

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1637

Short Title: Modernize Precious Metal Business Permitting. (Public)

Sponsors: Representatives Samuelson and Dickson (Primary Sponsors).

Referred to: Judiciary III, if favorable, Finance.

May 7, 2009

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE THE RECORD KEEPING OF PRECIOUS METALS PURCHASES BY DEALERS, TO SUBJECT ALL DEALERS IN PRECIOUS METALS TO THE SAME LICENSING AND RECORD-KEEPING REQUIREMENTS BY REPEALING THE "TEN PERCENT OR LESS OF PURCHASES" EXEMPTION FROM DEALER PERMITTING AND REGULATION, TO INCREASE PRECIOUS METAL PERMITTING FEES, TO REQUIRE THAT A CRIMINAL RECORD CHECK BE CONDUCTED ON EMPLOYEES OF PRECIOUS METALS DEALERS, AND TO MAKE VARIOUS OTHER CHANGES TO THE PRECIOUS METALS PERMITTING STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-164 reads as rewritten:

"§ 66-164. Definitions.

~~Unless the context clearly indicates otherwise, the following words and phrases shall have the following meanings:~~ The following definitions apply in this Article:

- (1) ~~'Dealer' means a Dealer. – A person who engages in the business of purchasing purchases~~ precious metals from the ~~public public~~, other than by ~~an exempted transaction~~, in the form of jewelry, flatware, silver ~~services services~~, or other forms and holds himself ~~or herself~~ out to the public by signs, ~~advertising advertising~~, or other methods as engaging in such ~~purchases purchases~~, including any independent contractor purchasing precious metals under any arrangement in any department ~~store; store~~. ~~provided, however, that permanently located retail merchants shall be exempted insofar as they make~~ Exempted transactions include (i) purchases directly from manufacturers or wholesalers of precious metals by permanently located retail merchants for their inventories. inventories ~~Provided further, a permanently located retail merchant who is primarily engaged in the business of purchasing or acquiring jewelry, secondhand furniture, antique furniture, objects of art, artifacts, nonprecious metal collector items, antiques and other used household furnishings or fixtures for resale to the public, and who purchases precious metals, articles or items from the public only incidentally to his main business, may be exempted as provided in G.S. 66-166 if his total purchases or acquisitions of precious metals from the public constituted ten percent (10%) or less in dollar volume of the total purchases or acquisitions in dollar volume made by such merchant for all such secondhand items or articles in the 12-month period next preceding the date of application for an exemption under G.S. 66-166.~~



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1 ~~Provided further that pawnbrokers as defined in G.S. 91A-3 shall be~~
 2 ~~exempted insofar as they accept and (ii) pawns or pledges of items made of~~
 3 ~~precious metals under the provisions of Chapter 91A of the General Statutes~~
 4 ~~and made to pawnbrokers as defined in G.S. 91A-3.~~

5 (2) ~~'Local law enforcement agency' means: Local law enforcement agency. –~~
 6 ~~The term means the following, as applicable:~~

7 a. ~~The county police force; or force, if the dealer's business is located~~
 8 ~~within a county with a police force and outside the corporate limits of~~
 9 ~~a municipality.~~

10 b. ~~The county sheriff's office in a county with no county police force for~~
 11 ~~any business located outside the corporate limits of a municipality or~~
 12 ~~inside the corporate limits of a municipality having no municipal~~
 13 ~~police force. "Local law enforcement agency" means the municipal~~
 14 ~~police for any business located within the corporate limits of a~~
 15 ~~municipality having a police force. The municipal police force, if the~~
 16 ~~dealer's business is located within the corporate limits of a~~
 17 ~~municipality having a police force.~~

18 c. ~~The county sheriff's office of the county in which the dealer's~~
 19 ~~business is located, if neither sub-subdivision a. nor b. of this~~
 20 ~~subdivision applies.~~

21 (3) ~~'Precious metal' means gold, Precious metal. – Gold, silver, or platinum~~
 22 ~~platinum, as defined below, but excluding coins, medals, medallions, tokens,~~
 23 ~~numismatic items, art ingots, or art bars.~~

24 a. ~~'Gold' is defined as any Gold. – Any item or article containing ten~~
 25 ~~(10) karat karats of gold or more which may be in combination or~~
 26 ~~alloy with any other metal.~~

27 b. ~~'Silver' is defined as any Silver. – Any item or article containing 925~~
 28 ~~parts per thousand of silver which may be in combination or alloy~~
 29 ~~with any nonprecious metal or which is marked 'sterling'.~~

30 c. ~~'Platinum' is defined as any Platinum. – Any item or article~~
 31 ~~containing 900 parts per thousand or more of platinum which may be~~
 32 ~~in combination or alloy with any other metal.~~

33 ~~For purposes of this Article, 'precious metal' does not include coins, medals, medallions,~~
 34 ~~tokens, numismatic items, art ingots, or art bars."~~

