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LOCAL LAW TO BE ENACTED BY
THE ERIE COUNTY LEGISLATURE
IN THE
COUNTY OF ERIE

LOCAL LAW INTRO. – NO. 1 – 4 – 2015

LOCAL LAW – NO. _____ - 2015

A Local Law regulating pawnbrokers, second hand dealers, jewelry, precious metals and coin exchange dealers

SECTION 1. Title

This chapter shall be known as the law "Regulating Pawnbrokers, Secondhand Dealers, Jewelry, Precious Metals, and Coin Exchange Dealers."

SECTION 2. Legislative Intent

The Legislature hereby finds and determines that the creation of a uniform countywide electronic reporting program for tangible personal property acquired by secondhand merchants will curtail the distribution and facilitate the recovery of stolen property throughout Erie County.

The Legislature further finds and determines that advances in technology make the establishment of such an electronic reporting system to monitor and track the transactions set forth in this local law both necessary for the protection of the citizens of Erie County and feasible for such precious metal exchange establishments, pawnshops, and second hand merchants.

Therefore, the purpose of this local law is to establish a uniform system for tracking the sale of precious metal exchanges, pawnshops, and secondhand merchants to assist the law enforcement community in tracking and recovering stolen property.

SECTION 3. Definitions

A. As used in this local law, the following terms shall have the meanings indicated:
   1) "Antiques" - Such items or collectibles recognized as such by established dealer associations within the industry.

2) "Antique Dealer" – Person engages exclusively in the business of purchasing and selling antique, collectible, vintage, or estate articles whose value is determined by age, condition, and rarity.
3) "Bullion" – Any gold, silver, platinum, or other precious metal in the form of bars, ingots, or coins, where the value of the item is primarily derived from the underlying value of the composite metals.
4) "Dealer" – For purposes of this law "Dealer" shall be any party required to be licensed under this law.
5) "Identification" – A valid New York State driver's license, passport, or equivalent photo identification that contains the person's name, physical description, and current address.
6) "Jewelry" – Articles composed (in whole or in part) of gold, silver, or other precious metals, gems or gemstones which, as constructed, are designed to be worn for personal adornment.
7) "Jewelry and Coin Exchange dealer" – Persons or business establishments engaged in the business of sale, purchase, or exchange of precious metals and/or jewelry for other objects of precious metal, jewelry, United States currency, bank drafts, other negotiable instruments as defined in the Uniform Commercial Code or any other object or thing of value.
8) "Local Law Enforcement Agency" - Any law enforcement agency operating within Erie County, with jurisdiction over the jewelry and coin exchange dealer, secondhand dealer, and/or pawnbroker.
9) "Numismatic Coins" – Coins with a market value greater than that of their face value.
    a) This section is not intended to include bullion coins whose value is determined by the market value of their underlying precious metals content plus a mint mark-up.
10) "Operator" – Person(s) responsible for the day-to-day operations of the business as indicated under this law.
11) "Pawnbroker" - Any person or business establishment who holds goods as collateral on short-term, high-interest loans or a person who qualifies as a "collateral loan broker" pursuant to § 52 of the New York General Business Law.
12) "Precious Metals" – Includes , but is not, limited to gold, silver, platinum, palladium, copper, or any combination thereof purchased and sold by weight and any secondhand manufactured article composed wholly or in part of gold, silver, platinum, or palladium.
13) "Precious Metals Exchange" – Person or corporation engaged in the business of purchase or exchange of precious metals for other objects of precious metal, U.S. Currency, bank drafts, other negotiable instruments as

defined in the Uniform Commercial Code or any other object or thing of value.

14) "Secondhand Article" - Any article or object, with the exception of clothing and books, that has previously been bought or sold at retail and/or which has been previously used and/or is not in a new condition. This shall include any "gift card" or other electronic payment device that is usable at a single merchant or an affiliated group of merchants that share the same name, mark, or logo, is issued in a specific amount, and may or may not be increased in value or reloaded, or as otherwise defined in Article 26, §396(I), or Article 13, § 1315, of the New York State General Business Law.

15) "Secondhand dealer" - Any person or business establishment who deals in the purchase, sale, exchange or pledge as security for a sum of money any secondhand article. This shall not include providers of commercial mobile services as defined in 47 U.S.C. 332(d), and such providers' authorized agents and retailers that have contractual relationships with the provider to sell the providers' authorized products and services.

SECTION 4. Prohibited Acts

A. It shall be unlawful for a dealer to purchase any articles, jewelry or precious metals 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 dealer to sell, dispose of, destroy, alter or remove from such dealer's premises any articles, jewelry or precious metals until the expiration of 14 calendar days after the acquisition by such dealer of any such articles, jewelry or precious metals, unless otherwise exempted herein.

