

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS
First Regular Session

House Bill No. **4465**



Introduced by HON. JOHN MARVIN "YUL SERVO" NIETO, HON. EDWARD VERA PEREZ MACEDA, HON. DENNIS C. LAOGAN, HON. XAVIER JESUS D. ROMUALDO, HON. MANUEL F. ZUBIRI, and HON. GUS S. TAMBUNTING

EXPLANATORY NOTE

The trade of used items, popularly known as "secondhand goods", traces back its roots from the era of barter trade when a considerably large volume of goods were being traded by people at public bazaars and flea markets, in hopes of generating extra value. With the advent of more efficient communication and banking technologies, trading, or as we may presently refer to as the practice of "secondhand buy and sell", has become more convenient for both the sellers and buyers since these innovations have enabled our transactions to transcend geographical boundaries. Today, communication between two parties has become much easier because of the advancement of mobile technologies (i.e. SMS and online markets); and financial transactions have become more efficient through the development of mobile banking and money transfer. Because of these, many of the buyers and sellers of secondhand goods are able to transact with each other in the convenience of their own homes, without having to actually meet up to verify the authenticity and quality of the items.

On this regard, a major caveat brought about by the aforementioned technologies for purchasing secondhand items is the exposure to the risk of being taken advantage of by the seller, especially when the monetary value of the secondhand item being sold to a consumer is high. Some of the most traded secondhand items are electronics such as computers, cellular phones, and cameras. Aside from these, more expensive luxury items such as jewelries and designer bags are also common in the trade. Alarming, the increase in price and value of the secondhand items being sold can go from several hundred thousands, even up to over a million pesos (e.g. cars, etc.), thus, greater consumer protection and stricter seller regulations are not only timely, but are also necessary.

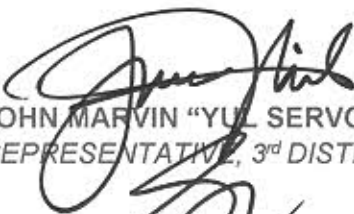
Republic Act 7394, otherwise known as the "Consumer Act of the Philippines", provides standards, procedures and safeguards for the consumers in general. Unfortunately, the existing laws and regulations do not cover the rapidly thriving industry of secondhand goods trade and fails to adequately ensure the consumers that the quality and source of secondhand goods being traded are of their expectations, thus exposing the buyers to the risk of spending their

hard-earned money on defective items, inauthentic goods, falsely-advertised products, and others.

In line with the policies forwarded in RA 7394, this piece of legislation aims to improve and further develop the secondhand goods trade in the country. Patterned after the successful Secondhand Dealers laws of other Asian countries, it seeks to regulate the trade of secondhand goods by requiring the secondhand goods dealers to secure license from the licensing officer appointed by the Secretary of the Department of Trade and Industry. It also provides for the record-keeping and reporting by the dealers to ensure the reliability of source and to prevent the sale and circulation of lost or stolen items.

The form of regulation proposed by this measure intends to protect both the buyers and the sellers or dealers. The fact that the goods being traded are secondhand does not mean that this should be given lesser attention; the quality of goods bought by the consumers, regardless of their price, should not be sacrificed.

In view of the foregoing considerations, immediate approval of this measure is sought.



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AN ACT
TO PROVIDE FOR THE LICENSING AND CONTROL OF DEALERS IN SECONDHAND GOODS AND FOR MATTERS CONNECTED THEREWITH

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

SECTION 1. Short Title. – This Act shall be known as the "**Secondhand Goods Dealers Act of 2016**".

SEC. 2. Declaration of State Policy. – It shall be the policy of the State to protect the rights and welfare of the consumers and to ensure a healthy commercial environment, including the trade of secondhand goods.

SEC. 3. Definition of Terms. – As used in this Act:

(a) "**goods**" in the term "secondhand goods" means any of the following goods:

- i.) cameras, videographic and photographic equipment including lenses;
- ii.) computers including desktop computers, tablet personal computers, laptops, palmtops, personal digital assistants and computer accessories;
- iii.) handphones, personal digital assistant handphones and smartphones;
- iv.) compact disc (CD), digital video/versatile disc (DVD) and blu-ray disc players;
- v.) jewelry set with precious stones including, but not limited to, diamonds, jade, rubies, sapphires and emeralds;
- vi.) jewelry made from platinum, gold and white gold without precious stones;
- vii.) pawn tickets;
- viii.) watches;
- ix.) cables and wires made of copper;

