

OCCUPATIONS CODE

TITLE 11. REGULATION OF SALES AND SOLICITATION
CHAPTER 1805. SALE OF SECONDHAND BUSINESS MACHINES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1805.001. DEFINITIONS. In this chapter:

(1) "Business machine" includes an adding machine, addressing machine, calculator, cash register, check-writing device, computer or peripheral device to a computer, letter-sorting or folding device, item of recording, copying, or accounting equipment, or typewriter. The term does not include office furniture or fixtures.

(2) "Secondhand dealer" means a person who:

(A) engages in the business of buying, selling, trading, accepting for sale on consignment, accepting for auction, or auctioning business machines; or

(B) owns or operates an auction or another event at which:

(i) two or more persons offer business machines for sale or exchange; and

(ii) a fee is charged for:

(a) offering or displaying property for sale or exchange; or

(b) admission to the area in which the property is offered or displayed for sale or exchange.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1805.002. APPLICATION TO BUSINESS MACHINES. (a) This chapter applies only to a business machine that has previously been sold at retail.

(b) This chapter does not apply to a business machine:

(1) acquired in good faith in a transaction involving the stock in trade of another secondhand dealer who previously made the reports on the machine required by this chapter if:

(A) the selling dealer delivers to the acquiring dealer a written document stating that the reports have been made;

(B) the acquiring dealer submits a copy of the statement to the chief of police of the municipality or the sheriff of the county in which the selling dealer is located; and

(C) each secondhand dealer involved in the transaction retains a copy of the statement required by this subdivision for three years after the date of the transaction;

(2) acquired in a nonjudicial sale, transfer, assignment, assignment for the benefit of creditors, or consignment of the assets or stock in trade, in bulk, or a substantial part of those assets, of an industrial or commercial enterprise, other than a secondhand dealer, for the voluntary dissolution or liquidation of the seller's business, or for disposing of an excessive quantity of personal property, or property that has been acquired in a nonjudicial sale or transfer from an owner other than a secondhand dealer, the seller's entire household of personal property, or a substantial part of that property, if the secondhand dealer:

(A) gives written notice to the chief of police of the municipality or the sheriff of the county in which the dealer's business is located that a reporting exemption is being claimed under this subdivision;

(B) retains in the dealer's place of business, for three years after the date of the transaction, a copy of the bill of sale, receipt, inventory list, or other transfer document; and

(C) makes the record retained available for inspection by any peace officer;

(3) acquired in a sale made:

(A) by any public officer in the officer's official capacity as a trustee in bankruptcy, executor, administrator, receiver, or public official acting under judicial process or authority; or

(B) on the execution of, or by virtue of, any process issued by a court;

(4) acquired as surplus property from the United States, a state, a subdivision of a state, or a municipal corporation;

(5) reported by a secondhand dealer as an acquisition

or a purchase, or reported as destroyed or otherwise disposed of, to:

(A) a state agency under another law of this state; or

(B) a municipal or county officer or agency under another law of this state or a municipal ordinance; or

(6) acquired by a person licensed under Chapter 371, Finance Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1805.003. APPLICATION TO SECONDHAND DEALERS. This chapter does not apply to a person:

(1) acting as a dealer for the exclusive benefit of any community chest, fund, foundation, or nonprofit corporation organized and operated for religious, hospital, or charitable purposes if none of the gross receipts or net earnings of the sale or exchange of business machines benefits a private shareholder or a person participating in the organization or the conduct of the sale or exchange;

(2) who owns the land on which an auction or event involving the sale or exchange of business machines occurs if the person:

(A) does not have control over the auction or event; and

(B) does not have personal knowledge of any facts arising from the auction or event constituting a violation of this chapter; or

(3) whose primary business includes the manufacture, sale, or service of computers or devices peripheral to computers.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1805.004. EFFECT ON OTHER LAWS AND ORDINANCES. (a) This chapter does not excuse noncompliance with another state law or municipal ordinance relating to the reporting, holding, or releasing of business machines.

(b) This chapter does not prohibit the enactment, amendment, or enforcement by any municipality of any ordinance

relating to a secondhand dealer.

(c) This chapter does not supersede any municipal ordinance except to the extent that the ordinance does not require any reporting for transactions involving business machines.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. REPORTING REQUIREMENTS

Sec. 1805.051. REPORT OF PURCHASE. (a) A secondhand dealer shall report each business machine that the dealer purchases, takes in trade, accepts for sale on consignment, or accepts for auction.

(b) The report required by Subsection (a) must:

- (1) meet the requirements of Section 1805.052; and
- (2) be made not later than 48 hours after the time the business machine is received.

(c) Before a business machine is offered for sale or exchange, a secondhand dealer shall notify each person intending to sell or exchange a business machine that, before the dealer may accept any of the person's business machines, the person must file with the secondhand dealer a list describing each of the person's machines to be accepted by the dealer.

