

Proposed Local Law Number 8 Of 2015

County Of Ulster

A Local Law Providing For Regulation Of Pawnbrokers, Precious Metal Dealers, And Second Hand Dealers

BE IT ENACTED, by the County Legislature of the County of Ulster, New York, as follows:

SECTION 1. TITLE.

This Local Law shall be known as the "Pawnbrokers, Secondhand Dealers, Jewelry, Precious Metals, and Coin Exchange Dealers Licensure Act."

SECTION 2. LEGISLATIVE INTENT

The Ulster County Legislature finds that pawnbrokers, precious metal dealers, and second hand dealers can provide an opportunity for the commission of crimes and the concealment thereof because such businesses have the ability to receive and transfer stolen property easily and quickly.

Accordingly, the Ulster County Legislature finds that consumer protection regulation is warranted in transactions involving pawnbrokers, precious metal dealers, and second hands. To prevent such businesses from being used as facilitators for the commission of crimes and to protect the safety and general welfare of the residents of Ulster County, the Ulster County Legislature deems it necessary to enact a local law to regulate pawnbrokers, precious metal dealers, and second hand dealers.

The Legislature hereby finds and determines that the creation of a uniform countywide electronic reporting program for tangible personal property acquired by precious metal exchange establishments, pawnshops, and secondhand merchants will curtail the distribution and facilitate the recovery of stolen property throughout Ulster 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 Ulster County and feasible for such precious metal exchange establishments, pawnshops, and second hand dealers.

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

SECTION 3. DEFINITIONS

A. As used in this local law, the following terms shall have the meanings indicated:

a. "Antiques" - Items or collectibles recognized as such due to its age and in accordance by established dealer associations within the antique industry.

b. "Antique Dealer" – A sole proprietor, partnership, corporation, limited liability company, or other business entity which engages exclusively in the business of purchasing and selling antique, collectible, vintage, or estate articles which value is determined by age, condition, and rarity.

c. "Identification" - A valid driver's license, passport, or equivalent photo identification that contains the person's name, physical description, and current address.

d. "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.

e. "Jewelry and Coin Exchange dealer" – A sole proprietor, partnership, corporation, limited liability company, or other business entity engaged in the business of selling, purchasing, or exchanging 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.

f. "Local Law Enforcement Agency" - Any law enforcement agency operating within Ulster County..

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g. "Operator" - Person responsible for the day-to-day operations of the business as indicated under this law.

h. "Pawnbroker" - A sole proprietor, partnership, corporation, limited liability company, or other business entity engaged in the business of holding 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.

i. "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.

j. "Precious Metals Exchange" - A sole proprietor, partnership, corporation, limited liability company, or other business entity engaged in the business of purchasing or exchanging 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.

k. "Secondhand Article" - Any article or object, with the exception of clothing or 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.

l. "Secondhand dealer" - A sole proprietor, partnership, corporation, limited liability company, or other business entity engaged in the business which 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.

m. "Sheriff" - The Ulster County Sheriff.

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SECTION 4. PROHIBITED ACTS

A. It shall be unlawful for a pawnbroker, secondhand dealer, jewelry and coin exchange dealer, or precious metals exchange 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 18 years of age.

B. It shall be unlawful for any pawnbroker, secondhand dealer, jewelry, precious metals, or coin exchange dealer to sell, dispose of, destroy, alter or remove from such business' 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.

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 pawnbroker, secondhand dealer, jewelry, precious metals and coin exchange 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. Secondhand dealers shall not employ any person who has been convicted of any felony related to the operation of a business within the previous three years of applying for the job or who has had a secondhand dealer's license revoked or denied the year prior to applying for a job.

SECTION 5. LICENSING

A. Every pawnbroker, secondhand dealer, jewelry and coin exchange dealer, or precious metal exchange operating within Ulster County is required to be licensed according to this local law. The Ulster County Sheriff shall be the licensing authority authorized to issue licenses for pawnbrokers, secondhand dealers, jewelry, precious metals, or coin exchange dealers.

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B. Licenses shall be valid for one year from date of issuance and shall expire one calendar year from the date of issuance.

C. The annual fee for a license issued pursuant to this Local Law shall be _____ . The fee for this license maybe changed by the Ulster County Legislature by resolution.