- x.) Other electronic device.
- (b) "**license**" means a license issued under Section 5 of this Act;
- (c) "**licensing officer**" refers to the Licensing Officer and Assistant Licensing Officer from the Department of Trade and Industry appointed under Section 3 of this Act;
- (d) "**second hand goods dealer**" refers to any person who deals in secondhand goods, including a person in the Philippines who deals in secondhand goods through the Internet; further, every person in whose shop secondhand goods are found apparently exposed for sale, or who is found in possession of secondhand goods of an unusual quantity, shall be deemed, until the contrary is proven, to be a person who deals in secondhand goods;
- (e) "**Secretary**" refers to the Secretary of the Department of Trade and Industry;
- (f) "**shop**" includes a stall, house, flat, place of business, place of storage of secondhand goods, an administrative office or any other premises from which the business of a secondhand goods dealer is being carried out, whether electronically or otherwise;
- (g) "**stolen property**" means property, the possession of which has been transferred by theft, extortion or robbery, which has been criminally misappropriated or in respect of which criminal breach of trust or cheating has been committed, whether the transfer has been made or the misappropriation or breach of trust or cheating has been committed within or out of the Philippines; but does not include such property which subsequently comes into the possession of a person legally entitled to the possession thereof;

SEC. 4. Appointment of Licensing Officer and Assistant Licensing Officers. – The Secretary of the Department of Trade and Industry (DTI) shall appoint a Licensing Officer for the purposes of this Act and may similarly appoint such number of Assistant Licensing Officers as may be deemed necessary.

SEC. 5. Dealing in Secondhand Goods. – No person shall deal in secondhand goods except under and in accordance with the conditions of a license issued under Section 6 of this Act.

SEC. 6. Issuance, Renewal and Conditions of License. – An application for a license shall be –

- (a) made to the Licensing Officer in such form or manner as the Licensing Officer may require; and,
- (b) accompanied by –
 - i.) such particulars, information and documents as the Licensing Officer may require; and,
 - ii.) the licensing fee and any other charges that may be necessary.

Upon receipt of an application, the Licensing Officer may, in his discretion, issue a license to the applicant subject to such conditions as the Licensing Officer may deem fit to impose.

The Licensing Officer may at any time add to, vary or revoke any condition of a license imposed under the preceding paragraph.

The Licensing Officer shall, before adding to, varying or revoking any condition of a license, give the licensee –

- (a) notice in writing of his intention to do so; and,
- (b) an opportunity to be heard, within such time as may be specified in the notice, as to why the condition should not be added to, varied or revoked.

Any person who is aggrieved by the decision of the Licensing Officer under this Section may, within fourteen (14) days of being notified of the decision of the Licensing Officer, appeal in writing to the Secretary of the DTI whose decision shall later on be final.

A license may be renewed upon its expiry, with the necessary modifications, to an application for the renewal of a license.

Any person who, in making an application for a license –

- (a) makes any statement or furnishes any particulars, information or document which he knows to be false or does not believe to be true; or,
- (b) by the intentional suppression of any material fact, furnishes any information which is misleading

shall be guilty of an offense.

SEC. 7. Form and Validity of License. – A license shall –

- (a) be in such form as the Licensing Officer shall determine;
- (b) contain the conditions subject to which it is issued; and,
- (c) be valid for such period as may be specified therein.

SEC. 8. Transfer of License. – No person shall transfer his license to another person except with the consent of the Licensing Officer and upon payment of the prescribed fee.

Any person who contravenes this provision shall be guilty of an offense.

SEC. 9. Revocation or Suspension of License. – The Licensing Officer may revoke a license or suspend a license for such period as he deems fit –

- (a) if he is satisfied that the license –
 - i) has ceased to carry on the business for which he has been licensed or, if the licensee being a company, has gone into liquidation or is wound up or otherwise dissolved;
 - ii) has improperly obtained his license contrary to the provisions of this Act;
 - iii) is no longer a fit and proper person to continue to hold a license;
 - iv) has been convicted of any offense involving dishonesty or, if the licensee is a company, any of its officers holding a managerial or an executive position has been convicted of any offense involving dishonesty;
 - v) is carrying on or has carried on the business of a secondhand goods dealer in such a manner as to render him unfit to continue to hold a license;
 - vi) has failed to comply with any condition of his license;
 - vii) is contravening or has contravened any of the provision of this Act; or,

- viii) has been convicted of any offense under this Act or, if the licensee is a company, any of its officers holding a managerial or an executive position has been convicted of any offense under this Act; or

(b) if he considers it necessary in the interest of the public.

The Licensing Officer shall, before revoking or suspending any license under this Section, give the licensee notice in writing of his intention to do so, specifying a date, not less than fourteen (14) days after the date of the notice, upon which the revocation or suspension shall take effect and calling upon the licensee to show cause to the Licensing Officer why the license should not be revoked or suspended.

When the Licensing Officer has revoked or suspended a license, he shall immediately inform the licensee by notice in writing of the revocation or suspension.

