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Senate Bill 1089 (as introduced 2-13-08)
Sponsor: Senator John J. Gleason
Committee: Economic Development and Regulatory Reform

Date Completed: 2-21-08

CONTENT

The bill would amend Public Act 350 of 1917, which regulates and provides for the licensure of second hand and junk dealers, to do all of the following:

- **Make the Department of Labor and Economic Growth (DLEG) responsible for the licensure of secondhand and junk dealers in a county, city, or village that did not have a licensing ordinance.**
- **Prohibit a secondhand or junk dealer license from being issued to someone who did not have an actual business location.**
- **Establish a maximum fee for licenses issued by DLEG, and allow DLEG to charge an initial application fee.**
- **Require a dealer's records to include the weight, amount, and number of articles purchased or exchanged.**
- **Require a dealer to provide his or her records to a law enforcement agency within 24 hours of a request.**
- **Prescribe a criminal penalty for buying or selling stolen construction materials.**
- **Repeal a section of the Act dealing with peddlers.**

License Issued by DLEG

The Act prohibits a person, corporation, copartnership, or firm from carrying on the business of secondhand goods dealer or junk dealer in any Michigan county, city, or village without first obtaining a license from the mayor of the city or the chief executive officer of the county or village. Under the bill, a person could not engage in the business of dealer in secondhand goods or junk dealer in any Michigan county, city, or village without obtaining a license from DLEG or the mayor or chief executive officer. ("Person" would mean an individual, corporation, partnership, copartnership, limited liability company, or other legal entity.)

In the case of a county, city, or village that had not adopted an ordinance providing for the licensure of secondhand dealers or junk dealers, DLEG would be responsible for licensure of dealers within that local unit. The Department would have to accept written or electronic applications for licensure and would have to require an applicant to demonstrate compliance with any applicable State laws or local ordinances regarding the conduct of the business.

The Department would be required only to accept applications for initial and renewal licensure and issue initial and renewal licenses to qualified applicants. Any administrative, civil, or criminal proceedings regarding licensees would be considered to be within the jurisdiction of the local unit or local prosecutor, but DLEG could request the Attorney General to proceed against a licensee. The Department could promulgate rules to enforce and administer licensure of secondhand and junk dealers.

Location & Transfer Restriction

A license issued under the Act must designate the particular place where the licensee engages in business, and the business may be conducted only in the place designated in the license. The bill specifies that a license could not be issued to an applicant who did not demonstrate an actual location within which he or she proposed to engage in the business regulated by the Act.

A license issued under the Act is valid for one year from the date of issuance unless sooner revoked for cause, and is not transferable. The bill specifies that it would not be transferable as to ownership or location.

Licensing Fees

The Act allows the legislative body of any city, or the trustees and chief executive officer of any county or village, to establish the fee for the processing and issuance of a license, in accordance with its charter or local ordinance, based upon the cost of issuance and administration of that license. The bill would require DLEG to charge a fee of up to \$50, based upon the Department's actual cost in issuing the license. The Department could charge an initial application fee of \$50 to cover the cost of processing the application.

Record-Keeping

The Act requires a secondhand or junk dealer to keep a separate book or other record, written in English, that is open to inspection by local law enforcement agencies. The bill would require the book or record to be written or electronic in a format acceptable to the local law enforcement agency. Under the bill, within 24 hours after a request from a local law enforcement agency, a licensee would have to provide a copy of the recorded information.

The dealer must write or enter in the book or record, at the time an article is purchased or exchanged, a description of the article. The record also must include the name, description, fingerprint, operator's or chauffeur's license or State identification number, registration plate number, and address of the person from whom the article was purchased or received. The bill would require the dealer also to enter the weight, amount, and number of articles regarding a transaction, and the person or place from which the article was obtained. A dealer's record also would have to indicate the method of payment. Payment for an item could be made only by a check or an electronic payment system.

By noon each Monday, a dealer licensed under the Act must prepare and deliver to the chief of police or chief law enforcement officer of the local unit, a legible and correct copy, written in English, from the book or other record, describing each article purchased or received during the preceding week. The report must include the hour and day when the purchase was made and a description of the person from whom the article was purchased. The bill would require that the report also include the amount, weight, and number of articles regarding a transaction.

The provisions of the bill requiring a licensee's records to include the amount, weight, and number of articles in a transaction and requiring payment by check or electronic means would take effect 90 days after the bill's enactment.

Stolen Construction Materials

A secondhand or junk dealer who buys or sells stolen scrap metal that he or she has reason to believe was unlawfully removed from a utility pole, telecommunication company property, government property, or utility property or jobsite is guilty of a felony punishable by up to five years' imprisonment and/or a maximum fine of \$10,000.

Under the bill, the same penalty would apply to a secondhand or junk dealer who bought or sold stolen construction materials that he or she had reason to believe were unlawfully removed from a building or house.

"Construction materials" would mean any of the following:

- Wire, cable, bars, ingots, wire scraps, pieces, pellets, clamps, aircraft parts, pipes, siding, or connectors made of aluminum.
- Catalytic converters containing platinum, palladium, or rhodium.
- Copper, titanium, tungsten, and nickel in any form.
- Any materials normally associated with the construction or renovation of a house or a building that may be found at a new construction site, at a demolition site, or in an existing occupied or unoccupied building or house.

Repealer

The bill would repeal Section 6 of the Act, which specifies that a purchaser or receiver who is a peddler, or goes about with a wagon to purchase or obtain articles, and does not have a place of business in a building, need not retain those articles for 15 days before selling them, if each Monday he or she files with the chief of police or chief police officer of the city or village a report showing both of the following:

- The place of business of the person to whom the sale was made.
- A copy of the record required to be kept in a separate book of the articles purchased or received during the preceding week, including a description of the articles sold, to whom they were sold, and the purchaser's place of business.

MCL 445.401 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would require the licensure by DLEG of an additional occupation. The bill would allow application fees and require licensure fees to be charged to cover the administrative costs associated with those additional regulatory responsibilities. The revenue that would be generated from the fees would depend on the number of applicants and the number of licenses that would be issued under the bill.

Extending the felony penalty to an additional offense would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of buying or selling stolen construction materials. Under the Act, it is a misdemeanor, punishable by imprisonment for up to six months and a fine of at least \$500 but not more than \$1,000, for a secondhand or junk dealer to purchase or receive any article from a person known or suspected to be a thief or an associate of thieves. To the extent that the bill resulted in decreased misdemeanor convictions, local governments would incur decreased costs of misdemeanor probation and incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an average annual cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$33,000. Additional penal fine revenue would benefit public libraries.

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