

## SECOND-HAND GOODS ACT 23 OF 1955

[ASSENTED TO 28 APRIL 1955]

[DATE OF COMMENCEMENT: 1 JANUARY 1956]

(English text signed by the Governor-General)

as amended by

General Law Amendment Act 50 of 1956

General Law Amendment Act 68 of 1957

Second-hand Goods Amendment Act 18 of 1978

Abolition of Restrictions on the Jurisdiction of Courts Act 88 of 1996

ACT

To regulate the business of dealers in second-hand goods.

### 1 Definitions

In this Act, unless the context otherwise indicates-

'acquire' includes receive;

[Definition of 'acquire' substituted by s. 1 (a) of Act 18 of 1978.]

'commissioned officer' means a commissioned officer appointed under subsection (1) of section 3 of the Police Act, 1958 (Act 7 of 1958);

[Definition of 'commissioned officer' inserted by s. 1 (b) of Act 18 of 1978.]

'Commissioner' means the Commissioner of the South African Police appointed under section 3 of the Police Act, 1958 (Act 7 of 1958);

[Definition of 'Commissioner' inserted by s. 1 (b) of Act 18 of 1978.]

'dealer' means a person who deals in second-hand goods;

[Definition of 'dealer' amended by s. 43 of Act 68 of 1957 and substituted by s. 1 (c) of Act 18 of 1978.]

'dispose of,' in relation to a pawnbroker, includes return of redeemed property received in pawn;

'goods' means any article of clothing, jewellery, any motor vehicle, including any motor cycle, or any part or accessory thereof, any bicycle or any part or accessory thereof, any office or household equipment, any photographic or optical instrument or any part thereof, any wrought article consisting wholly or principally of gold, silver or steel, any antique, any ferrous metal, lead, copper, tin, aluminium, brass or zinc or any article or substance consisting wholly or principally of one or more of these metals, and any other article or substance which the Minister may, by notice in the *Gazette*, declare to be goods for the purposes of this Act;

'licence' .....

[Definition of 'licence' deleted by s. 1 (d) of Act 18 of 1978.]

'local authority' .....

[Definition of 'local authority' deleted by s. 21 of Act 50 of 1956.]

'Minister' means the Minister of Police;

[Definition of 'Minister' substituted by s. 1 (e) of Act 18 of 1978.]

'prescribed' means prescribed by or under this Act;

'second-hand goods' means goods which have been in use in the Union or which (whether they have been in use in the Union or not) have at any time been possessed in the Union for his own account by a person other than the manufacturer or producer thereof or a person dealing therewith in the course of business.

### 2 Application of Act

(1) This Act shall not apply to a duly licensed auctioneer who sells second-hand

goods by public auction, and the provisions of sections *three, four* and *eight* shall not apply to a factory as defined in the Factories, Machinery and Building Work Act, 1941 (Act 22 of 1941), nor to any person carrying on the business of selling manufactured articles, in so far as he accepts in part payment for any such article sold by him, an article of a kind normally dealt in by him in his business, nor to any person who acquires second-hand goods solely for his own use in connection with the manufacture or repair of articles normally dealt in by him in his business.

(2) The Minister may-

- (a) by notice in the *Gazette* exclude from the operation of any or all of the provisions of this Act any area specified in the notice or any area other than an area so specified or any second-hand goods or any class of such goods, and may in like manner amend or repeal any such notice;
- (b) by notice in writing addressed to any person, and on such conditions as he may deem fit, exempt such person from compliance with any or all of the said provisions, and in like manner amend or withdraw any such notice.

### **3 Certificate required in connection with certain businesses**

Cases

No person shall deal in second-hand goods except to the extent specified in a certificate granted to him under section 4.

[S. 3 substituted by s. 2 of Act 18 of 1978.]

### **4 Grant of certificates**

Cases

(1) An application for a certificate required under section 3, in the prescribed form and containing the prescribed particulars, shall be lodged with the commissioned officer in charge of the police district within which the applicant proposes to carry on business.

(2) If after consideration of any such application, and of a report from the commissioned officer in charge of the police district in question, the Commissioner or a commissioned officer authorized thereto by him is satisfied-

- (a) that the applicant is a person of good character; and
- (b) that the premises in or on which the applicant proposes to carry on business are suitable and adequately equipped for the purpose,

he may grant the required certificate to the applicant.