Any person whose license has been revoked or suspended may, within fourteen (14) days of the receipt of the notice or such extended period of time as the Secretary of the DTI may allow, appeal in writing against the revocation or suspension to the Secretary whose decision shall be final.

Any revocation or suspension of a license shall not take effect until the expiration of a period of fourteen (14) days after the Licensing Officer has informed the licensee of the revocation or suspension in accordance with this Section, and if within that period, the licensee gives due notice that an appeal has been made to the Secretary, the revocation or suspension order shall not take effect unless the revocation or suspension order is confirmed by the Secretary or the appeal is for any reason dismissed by the Secretary.

Where any license has been suspended, the Licensing Officer may, at any time and subject to such conditions as he may deem fit to impose, lift the suspension if he considers it appropriate to do so.

SEC. 10. *Effect of Revocation or Suspension of License.* – Where any revocation or suspension of a license becomes effective, the licensee shall cease to carry on the business of a secondhand goods dealer.

This Section shall not prejudice the enforcement by any person of any right or claim against the licensee or by the licensee of any right or claim against any person arising out of or concerning any matter or thing done prior to the revocation or suspension of the license.

SEC. 11. *Keeping Proper Records.* – Every secondhand goods dealer shall keep in his shop –

- (a) records of the particulars of all goods bought by him, including the dates of purchase, the names and addresses of the persons from whom he bought the goods and such other particulars as may be prescribed; and,
- (b) records of the particulars of all goods sold by him, including the dates of sale, the names and addresses of the persons whom he sold the goods to and such other particulars as may be prescribed.

Every secondhand goods dealer shall submit to the Licensing Officer the records at such time and in such format and through such medium (whether electronic or otherwise) as the Licensing Officer may require.

Every secondhand goods dealer shall retain the records for a period of not less than five (5) years from the end of the financial year in which the transactions or operations to which those records related are completed.

Every secondhand goods dealer shall produce the records for examination at any time on demand by the Licensing officer, any court, a police officer or any concerned and competent authority.

Any person who –

- (a) contravenes the provisions of this Section; or,
 - (b) in compliance or purported compliance with the provisions of this Section fabricates, keeps, submits or produces to the Licensing Officer, any court, a police officer or any concerned and competent authority, any record which he knows is false or misleading,
- shall be guilty of an offense.

SEC. 12. *Information of Stolen and Lost Property to be Given to Secondhand Goods Dealers.* – Where a police officer has received any information as to any stolen property or as to any property which has been lost, he may, if he deems it necessary or expedient to assist in the recovery of the property, disseminate the information to all secondhand goods dealers, with lists and descriptions of the stolen or lost property.

If any secondhand goods dealer possesses any property fitting such lists and descriptions referred to in the preceding paragraph or such property is thereafter offered to or shown to any secondhand goods dealer –

- (a) he shall, without necessary delay, make a report to any police officer, with the name and address of the person in whose possession the property was seen; and,
- (b) he may detain the person offering or showing him such property until the arrival of a police officer.

SEC. 13. *Power to Enter and Search Secondhand Goods Dealer's Shop, etc.* – Any police officer may enter the shop of any secondhand goods dealer at any time and may, without a warrant, search the shop for any property which he has personal knowledge to suspect to be therein which are stolen property or property that has been lost.

Any police officer may at any time enter and search without a warrant any shop where he has reason to suspect that any person is dealing in secondhand goods without a license issued under this Act.

For the purposes of exercising his powers under this Section, a police officer may, with such assistance as he considers necessary, break open any door, window, lock, fastener, floor, wall, ceiling, compartment, box, container or any other object. Provided however, that the police officer shall announce first that he would enter such premises by reason of suspected unlawful

transaction; only upon failure of the owner of the place to be searched can the police officer break any opening as he may deem necessary.

Any police officer may seize any secondhand goods found in any shop referred to in this Act. The police officer who seized the said goods shall immediately turnover such to the proper competent authority.

SEC. 14. *Power to Arrest Persons Loitering Suspiciously About Secondhand Goods Dealer's Shop.* – Any police officer, having reason to believe that a person in or loitering about the shop of any secondhand goods dealer under suspicious circumstances has with him any stolen property, may arrest that person and require him to produce any property which he has with him.

SEC. 15. *Delivery to Owner of Property.* – If any person is convicted in any court of an offense under the Title Ten, "Crimes Against Property" of the Revised Penal Code in respect of any property, and it appears to the court that the property has been sold to a secondhand goods dealer, the court may, on proof of the ownership of the property and if it thinks fit, order the delivery thereof to the owner either on payment to the secondhand goods dealer of the amount of the purchase price or any part thereof, or without payment thereof or of any part thereof, as to the court according to the conduct of the owner and the other circumstances of the case seems just and fitting.