D. 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 Ulster County Sheriff's Office. The application shall include the following requirements:

a. The name of the business and the name and address of the owner of the business;

b. Employee names, dates of birth, and dates of employment, which shall also be kept and made available for inspection by the Sheriff or his representatives for the duration of the license;

c. Where the owner is not directly involved with the day-to-day operation of said business,

i. the operator must also be included on the application; or
ii. 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 dealer's license shall be issued to the operator; the names, addresses and phone numbers of the partners, officers or principals of the business entity shall also be listed on the application. All addresses of persons involved shall be home addresses which shall include the street and number;

d. The legal address of the premises where such business is to be carried out; and

e. Whether the applicant or any officer and operator has previously been involved in the purchase or sale of secondhand goods and, if so, the name of the business, its location and the dates of involvement.

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f. 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;

g. The application shall be signed and sworn to before a notary public or other official authorized to administer oaths in the County;

h. Before the issuance of a dealer's license, the Sheriff or the Sheriff's representative shall have the right to enter upon such premises during normal business hours for the purpose of making inspections. 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 pawnbroker, secondhand dealer, jewelry and coin exchange dealer, or precious metal exchange, may be made in areas open to the public or other areas with consent.

i. 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 Ulster County Sheriff within 10 days of the change.

j. All applications for dealer's licenses shall be issued or denied within 30 days after a fully completed application has been received by the Office of the Ulster County Sheriff. The applicant shall be notified, in writing, of any delay which is due to incomplete application, investigative delays, or other reasonable cause and shall be allowed to continue to operate until such time that the license is issued or been denied.

k. 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 a business. No person who stands convicted of a felony (other than those defined by the Vehicle and Traffic Law) shall be eligible for a license pursuant to this law.

l. 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 dealer's license.

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m. Dealer's licenses shall not be transferrable. 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 by any person who holds power of attorney.

n. The Sheriff may deny or revoke any license granted herein in the following situations:

- i. Where the applicant has made a false statement in connection with its application; or
- ii. Where the applicant has previously revoked consent to examine records and items when requested by the Sheriff or refused to allow inspection of applicant's premises.

o. The following entities are exempt from the licensing requirements of this local law:

- i. Any pawnbroker, secondhand dealer, jewelry and coin exchange dealer, or precious metal exchange that is exempt from taxation under § 501(c)(3) or § 501(c)(4) of the Internal Revenue Code; or

- ii. 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 local law. 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.

- iii. Any retailer whose annual gross retail sales are comprised of less than 15% of secondhand articles. Any party claiming this exemption must provide written proof of its applicability by a certified public accountant within 20 days upon request of any law enforcement agency.

- iv. Any dealer in secondhand or used motor vehicles.

- v. Any sale conducted pursuant to statute or by order of any court.

- vi. The sale of antiques by an antique dealer, or his/her employee or associate, provided the antique dealer:

- (1) Has an established antique shop advertised and promoted as such; or

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(2) Exhibits at least twice a year at established advertised and/or promoted antique shows; or

(3) Is a private dealer working from home and/or non retail location and has applied for and has been granted a New York State resale number for collection and submission of sales tax.

vii. The sale of secondhand articles at antique shows or trade shows, here such shows are advertised and/or promoted as such.

viii. Any secondhand clothing store where 50% or more of its gross revenues are related to items of clothing. Any clothing store claiming this exemption must provide written proof of its applicability by a certified public accountant within 20 days upon request of any law enforcement agency.

ix. The sale of any item for less than \$15.

x. This local law 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.

E. If an application for a license is denied, or an existing license is revoked, the applicant or holder of the revoked license may, within 10 business days of notice of denial or revocation, request reconsideration by the Ulster County Sheriff's Office by providing that office with any additional, relevant information. The Ulster 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 or overnight service.

SECTION 6. GENERAL OPERATION

A. Secondhand 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 secondhand dealer is also a pawn dealer, the secondhand dealer shall comply with Article 5 of the New York State General Business Law entitled "Collateral Loan Brokers Law."

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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 owner, operator, or employee of any establishment covered by this local law 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 Ulster County Sheriff's Office or a law enforcement agency.

D. Any law enforcement agency that confiscates property from a business licensed under this local law, either 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 local law shall release to a law enforcement agency any item in the dealer's possession when:

- a. The item is established to be stolen; and
- b. 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
- c. 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
- d. The secondhand dealer is given a receipt for the item released.