C. When requested to do so by the appropriate local law enforcement agency in connection with a law enforcement investigation, it shall be unlawful for any dealer to sell, dispose of, destroy, alter or remove from such dealer's premises any articles, jewelry or precious metals until the expiration of 30 calendar days from the date of the request. Upon the written request of the law enforcement agency, the property shall be held for up to two additional thirty-day periods.

D. No dealer shall employ any person who has been convicted, within three years, of any felony related to the operation of a business or who has had a dealer's license revoked or denied within the past year.

SECTION 5. Licensing

A. Every pawnbroker, secondhand dealer, jewelry and coin exchange dealer, or precious metal exchange operating within Erie County is required to be licensed according to this local law.
B. The Erie County Sheriff shall be the licensing authority authorized to issue dealer licenses under this law.
C. Licenses shall be valid for one year from date of issuance.
D. The fee structure for the purposes of this law shall be equal to those of the City of Buffalo, as directed in §245-21 of the Buffalo Code.
E. An application for a pawnbroker's, secondhand dealer's, jewelry, precious metals, or coin exchange dealer's license (hereinafter "dealer's license") shall be made by the owner on forms provided by and filed with the Erie County Sheriff. The application shall include the following requirements:
    1) Employee names, dates of birth, and dates of employment, kept and made available for inspection by the Sheriff or his representatives for the duration of the license;
    2) Where the owner is not directly involved with the day-to-day operation of said business,
        a) the operator must also be included on the application; or
        b) If a partnership, corporation or other business entity is involved, the application must designate an individual as operator who is involved in the day-to-day operation of the business. In this situation, the secondhand dealer's license shall be issued to the operator; the names, addresses and phone numbers of the partners, officers or principals shall also be listed on the application. All addresses of persons involved shall be home addresses listing street and number;
    3) The legal address of the premises where such business is to be carried out; and
    4) Whether the applicant or any officer and operator has previously been involved in the purchase or sale of secondhand articles and, if so, the name of the business, its location and the dates of involvement.
    5) Any and all e-commerce websites, including Internet storefronts, third-party sales outlets, as well as any and all written or electronic classified advertisements. The application shall further include any seller names or otherwise identifying names used within those e-commerce sites;
    6) The application shall be signed and sworn to before a notary public or other official authorized to administer oaths in the County;
    7) Before the issuance of a dealer's license, the Sheriff or his or her representative shall have the right to enter upon such premises during

normal business hours for the purpose of conducting inspections, related to the security systems and layout of the premises. After a dealer's license has been issued, further inspections of the premises, to ensure compliance with the laws, ordinances and rules and regulations relating to secondhand business, may be made in areas open to the public or other areas with consent.

8) Any change in the facts or information required on said application that occurs after the application has been filed shall be reported by the licensee, in writing, to the Erie County Sheriff within 10 days of the change.
9) All applications for dealer's licenses shall be issued or denied within 30 days after a fully completed application has been received by the Erie County Sheriff's office. The applicant shall be notified, in writing, of any delay which is due to incomplete application, investigative delays, or other reasonable cause.
10) Except as provided in Article 23-A of the New York State Corrections Law, the Sheriff reserves the right to deny a dealer's license to any person convicted of any crime related to the operation of the business.
11) No person who stands convicted of a felony charge involving burglary, theft, or robbery may be eligible for a license pursuant to this law.
12) No dealer's license shall be issued for a period of one year to any applicant that has been found guilty of operating a business without a secondhand dealer's license.
13) Dealer's licenses shall not be transferred. In the event of any change involving the owner or operator of the business or the business location, a new dealer's license shall be required. A dealer's license shall not be transferred to any person who holds power of attorney.
14) The Erie County Sheriff's office may deny or revoke any license granted herein in the following situations:
    a) Where the dealer has made a false statement in connection with its application; or
    b) Where the dealer revokes the consent to examine such records and items or refuses to allow inspection of its premises.

F. If an application for a license is denied, or an existing license is revoked, the applicant or holder of the revoked license shall, within 10 business days of notice of denial or revocation, request reconsideration by the Erie County Sheriff's office by providing that office with any additional, relevant information. The Erie County Sheriff's office shall, within 10 business days of receipt of the reconsideration materials, issue a final notice of denial or revocation setting forth the grounds upon which the license was either denied or revoked. Such final notice shall be transmitted by certified or registered mail.