The court may also adjourn the proceedings for the attendance of the secondhand goods dealer and may summon the secondhand goods dealer to attend at the adjourned hearing.

If after hearing the secondhand goods dealer the court is satisfied that the secondhand goods dealer, before purchasing the property –

- (a) ought reasonably to have known or suspected that the property was stolen property; and,
- (b) did not exercise due care and diligence to ascertain that the property was not stolen property,

the court may order the secondhand goods dealer to pay a financial penalty not exceeding One Hundred Thousand Pesos (P100, 000.00).

SEC. 16. *Offenses by Bodies Corporate, etc.* –

(1) Where an offense under this Act committed by a body corporate is proven –

- (a) to have been committed with the consent or connivance of an officer; or,
- (b) to be attributable to any neglect on his part,

the officer as well as the body corporate shall be guilty of the offense and shall be liable to be proceeded against and penalized accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where an offense under this Act committed by a partnership is proven –

- (a) to have been committed with the consent or connivance of a partner; or,
- (b) to be attributable to any neglect on his part,

the partner as well as the partnership shall be guilty of the offense and shall be liable to be proceeded against and punished accordingly.

- (4) Where an offense under this Act is committed by an unincorporated association (other than a partnership) is proven –

- (a) to have been committed with the consent or connivance of an officer of the unincorporated association or a member of its governing body; or,
- (b) to be attributable to any neglect on the part of such an officer or member,

the officer or member as well as the unincorporated association shall be guilty of the offense and shall be liable to be proceeded against and punished accordingly.

- (5) In this Section –

- (a) "**body corporate**" includes a limited liability partnership;
- (b) "**officer**" –
 - i) in relation to a body corporate, means any director, partner, member of the committee of management, chief executive, manager, secretary or other similar officer of the body corporate and includes any person purporting to act in any such capacity; or,
 - ii) in relation to an unincorporated association (other than a partnership), means the president, the secretary, or any member of the committee of the unincorporated association, or any person holding a position analogous to that of president, secretary or member of a committee and includes any person purporting to act in any such capacity;
- (c) "**partner**" includes a person purporting to act as a partner

SEC. 17. Liability for Offenses. – Where an offense under this Act is committed by any person acting as an agent or employee of another person, or being otherwise subject to the supervision or instruction of another person for the purposes of any employment in the course of which the offense was committed, that other person shall, without prejudice to the liability of the first-mentioned person, be liable under this Act in the same manner and to the same extent as if he had personally committed the offense if it is proven that the act which constituted the offense was committed with his consent or connivance or that it was attributable to any neglect on his part.

Where any person, being an agent or employee employed by a secondhand goods dealer in the course of his business as such secondhand goods dealer, willfully does any act or commits any omission that constitutes an offense under this Act, that person shall also be guilty of the offense and shall be liable to the fine or punishment prescribed for that offense, as if he were the person carrying on such business as a secondhand goods dealer.

SEC. 18. *Penalties.* – Any person who is guilty of an offense under this Act shall be liable on conviction to a fine not exceeding One Hundred Thousand Pesos (P100, 000.00) or to imprisonment not exceeding one (1) year, or both at the discretion of the court.

SEC. 19. *Composition of Offenses.* – The Licensing Officer may, in his discretion compound any offense under this Act which is prescribed as a compoundable offense by collecting from a person reasonably suspected of having committed the offense a sum not exceeding One Hundred Thousand Pesos (P100, 000.00).

On payment of such sum of money, no further proceedings shall be taken against that person in respect of the offense.

The Secretary may make rules to prescribe the offenses which may be compounded.

SEC. 20. *Exemption.* – The Secretary may, with or without conditions, exempt any person or class of persons from any or all of the provisions of this Act.

If any exemption is granted under this Section with conditions, the exemption operates only if the conditions are complied with.

SEC. 21. *Implementing Rules and Regulations.* – The Secretary of the Department of Trade and Industry, together with the other concerned agencies and private organizations, shall promulgate the implementing rules and regulations of this Act within ninety (90) days from the approval of this Act.

Such rules may include the following:

- (a) prescribed fees and charges payable for the purposes of this Act;
- (b) prescribed forms to be used for the purposes of this Act; and,
- (c) prescribed records to be kept by secondhand goods dealers and the particulars to be entered therein.

SEC. 22. *Repealing Clause.* – All laws, acts, presidential decrees, executive orders, administrative orders, rules and regulations inconsistent with or contrary to the provisions of this Act are deemed amended, modified or repealed accordingly.

SEC. 23. *Separability Clause.* – If any part or provision of this Act is declared invalid or unconstitutional, the other parts thereof not affected thereby shall remain valid.

SEC. 24. *Effectivity Clause.* – This Act shall take effect fifteen (15) days upon completion of its publication in at least two (2) national newspapers of general circulation.

Approved,