
 - (c) Where the coin club holds the coin show for one day and only once per calendar year; and
 - (d) Where the coin club conducting the coin show provides the Putnam County Department of Consumer Affairs and the law enforcement agency for the jurisdiction with written notice of the time and place of the coin show at least 10 business days prior to the coin show.
- (7) The acceptance of merchandise which is not secondhand as a return, exchange, or for credit or refund if such merchandise was originally purchased as new merchandise from the person accepting or receiving same, nor to the resale of such merchandise.
 - (a) The burden of proof that an article was originally purchased from the person accepting it or receiving it, that it was the first subsequent sale or exchange thereof to a person other than an ultimate consumer, or that it was a first sale at retail of such factory rebuilt merchandise shall be upon the person asserting the same.

§ 195-3. License required; display.

- A. No person shall, within the County of Putnam, establish, engage in or carry on, directly or indirectly, the business of dealing in secondhand articles either separately or in conjunction with some other business, without first having obtained and having in full force and effect a license as provided herein.
- B. Such license shall be displayed in a conspicuous place at the designated place of business of the licensee.
- C. Such license shall not in any way supplant the licensing and display requirements of any applicable state or federal laws.

§ 195-4. Application for license; fee; bond.

- A. Applications for secondhand dealer licenses shall be made to the Director of Consumer Affairs (hereinafter the "Director"). The application shall contain the following information:

- (1) Name and description of the applicant's business enterprise. Individuals operating under a trade name shall present a certified copy of the trade name certificate filed in the Putnam County Clerk's office. A partnership conducting business, whether or not under a trade name, shall submit a certified copy of the partnership certificate which was filed in the Putnam County Clerk's office when the partnership was formed. A corporation shall furnish a copy of its certificate of incorporation, as well as its certificate of good standing and, if a foreign corporation, its application for authority to do business in New York State.
 - (2) The applicant's legal address and address of all places of business within Putnam County and the address of a designated agent for service of process.
 - (3) A description of the nature of the business to be conducted and/or being conducted by the applicant in Putnam County.
 - (4) The name and address of the owner or owners of the business premises and the nature of the right of occupancy of the applicant to the use of said premises.
 - (5) A statement that the applicant is at least 18 years of age.
 - (6) A statement as to whether or not the applicant has, within the past 10 years, been convicted of a crime or violation of any municipal ordinance, the nature of the offense and the punishment or penalty assessed therefor and such other facts or evidence as is deemed necessary to establish that the applicant is a person fit and capable of properly conducting the activity or business for which the license is sought.
 - (7) Two photographs of the applicant, taken not more than 60 days prior to the date of application, which clearly depict the head and shoulders of the applicant and which shall be two inches wide by two inches tall.
- B. Such application for a secondhand dealer's license shall be accompanied by a nonrefundable application fee of \$250.
- C. Every applicant shall submit a bond or other surety to the County of Putnam in the sum of \$5,000, or for a renewal license, evidence of a bond issued in favor of the licensee. The bond shall be for the purpose of guaranteeing payments up to the face amount of the bond for bank drafts or other negotiable instruments issued by the licensee in exchange for the purchase of secondhand articles. All bonds must be conditioned so that the licensee will observe all laws in relation to secondhand dealers and will conduct business in conformity thereto. Such bond shall remain in force during the entire period for which the license is valid. The Director may establish rules and regulations concerning the amount of a bond to be posted, upon proper notice to the licensee.

§ 195-5. Issuance of license.

- A. Upon receipt of the license application, fee and bond(s) required of the applicant, the Director shall review the application and, if appropriate, issue a license to the applicant.

- B. The Director shall keep a record of all licenses issued, as well as any other matters herein described.
- C. If a license hereunder shall be lost, stolen, or destroyed; a duplicate may be issued by the Director on:
 - (1) The filing of an affidavit satisfactorily explaining the facts of such loss or theft; and
 - (2) The payment of a fee of \$25.

§ 195-6. Expiration and renewal of license.

Every license shall expire one year after its issuance. Every license may be renewed upon payment of the required renewal fee in the amount of \$250, and filing a renewal application with the Director no earlier than 30 days, and no later than 15 days before the license is due to expire.

§ 195-7. Denial or revocation of license; appeals.