35 **SECTION 2.** G.S. 66-165 reads as rewritten:

36 **"§ 66-165. Permits required.**

37 (a) Except as provided in subsection (c), it shall be unlawful for any person to engage
 38 as a dealer in the business of purchasing precious metals either as a separate business or in
 39 connection with other business operations without first obtaining a permit for the business from
 40 the local ~~law enforcement~~ law enforcement agency. The form of the permit and application
 41 therefor shall be as approved by the Department of Crime Control and Public Safety. The
 42 application shall be given under oath and shall be notarized. A 30-day waiting period from the
 43 date of filing of the application is required prior to initial issuance of a permit. A separate
 44 permit shall be issued for each location, place, or premises within the jurisdiction of the local
 45 ~~law enforcement~~ law enforcement agency which is used for the conduction of a precious metals
 46 business, and each permit shall designate the location, place or premises to which it applies.
 47 Such business shall not be conducted in any other place than that designated in the permit, and
 48 no business shall be conducted in a mobile home, trailer, camper, or other vehicle, or structure
 49 not permanently affixed to the ground or in any room customarily used for lodging in any hotel,
 50 motel, tourist court, or tourist home as defined in G.S. 105-61. The permit shall be posted in a
 51 prominent place on the designated premises. Permits shall be valid for a period of 12 months

1 from the date issued and may be renewed without a waiting period upon filing of an application
2 and payment of the annual fee. The annual fee for each dealer's permits within each jurisdiction
3 shall be ~~ten dollars (\$10.00)~~ two hundred fifty dollars (\$250.00) to provide for the
4 administrative costs of the local ~~law enforcement~~ law enforcement agency, including purchase
5 of required forms. The fee shall not be refundable even if the permits are denied or later
6 suspended or revoked. Such permits shall be in addition to and not in lieu of other business
7 licenses and are not transferable.

8 Any dealer applying to the local ~~law enforcement~~ law enforcement agency for a permit
9 shall furnish the local ~~law enforcement~~ law enforcement agency with the following
10 information:

- 11 (1) His full name, and any other names used by the applicant during the
12 preceding five years. In the case of a partnership, association, or corporation,
13 the applicant shall list any partnership, association, or corporate names used
14 during the preceding five years;
- 15 (2) Current address, and all addresses used by the applicant during the preceding
16 five years;
- 17 (3) Physical description;
- 18 (4) Age;
- 19 (5) Driver's license number, if any, and state of issuance;
- 20 (6) Recent photograph;
- 21 (7) Record of felony convictions;
- 22 (8) Record of other convictions during the preceding five years; and
- 23 (9) A full set of fingerprints of the applicant.

24 If the applicant for a dealer's permit is a partnership or association, all persons owning a ten
25 percent (10%) or more interest in the partnership or association shall comply with the
26 provisions of this subsection. Any such permits shall be issued in the name of the partnership or
27 association.

28 If the applicant for a dealer's permit is a corporation, each officer, director and stockholder
29 owning ten percent (10%) or more of the corporation's stock, of any class, shall comply with
30 the provisions of this subsection. Any such permits shall be issued in the name of the
31 corporation.

32 No permit shall be issued to an applicant who, within five years prior to the date of
33 application, has been convicted of a felony involving a crime of moral turpitude, or larceny, or
34 receiving stolen goods or of similar charges in any federal court or a court of this or any other
35 state. In the case of a partnership, association, or corporation, no permit shall be issued to any
36 applicant with an officer, partner, or director who has, within five years prior to the date of
37 application, been convicted of a felony involving a crime of moral turpitude, or larceny, or
38 receiving stolen goods or of similar charges in any federal court or a court of this or any other
39 state.

40 The Department of Justice may provide a criminal record check to the local
41 ~~law enforcement~~ law enforcement agency for a person who has applied for a permit through the
42 agency. The agency shall provide to the Department of Justice, along with the request, the
43 fingerprints of the applicant, any additional information required by the Department of Justice,
44 and a form signed by the applicant consenting to the check of the criminal record and to the use
45 of the fingerprints and other identifying information required by the State or national
46 repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation
47 for a search of the State's criminal history record file, and the State Bureau of Investigation
48 shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national
49 criminal history check. The agency shall keep all information pursuant to this subsection
50 privileged, in accordance with applicable State law and federal guidelines, and the information
51 shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

1 The Department of Justice may charge each applicant a fee for conducting the checks of
2 criminal history records authorized by this subsection.