SECTION 6. Licensing Exemptions

A. The following entities are exempt from the licensing requirements of this chapter:
   1) Any secondhand dealer that is exempt from taxation under § 501(c)(3) or § 501(c)(4) of the Internal Revenue Code; or
   2) Garage sales, basement sales, porch sales, yard sales and other such events at which a person desires to sell or trade his or her personal used items, household goods, furniture or equipment upon his or her premises, said premises not being a regular place of business for purchase or sale of secondhand items, shall be exempted from the license requirement of this chapter. No more than three such sales shall be conducted by the same person or persons upon the same premises within one calendar year, and each such sale shall not exceed three consecutive days.
   3) Any dealer in secondhand or used motor vehicles.
   4) The sale of antiques by an antique dealer, or his/her employee or associate, provided the antique dealer:
      a) Has an established antique shop advertised and promoted as such; or
      b) Exhibits at least twice a year at established advertised and/or promoted antique shows; or
      c) Is a private dealer working from home and/or nonretail location and has applied for and has been granted a New York State resale number for collection and submission of sales tax.
   5) Secondhand clothing stores.

SECTION 7. General Operation

A. Dealers shall comply with all provisions of federal, state and local laws and ordinances relating to the conduct of businesses and occupation, use and maintenance of the premises and shall ensure that all of their employees and agents do also. Where the dealer is also a pawn broker, the dealer shall comply with Article 5 of the New York State General Business Law entitled "Collateral Loan Brokers Law."
B. All dealers covered under this local law shall cause the dealer's license and business permit to be posted in a conspicuous place immediately visible upon entering the business establishment.
C. If the dealer or employee of any establishment covered by this chapter has reason to believe from the circumstances presented that an item has been stolen or acquired by dishonest means, it shall be his or her duty to immediately report same to the Sheriff or his or her representatives.

D. Any law enforcement agency that confiscates property from a business covered under this chapter, as evidence or for safekeeping in an investigation or to return to an owner, shall issue a receipt to the business. The receipt shall contain a crime report number which references the investigation.

E. Any dealer covered under this chapter shall release to a law enforcement agency, with valid jurisdiction, any item in the dealer's possession when:

1) The item is established to be stolen; and
2) The owner of the item or the victim of a theft has positively identified the item and provided an affidavit of ownership and has made a report of the theft to a law enforcement agency; and
3) The stolen property report describes the item by one or more of the following: date, initials, an insurance record, a photograph, a sales receipt, a serial number, specific damage, or a statement of facts that show the item is one of a kind or a unique engraving; and
4) The dealer is given a receipt from the sheriff's office for the item released.

F. Any dealer covered by this chapter, who is required to relinquish an item pursuant to this provision, is not entitled to demand or condition the release upon any reimbursement from the law enforcement agency, the owner of the item, or the victim of the theft. A dealer who is himself or herself a victim of a crime may seek restitution or reparation in accordance with the New York State Penal Law.

G. Any party either implicitly or explicitly exempted from licensing pursuant to this law shall not be subject to any other provision herein.

SECTION 8. Identification required

A. It shall be the duty of the dealer to verify the identity of every person from whom a purchase is made through acceptable photographic identification (as detailed below) and to make and to keep a written record of the nature of the evidence submitted by such person to prove identity. The signature of the dealer shall be included in the recording of each transaction.

B. Only the following shall be deemed acceptable evidence of identity: any official document (except a social security account number card) issued by the United States government, any state, county, municipality or subdivision thereof, any public agency or department thereof, or any public or private employer, which requires and bears the name, date of birth, signature, and picture of the person to whom issued.

C. It shall be the duty of every dealer to require that every person from whom any article, jewelry or precious metal is purchased sign his/her name in the presence of the dealer, and to compare the signature on the identifying document, if any, and

retain on said premises the person's signature together with the number and description of the identifying document, if any.

D. If the individual is acting as an agent for a principal, proof of the principal's true name, date of birth and residence address.

E. It shall further be the duty of every dealer, to take, and maintain, a copy or digital photo of the identification required by Section 8(B) and Section 9(B) of this law.

F. It shall further be the duty of every dealer to take, and maintain, a digital photograph of each article, jewelry or precious metal purchased. The photograph must include the serial number and model number or product key if the item(s) contain those features.

SECTION 9. Card Catalog

A. Every dealer shall maintain on the premises included in the license, pursuant to section 5(E)(3) of this law, a card catalog for a minimum of five years from the date of sale or purchase.

B. Details included in said catalog shall include a copy the following information:
   1) Identification of the seller as provided in Section 8 of this law;
   2) Details of the items purchased as provided in Section 8 of this law;

C. Every dealer shall furnish to the Erie County Sheriff all information requested by said agency relative to all records required to be kept under this chapter no later three (3) days after receipt of any item covered by this local law.