F. Any dealer covered by this local law, 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 and/or any remedies that are available to them under law or equity.

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SECTION 7. IDENTIFICATION REQUIRED

A. It shall be the duty of every pawnbroker, secondhand dealer, jewelry and coin exchange dealer, or precious metal exchange 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 signature and picture of the person to whom issued.

C. It shall be the duty of every pawnbroker, secondhand dealer, jewelry, precious metals, and coin exchange 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 pawnbroker, secondhand dealer or jewelry and coin exchange 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 pawnbroker, secondhand dealer, jewelry, precious metals and coin exchange dealer, to take, and maintain, a copy or digital photo of the identification required by Section 7(B) of this law.

F. It shall further be the duty of every pawnbroker, secondhand dealer, jewelry, precious metals, and coin exchange 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.

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SECTION 8. REPORTING

A. Every pawnbroker, secondhand dealer, jewelry, precious metals, and coin exchange dealer shall furnish to the Ulster County Sheriff all information requested by the Sheriff relative to all records required to be kept under this local law no later than 7 days after receipt of the request for any item covered by this local law.

B. If any items composed wholly or in part of second hand articles, jewelry or precious metals shall be advertised in any newspaper printed in Ulster County 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 pawnbroker, secondhand dealer or jewelry and coin exchange dealer or upon receiving actual written or oral notice of the similarity of description of such articles, such pawnbroker, secondhand dealer or jewelry and coin exchange 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.

C. Every dealer covered by this local law shall upload to the Ulster County Sheriff electronic records of all reportable transactions. Each transaction record shall contain all information required by this local law and shall be uploaded via internet connection to an electronic reporting service determined by the Ulster County Sheriff according to the following procedures:

a. For point of sale software, all dealers covered by this local law shall review the compatibility of their software with the electronic reporting service used by the Ulster County Sheriff, and dealers with compliant point of sale software shall electronically upload all required information from their point of sale software to the specified electronic reporting service via internet connection using the upload process or reporting service; or

b. All dealers covered by this local law and using point of sale software noncompliant with that utilized by the Ulster County Sheriff's office or not using point of sale software shall manually enter all reportable transactions into the electronic reporting service via internet connection.

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c. In the event that any dealer covered by this local law is unable to successfully upload transaction records via the electronic reporting service within the required time period, the dealer shall, within 24 hours of the unsuccessful upload, notify the Ulster County Sheriff of the reason for the submission failure and provide the Ulster County Sheriff with an estimated time of compliance. Under these circumstances, the dealer shall provide the Ulster County Sheriff a daily electronic data table or spreadsheet of all transactions that would otherwise have been submitted via the electronic reporting service. This data shall either be hand delivered, faxed, or e-mailed to the Sheriff no later than one business day after the transaction date.

SECTION 9. RELEASE OF STOLEN PROPERTY

A. A pawnbroker, secondhand dealer, jewelry and coin exchange dealer, or precious metal exchange shall release to the Ulster County Sheriff's office or other law enforcement agency any item in the secondhand dealer's possession if:

a. The item is established to be stolen; and

b. 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

c. 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

d. The pawnbroker, secondhand dealer, jewelry and coin exchange dealer, or precious metal exchange is given a receipt for the item released.

B. When the Ulster County Sheriff's office or law enforcement agency no longer needs an item for evidence, it shall be returned to the owner.

SECTION 10. PENALTIES FOR OFFENSES; ENFORCEMENT.

A. Any violation of the provisions of this local law shall constitute an offense and shall be punished as follows:

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a. Any person violating the provisions of this local law shall be guilty of a violation, and upon conviction thereof, shall be punished by a fine not to exceed \$_____ for the first offense, \$_____ for the second offense, and \$_____ for each subsequent offense. Each such violation shall constitute a separate and distinct offense.

b. This local law shall be enforced by any law enforcement agency having jurisdiction.

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

SECTION 11. DUE PROCESS

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

SECTION 12. SEVERABILITY

A. If any clause, sentence, paragraph, section or article of this local law 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 local law shall not supersede any similar legislation enacted by a local jurisdiction within the County.

SECTION 11. EFFECTIVE DATE

This law shall become effective 180 days after being filed with the New York Department of State.