(d) The list required by Subsection (c) must contain:

(1) the proposed seller's driver's license number or Department of Public Safety identification card number, as recorded by the dealer on physical presentation of the license or identification card by the seller;

(2) a complete and accurate description of each business machine, including its serial number or other identifying marks or symbols;

(3) the proposed seller's certification that the information is true and complete; and

(4) if the business machine is delivered to the secondhand dealer for sale or exchange at an auction, the make, year, model, color, and registration number of the vehicle in which the business machine is transported to the auction.

(e) The secondhand dealer shall:

- (1) provide, on demand, the list required by

Subsection (c) to any peace officer; and

(2) mail or deliver the list to the chief of police or the sheriff as provided by Section 1805.052 not later than 48 hours after the list is filed with the secondhand dealer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1805.052. FORM OF REPORT; FILING. (a) A report required by this chapter must comply with this section unless a similar report is required by another state law or a municipal ordinance, in which event the required report must comply with the applicable law or ordinance.

(b) Except as provided by Section 1805.053, a report required by this chapter must contain:

(1) the name and address of the seller of the business machine;

(2) a complete and accurate description of the business machine for which the report is made, including the serial number or other identifying marks or symbols;

(3) the seller's certification that the information is true and complete; and

(4) the seller's driver's license number or Department of Public Safety identification card number, as recorded by the dealer on physical presentation of the license or identification card by the seller.

(c) If a transaction regulated by this chapter occurs in a municipality, the original report required by this chapter and a copy must be submitted to the municipality's chief of police. If the transaction does not occur in a municipality or occurs in a municipality that does not maintain a police department, the original report and a copy must be submitted to the sheriff of the county in which the transaction occurred.

(d) The person submitting the report shall:

(1) submit the report on a form prescribed by the district attorney or person performing the duties of district attorney of the county in which the transaction occurs if no other state law or municipal ordinance requires a report of property acquired by a secondhand dealer as provided by Section 1805.051(a);

(2) retain a copy of the report in the person's place of business for three years from the date the report is filed; and

(3) make the report available for inspection by any peace officer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1805.053. SERIAL NUMBER. (a) A secondhand dealer may not knowingly purchase a business machine, and a person in the business of repairing or servicing business machines may not knowingly service or repair a business machine, if another person has tampered with a serial number on the machine.

(b) A secondhand dealer or person in the business of repairing or servicing business machines shall file a report not later than the second day after the date a business machine is brought to the secondhand dealer or person if a person has tampered with the serial number on the business machine that is sought to be sold, serviced, or repaired.

(c) The report must contain:

(1) a complete and accurate description of the business machine; and

(2) if available, the name and address of the person attempting to sell the machine or have it serviced or repaired.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1805.054. REQUIRED RETENTION OF PROPERTY. (a) If a report is required under this chapter, other than a report under Section 1805.053, a secondhand dealer may not dispose of the business machine that is the subject of the report before the 11th day after the date the report is filed unless:

(1) the peace officer to whom the report is submitted, for good cause, authorizes disposition of any property described in a specific report; or

(2) the secondhand dealer obtains the name, address, and description of the buyer of the property and retains this information.

(b) A secondhand dealer who retains certain information under Subsection (a)(2) shall make that information available for

inspection by any peace officer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. REQUIREMENTS FOR CERTAIN PURCHASES; PENALTY

Sec. 1805.101. PURCHASE FROM MINOR. (a) A secondhand dealer may not purchase a business machine from a person younger than 18 years of age unless the seller delivers to the dealer before the purchase a written statement from the seller's parent or legal guardian consenting to the transaction.

(b) The dealer shall retain the statement with the records required to be kept under this chapter. The dealer may destroy the statement when the business machine is sold or one year from the date of purchase, whichever date is later.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1805.102. PURCHASE AT TEMPORARY LOCATION OF SECONDHAND DEALER. (a) A secondhand dealer conducting business from a temporary location may not engage in the business of buying business machines unless the person has filed within a 12-month period at least 30 days before the date on which each purchase is made:

(1) a registration statement with the Department of Public Safety; and

(2) a copy of the registration statement with the local law enforcement agency of:

(A) the municipality in which the temporary location is located; or

(B) the county in which the temporary location is located if the temporary location is not located in a municipality.

(b) The statement must contain:

(1) the secondhand dealer's name and address;

(2) the business's location; and

(3) other relevant information required by the department.

(c) If the secondhand dealer is an association or corporation, the statement must set forth the name and address of:

- (1) each member of the association; or
- (2) each officer and director of the corporation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1805.103. CRIMINAL PENALTY. (a) A person commits an offense if the person:

- (1) disposes of property in violation of Section [1805.054](#);

- (2) purchases, services, or repairs a business machine in violation of Section [1805.053](#) or fails to timely file a report required by that section;

- (3) fails to obtain or retain a statement as required by Section [1805.101](#);

- (4) fails to make a report or record available for inspection by a peace officer as required by this chapter; or

- (5) is a secondhand dealer and:

- (A) fails to make a report as required by Section [1805.051](#); or

- (B) fails to file a registration statement as required by Section [1805.102](#).

(b) An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.