- A. A license may be denied, suspended, or revoked for any of the following reasons:
 - (1) Fraud, misrepresentation or false statements in the application for license;
 - (2) Fraud, misrepresentation or false statements made in the course of carrying on the licensed business;
 - (3) Any violation of this chapter; or
 - (4) Conviction of a crime that involves theft, larceny, burglary, robbery, and possession of stolen property or any other fraudulent dealing within the past 10 years, subject to a review consistent with the provisions of Article 23-A of the New York Correction Law.
- B. The initial determination to deny, suspend, or revoke a license under this subsection shall be made in writing by the Director.
- C. Within 60 days of the initial determination to deny, suspend, or revoke a license under Subsections A through B above, an aggrieved applicant or licensee may request a formal hearing. Such request shall be addressed via certified mail to the Director of Consumer Affairs. Within a reasonable time thereafter, the Director shall appoint an independent hearing officer with the authority to compel the attendance of witnesses, administer oaths, take the testimony of any person under oath and in connection therewith require the production of any evidence relating to any matters affecting the determination. The applicant shall be advised of the hearing date and his/her right to be represented by counsel at said hearing. The hearing officer shall render his/her decision and recommendation to the Director within 30 days of the date of the hearing. The Director will notify the applicant/licensee within a reasonable time thereafter of his/her final determination with respect to the disposition of his/her license/application for license.

§ 195-8. Nontransferability of license.

No license under the provisions of this chapter shall be transferred or assigned to any person or used by any person other than the licensee to whom it was issued, his agents, employees or duly authorized representatives, said agents, employees or duly authorized representatives having been approved by the Director.

§ 195-9. Restrictions.

- A. It shall be unlawful for a secondhand dealer to purchase any secondhand articles from any person whom such dealer knows to be or has reason to believe to be under the age of 18 years.
- B. It shall be unlawful for any secondhand dealer to sell or dispose of any secondhand articles until the expiration of 14 days after the acquisition by such dealer of said secondhand article.
 - (1) All articles subject to this holding period shall be available for inspection by the County or any local law enforcement agency.
- C. It shall be unlawful to cause, allow or approve of the blockage, obstruction or concealment from the view of the consumer any scale, machine, weighing device or part thereof used to weigh or calculate the value of precious metals or gems. Only devices approved for use in trade by the New York State Department of Agriculture and Markets shall be lawful.
- D. No weighing or measuring device shall be used in the purchase or sale of precious metals or gems within Putnam County without first notifying the Director, or his/her designee, of its intended use.
- E. It shall be unlawful for a secondhand dealer to purchase secondhand articles from any person between the hours of 10:00 in the evening and 6:00 in the morning.
- F. It shall be unlawful for a secondhand dealer to purchase secondhand articles from any person who appears to be intoxicated or of unsound mind.
- G. It shall be unlawful for a secondhand dealer to purchase secondhand articles from a person who is unable to produce proper identification.
 - (1) For purposes of this section, proper identification shall be a valid United States passport; a New York State driver's license; or equivalent state-issued picture identification that contains the person's name, a physical description, and current address. Social security cards, draft registration cards, voter registration cards, school or college identification cards, and comparable documents shall not be considered sufficient identification for the purpose of this chapter.
- H. It shall be unlawful for any secondhand dealer to engage in buying activities in any place within Putnam County other than the place of business designated in such license, except to meet with a customer at his home, bank or suitable place of business. However, when purchases or sales are made at locations other than the premises of such an establishment, the licensee must note the location where the transaction took place in

addition to the records required by this chapter. A secondhand dealer may, upon application to the Director and receiving approval of the Director, temporarily extend his license to cover other locations within the County of Putnam, such as flea markets, fairs, bazaars or religious or charitable organization functions.

- I. It shall be unlawful for a secondhand dealer to continue to carry on business after his license is suspended, revoked, or has expired and has not been renewed.
- J. It shall be unlawful for any secondhand dealer to damage, destroy, alter or in any way change or direct or request anyone else to alter or change the structure or makeup of a precious metal or gem so as to make it unidentifiable within 14 days after the acquisition by said dealers of such precious metal or gem. In the event that said secondhand dealer damages, destroys, alters or in any way changes the precious metal or gem, the secondhand dealer shall restore the precious metal or gem to its original condition as much as is possible, provided that the secondhand dealer receives a written request to do so from the owner of said item and law enforcement agency within the time limits set forth in this Subsection J.

§ 195-10. Signs and labeling.

The unit daily price of each type and class of precious metal shall be clearly displayed in Arabic numbers in such a manner that the public will be informed of such prices.

§ 195-11. Lost or stolen property.

If any articles composed wholly or in part of precious metals or gems shall be advertised in any newspaper printed or circulated in the County of Putnam or reported by law enforcement as having been lost or stolen, and if any articles answering such advertised description or any part thereof shall be in or come into the possession of any licensed dealer, upon receiving actual written or oral notice of the similarity of description of such articles, such dealer shall immediately give information relating thereto to the appropriate law enforcement agency. No disposition of such articles shall be effected until authorization to do so shall be given to such dealer by the appropriate law enforcement agency. The failure of the law enforcement agency within 30 days to give the dealer further written notice that the articles are actually lost or believed to be stolen and are needed in connection with a pending investigation or prosecution shall constitute authorization to dispose of said articles.

§ 195-12. Written records.