(3) The grant of a certificate under subsection (2) shall be in the discretion of the Commissioner or the commissioned officer authorized thereto by him, as the case may be, who may in any particular case grant a certificate authorizing the applicant to deal in all classes or kinds of second-hand goods or specified classes or kinds of second-hand goods or all classes or kinds of second-hand goods other than specified classes or kinds of such goods.

(4) An applicant for a certificate under this section may appeal against any decision of the Commissioner or the commissioned officer concerned, as the case may be, on his or her application, to the Minister, who may after consideration of any such appeal confirm, amend or set aside the decision in question or make such order thereon as he or she may deem fit.

[Sub-s. (4) substituted by s. 7 of Act 88 of 1996.]

[S. 4 substituted by s. 3 of Act 18 of 1978.]

### **5 Period of validity of certificates**

A certificate granted under section *four* shall expire on the thirty-first day of December of the year in which it is issued.

## **6 Keeping of records by dealers**

### Cases

(1) Every dealer shall keep in the prescribed form in one or other of the official languages of the Union registers of his transactions in second-hand goods, in which shall be recorded in respect of every acquisition or disposal of such goods-

- (a) the name and address of the person from whom such goods are acquired or to whom such goods are disposed of;
- (b) the date and hour of acquisition or disposal of such goods and of delivery or removal thereof at or from the dealer's premises;
- (c) the consideration given or received for such goods;
- (d) a full description of such goods, indicating the quantity and colour (if likely to be of assistance for identification purposes) thereof, any identification marks thereon and any other distinguishing features thereof, and, in the case of metals, the form in which such metals are acquired or disposed of;
- (e) the number assigned to such goods by the dealer under subsection (3) at the time of acquisition thereof; and
- (f) in the case of a motor vehicle, the number of the engine and the chassis respectively and the registration number.

(2) The entry to be made under subsection (1) in respect of any transaction shall be effected at the time such transaction takes place: Provided that in the case of goods acquired or disposed of at a public auction, the entry may be made at any time on the day on which the auction takes place.

(3) For the purpose of paragraph (e) of subsection (1) a dealer shall, except in the case of metals acquired otherwise than in the form of manufactured articles, assign a number to every quantity of second-hand goods acquired by him, a new series of numbers being commenced for each month, and the number assigned to any such goods shall be marked by such dealer on such goods or, in the case of goods acquired in bulk, on the container thereof.

(4) Separate registers shall be kept in respect of acquisitions and disposals of goods and, if the Minister by notice in the *Gazette* so directs, also in respect of different classes or groups of goods as may be specified in the notice.

(5) The keeping of any register required to be kept by any dealer under any other law, shall, in so far as such register contains the particulars prescribed in this section, be deemed to be a sufficient compliance with the requirements of this section.

(6) Any dealer who fails to make in respect of second-hand goods acquired by him, an entry in the appropriate register in terms of this section, shall, apart from any penalty to which he may be liable by reason of the failure, in the event of such goods being proved to be stolen goods, be deemed to have received such goods knowing the same to have been stolen, unless the contrary is proved.

(7) For the purpose of this section any person acquiring or offering to dispose of secondhand goods from or to a dealer shall furnish his full name and address on demand by such dealer.

(8) Any person who is or has been a dealer shall retain any register kept by him

under this section for a period of three years after the date of the last entry therein, and shall at any time during that period on demand by a policeman make such register available for inspection by that policeman and furnish him with an explanation of any entry therein.

(9) A policeman may seize any register referred to in subsection (8) which may afford evidence of a contravention of any provision of this Act, and the provisions of section *twelve* shall *mutatis mutandis* apply in respect of any entry in any such register or any explanation of an entry therein given by the person by whom it has been retained in term of the said subsection.

### **7 Acquisition, storage and disposal of goods**

No dealer shall-

- (a) receive or deliver second-hand goods outside ordinary business hours, except in case of emergency or after notice to the officer in charge of the nearest police station;
- (b) store any second-hand goods elsewhere than on the premises on which he carries on business or on premises of the situation whereof he has in writing advised the officer in police charge of the district in which such premises are situated; or
- (c) deliver any such goods acquired by him to any person or change the form or alter the appearance thereof until after the expiration of a period of seven days from the date of acquisition thereof, except after notice to the officer in charge of the nearest police station.