D. If any items composed wholly or in part of articles, jewelry or precious metals shall be advertised in any newspaper printed in the County of Erie as having been lost or stolen, and if any items matching such advertised description or any part thereof shall be in or come into possession of any dealer upon receiving actual written or oral notice of the similarity of description of such articles, said dealer shall immediately give information relating thereto to the appropriate local law enforcement agency. No disposition of such items shall be effected until authorization to do so is given to such dealer by the appropriate local law enforcement agency.

SECTION 10. Record Maintenance & Holding Period Exemptions:

A. The following transactions are exempt from the record keeping and holding period requirements under this law:
   1) Any transaction by a party not required to be licensed pursuant to this law.
   2) Any sale conducted pursuant to statute or by order of any court.
   3) The sale or purchase of any item(s) for less than $15.

4) This chapter shall not apply to the return of secondhand items for credit, exchange or refund to the person from whom said items were originally obtained, provided that the items were not secondhand items when originally obtained.
5) The sale of secondhand articles at antique shows or trade shows, where such shows are advertised and/or promoted as such.
6) Dealer to dealer or dealer to government transactions.
7) Transactions primarily involving the exchange of bullion:
   a) The value of the bullion must exceed 90% of the dollar value of the entire transaction to qualify for this exemption.
8) Numismatic coin transactions.

SECTION 11. Release of Stolen Property

A. A dealer shall release to the Erie County Sheriff's office any item in the dealer's possession if:
   1) The item is established to be stolen; and
   2) The owner of the item or the victim of the theft has positively identified the item and provided an affidavit of ownership and made a report of the theft to a law enforcement agency; and
   3) The stolen property report describes the item by one or more of the following: date, initials, an insurance record, a photograph, a sales receipt, a serial number, specific damage, a statement of facts that show the item is one of a kind or a unique engraving; and
   4) The secondhand dealer is given a receipt for the item released.
B. When the Erie County Sheriff's office no longer needs an item for evidence, it shall be returned to the rightful owner.

SECTION 12. Penalties for offenses; enforcement.

A. Any violation of the provisions of this chapter shall constitute an offense and shall be punished as follows:
   1) Any person violating the provisions of this chapter shall be guilty of a violation, and shall be awarded a fine not to exceed $200 for the first offense, $1,000 for the second offense, and $3,000 for each subsequent offense. Each such violation shall constitute a separate and distinct offense.

a) A violation, for the purposes of this section of the local law, shall be enforced once per transaction, regardless of the number of violations occurring in said transaction.

b) A transaction shall consist of any single bargained for exchange committed between the same two parties within any 24 hour period.

2) This chapter shall be enforced by any local law enforcement agency having appropriate jurisdiction.

B. No provision of this law is intended to alter or interfere with any party's right against self-incrimination.

C. All penalties will inure to the license holder and shall be payable by said licensee.

D. Ten (10) violations in any consecutive twelve (12) month period shall cause a revocation of the dealer's license.

E. In the event a dealer is inappropriately operating as a secondhand dealer without a valid license, said dealer, after appropriate notice from the sheriff, shall be fined in an amount not to exceed $1,000 shall be charged with operating a secondhand dealership without a license.

1) Appropriate notice shall be in writing and the secondhand dealer shall be afforded thirty (30) days from the receipt of notice within which to come into compliance with this local law.

2) Three (3) violations in any consecutive twelve (12) month span of operating a secondhand dealership without a license shall result in a misdemeanor charge against the operator of the secondhand dealership for operating a secondhand dealership without a license and shall be punishable by a fine of $1,000 or not more than five (5) days in jail.

SECTION 13. Applicability

A. For the purposes of this law any licenses granted under any town, village, or city ordinance of the same matter, which is already in effect prior to the enactment of this law, shall be considered a valid dealer's license.

SECTION 14. Due Process

A. Nothing in this law shall infringe upon the due process rights of the parties involved. After following proper procedure as laid out above any unresolved issues may be appealed to any court of competent jurisdiction.

SECTION 15. Severability

A. If any clause, sentence, paragraph, section or article of this chapter shall be adjudged by any court of competent jurisdiction to be invalid, such determination shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or article thereof directly involved in the proceeding in which such adjudication shall have been rendered.

B. This chapter shall not supersede any similar legislation enacted by a local jurisdiction within the County.

SECTION 16. Effective Date

A. This law shall become effective upon its filing with the Secretary of State. However, no penalties or requirements of any section of this law shall be enforceable until after the thirty first (31) day of December two-thousand-fifteen.

Sponsors: Legislators Dixon, Savage, & Lorigo