- A. No secondhand dealer shall acquire an item specified herein, whether within the physical place of business or off site, within Putnam County, unless such secondhand dealer has requested, obtained and recorded the following information in English:
 - (1) The amount paid or advanced for the article;
 - (2) A detailed, complete and accurate description of the article, including but not limited to identifying marks, such as, but not limited to, monograms, engravings, and inscriptions;

- (3) If applicable, the article's serial number, make and model number;
 - (4) In the case of precious metals, jewelry, gems or precious stones, a photograph of the article;
 - (5) Identification information, as described in Subsection C below, of the person offering the article for sale;
 - (6) A physical description of the person conducting the transaction; and
 - (7) The date, time and place of the transaction.
- B. A bill of sale and/or receipt **MUST** be given, and a copy retained by the secondhand dealer. Any bill of sale and/or receipt must be numbered in consecutive order and issued in the same order.
- C. Identification Information.
- (1) Every secondhand dealer **MUST** request identification from the seller and compare the photographic image to the seller to verify the identity when acquiring a secondhand article. The secondhand dealer shall record the name, date of birth, address or current address (if different than that on the identification), and the identification number (i.e., motorist identification number on a driver's license) of the seller's identification. However, if the acquisition is made from another secondhand dealer, then the secondhand dealer purchasing the item shall record the date, time, business name and address of the secondhand dealer selling the item and the number of days the article was held prior to acquisition. Purchases between secondhand dealers do not require photographic identification.
 - (2) Only the following shall be deemed acceptable evidence of identity: a valid United States Passport; a New York State Driver's License; or equivalent state-issued picture identification that contains the person's name, a physical description, and current address. Social security cards, draft registration cards, voter registration cards, school or college identification cards, and comparable documents shall not be considered sufficient identification for the purpose of this chapter.
- D. Records retention/inspections.
- (1) Every secondhand dealer shall maintain the information required pursuant to this section in a secure location for a minimum period of five years. Every secondhand dealer shall allow any records kept pursuant to this chapter and all articles of secondhand merchandise therein, to be examined during normal business hours by any member of law enforcement, the Director or his/her designee. Computerized records can be used to satisfy the requirements of this chapter, provided that such records include the information herein and are available for inspection in printed format upon request.
 - (2) Additionally, every secondhand dealer shall electronically report each article purchased using a computer program approved by law enforcement and the Director during the sale. Such reporting will include the required information described in Subsections A and C of this section of this chapter. Jewelry, gems and

precious stones are NOT to be transmitted with these records. Further, nothing in this section shall be construed as to prevent law enforcement from requesting the form required hereunder to be filed on such other date or at such other times and frequency as exigency or law enforcement need may require. Law enforcement shall establish by rule the format and requirements of the transmission of data and may restrict the scope of the items that are to be electronically reported.

- E. Law enforcement hold. A secondhand dealer, when notified by law enforcement that property in his/her possession is stolen or alleged to be stolen, shall take immediate steps to secure that property and such property shall be marked "POLICE STOP." Thereafter, such property shall not be sold or removed from the premises until notification is made to the dealer in writing by law enforcement allowing such removal or sale.

§ 195-13. Payments of secondhand dealer by check.

It shall be unlawful for a secondhand dealer to make a payment in cash money to any seller or pledger.

§ 195-14. Report to law enforcement agencies.

Every secondhand dealer shall furnish to the appropriate law enforcement agency all information requested by such agency relative to all records required to be kept under this chapter.

§ 195-15. Duty to enforce.

It shall be the duty of any member of law enforcement, or the Department of Consumer Affairs, having jurisdiction at the site where a person is seen dealing in secondhand articles to enforce the provisions of this chapter against any person found to be in violation of this chapter.

§ 195-16. Disclaimer of liability.

This chapter shall not create any liability on the part of the County of Putnam, its officers, agents or employees or any member of law enforcement for any act or damage caused as a result of reliance on this chapter or any administrative decision lawfully made thereunder.

§ 195-17. Penalties for offenses.

- A. A failure to comply with §§ 195-9A, B, E, F, G, and J; 195-11; 195-12A through E; 195-13; and 195-14 shall constitute a violation and shall be punishable by a fine not exceeding \$500, or imprisonment for a period not exceeding 15 days, or by both such fine and imprisonment.
- B. A failure to comply with §§ 195-3; 195-6; 195-8; 195-9C, D, H, and I; and 195-10 shall subject the person committing the offense to a civil penalty in the amount of \$500 for

each day that the offense shall continue, collectible by and in the name of the County of Putnam.

§ 195-18. Severability.

If any section of this chapter or the application thereof to any person or circumstance shall be adjudged invalid by a court of competent jurisdiction, such order or judgment shall be confirmed in its operation to the controversy in which it is rendered, and shall not affect or invalidate the remainder of any other provision or any section or the application of any part thereof to any other person or circumstance and to this end, the provisions of each section of this chapter is hereby declared to be severable.

§ 195-19. Applicability.

This chapter shall apply to actions or transactions occurring on or after the effective date of this chapter.