### **8 Smelting of metals and possession of smelting apparatus**

No dealer shall smelt or melt or cause to be smelted or melted any metal or any article or substance containing metal, or have in his possession any apparatus which can be used for the smelting or melting of metal or any such article or substance.

### **9 Reports to be furnished by dealers**

Whenever-

- (a) any second-hand goods are offered to a dealer by a person who refuses to furnish his full name and address or furnishes a name and address which such dealer has reason to believe is not his correct name or address; or
- (b) any dealer has reason to believe, whether from information furnished to him by a policeman or otherwise, that second-hand goods offered to him are stolen goods,

such dealer shall immediately report the circumstances to the nearest police station.

### **10 Powers of police**

(1) Any policeman may at all reasonable times-

- (a) enter any place occupied by a person who is or is on reasonable grounds believed to be a dealer, or any place or vehicle in or upon which there are or are suspected to be any second-hand goods not intended for the use of the owner thereof;
- (b) inspect any goods found in any such place or on any such vehicle and any book, record or document which is suspected to contain any information relating to such goods;
- (c) require from the owner or any person in charge of such place or vehicle or any goods therein or thereon, information in regard to any such goods;

- (d) require from such owner or person an explanation of any entry in any such book, record or document;
- (e) seize any goods, books, records or documents which may afford evidence of a contravention of any provision of this Act.

(2) A dealer shall on demand afford any policeman such assistance and facilities as he may require in connection with the exercise of his powers or the performance of his functions under this section.

### **11 Offences and penalties**

Any person who-

- (a) contravenes or fails to comply with any provision of this Act which is applicable to him or any condition on which he has under paragraph (b) of subsection (2) of section *two* been exempted from compliance with any such provision;
- (b) makes any incorrect entry in any register required to be kept under this Act;
- (c) in connection with any information or explanation which he is in terms of this Act required to furnish, knowingly makes a false statement; or
- (d) obstructs or interferes with any policeman in the exercise of his powers of the performance of his functions under this Act or refuses or fails to afford to any policeman any assistance or facilities lawfully required by him,

shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand or imprisonment for a period not exceeding twelve months or both such fine and such imprisonment.

[S. 11 amended by s. 4 of Act 18 of 1978.]

### **12 Admissions and presumptions**

(1) At the trial of any person charged with an offence under this Act, any statement or record contained in any book, register or document kept by the accused or an employee or agent of the accused or which at any time was at any place during the occupancy of that place by the accused, and any statement made or explanation given under section *ten* by or on behalf of the accused to any policeman, shall be admissible in evidence against the accused as an admission of the facts set forth in that statement, record or explanation.

(2) Whenever in any proceedings under this Act it is proved that any goods have been in use, such goods shall be deemed to have been in use in the Union, unless the contrary is proved.

### **13 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 it would be an offence under this Act for such dealer to do or omit to do, then, unless it is proved-

- (a) that in doing or omitting to do that act the manager, agent or employee was acting without the permission or connivance of the dealer;
- (b) that all reasonable steps were taken by the dealer to prevent any act or omission of the kind in question: and
- (c) that it was not under any condition or in any circumstance within the scope of the authority or in the course of the employment of the manager, agent or employee to do or omit to do acts, whether lawful or unlawful, of

the character of the act or omission charged, the dealer shall be presumed himself 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.

#### **14 Regulations**

The Minister may make regulations, not inconsistent with this Act, prescribing any matter which in terms of this Act is required or permitted to be prescribed.

[S. 14 amended by s. 44 of Act 68 of 1957.]

#### **15 Repeal of laws**

The Second-hand Goods Act, 1895 (Act 10 of 1895), of the Cape of Good Hope, and Act 11 of 1907 of Natal, entitled 'Act to regulate the business of dealers in old metals' are hereby repealed.

#### **16 Short title and commencement**

This Act shall be called the Second-hand Goods Act, 1955, and shall come into operation upon a date to be fixed by the Governor-General by proclamation in the *Gazette*.