3 (b) Every employee engaged in the precious metal business shall, within two days of
4 being so engaged, register his name and address with the local ~~law enforcement~~ law
5 enforcement agency and have his photograph taken by the agency. The employee shall also
6 consent to a criminal history check, which shall be performed by the local law enforcement
7 agency. A person who refuses to consent to a criminal history check shall not be employed by a
8 dealer required to be licensed under this section. A person who, within five years prior to the
9 date of application, has been convicted of a felony involving a crime of moral turpitude,
10 larceny, receiving stolen goods, or of similar charges shall not be employed by a dealer
11 required to be licensed under this section. The agency shall issue to him a certificate of
12 compliance with this section upon the applicant's payment of the sum of ~~three dollars~~
13 ~~(\$3.00)~~ ten dollars (\$10.00) to the agency. The permit shall be renewable annually for a three
14 dollar (\$3.00) fee and shall be posted in the work area of the permit holder.

15 (c) A special occasion permit authorizes the permittee to purchase precious metals as a
16 dealer participating in any trade shows, antique shows, and crafts shows conducted within the
17 State. A special occasion permit shall be issued by any local ~~law enforcement~~ law enforcement
18 agency; provided, however, that a permittee under subsection (a) shall apply for a special
19 occasion permit with the local ~~law enforcement~~ law enforcement agency which issued such
20 dealer's permit. An application for a permit shall be on a form as approved by the Department
21 of Crime Control and Public Safety and shall be given under oath and notarized. A 30-day
22 waiting period from the date of filing of the application is required prior to initial issuance of a
23 permit.

24 Any dealer applying to a local ~~law enforcement~~ law enforcement agency for a special
25 occasion permit shall furnish the local ~~law enforcement~~ law enforcement agency with the
26 information required in an application for a dealer's permit as set forth in (a).

27 If the applicant for a special occasion permit is a partnership or association, all persons
28 owning a ten percent (10%) or more interest in the partnership or association shall comply with
29 the provisions of this subsection. Any such permits shall be issued in the name of the
30 partnership or association.

31 If the applicant for a special occasion permit is a corporation, each officer, director and
32 stockholder owning ten percent (10%) or more of the corporation's stock, of any class, shall
33 comply with the provisions of this subsection. Any such permits shall be issued in the name of
34 the corporation.

35 No permit shall be issued to an applicant who, within five years prior to the date of
36 application, has been convicted of a felony involving a crime of moral turpitude, or larceny, or
37 receiving stolen goods or of similar charges in any federal court or a court of this or any other
38 state. In the case of a partnership, association, or corporation, no permit shall be issued to any
39 applicant with an officer, partner, or director who has, within five years prior to the date of
40 application, been convicted of a felony involving a crime of moral turpitude, or larceny, or
41 receiving stolen goods or of similar charges in any federal court or a court of this or any other
42 state.

43 The Department of Justice may provide a criminal record check to the local
44 ~~law enforcement~~ law enforcement agency for a person who has applied for a permit through the
45 agency. The agency shall provide to the Department of Justice, along with the request, the
46 fingerprints of the applicant, any additional information required by the Department of Justice,
47 and a form signed by the applicant consenting to the check of the criminal record and to the use
48 of the fingerprints and other identifying information required by the State or national
49 repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation
50 for a search of the State's criminal history record file, and the State Bureau of Investigation
51 shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national

1 criminal history check. The agency shall keep all information pursuant to this subsection
2 privileged, in accordance with applicable State law and federal guidelines, and the information
3 shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

4 The Department of Justice may charge each applicant a fee for conducting the checks of
5 criminal history records authorized by this subsection.

6 The fee for an application for a special occasion permit shall be ~~ten dollars (\$10.00)~~ two
7 hundred fifty dollars (\$250.00) to provide for the administrative cost of the local
8 ~~law enforcement~~ law enforcement agency including purchase of required forms. The fee shall
9 not be refundable even if the permit is denied or is later suspended or revoked. Such permits
10 shall be in addition to and not in lieu of other business licenses and are not transferable.

11 A special occasion permit shall be valid for 12 months from the date issued, unless earlier
12 surrendered, suspended, or revoked. Application for renewal of a permit for an additional 12
13 months shall be on a form as approved by the Department of Crime Control and Public Safety
14 and shall be accompanied by an application fee of ten dollars (\$10.00). A renewal fee shall not
15 be refundable.

16 Each special occasion permit shall be posted in a prominent place on the premises of any
17 show at which the permittee purchases precious metals."

18 **SECTION 3.** G.S. 66-166 reads as rewritten:

19 "**§ 66-166. Exemption from ~~permits~~. permits; record keeping under an exemption.**

20 (a) Any merchant claiming an exemption from the requirements of G.S. 66-165,
21 66-168, and 66-170 due to the percentage of his total business which constitutes precious
22 metals purchases shall file an application therefor with the local ~~law enforcement~~ law
23 enforcement agency at the same time as applications for dealers' permits are required to be filed
24 under the provisions of this Article. The application shall be upon a form approved by the
25 Department of Crime Control and Public Safety and shall contain as a minimum the following
26 information: the name, home address and business address of the applicant; the name and
27 location of the business at its permanent address; the primary nature of the business both as to
28 purchases and sales; the total dollar volume of purchases of precious metals during the
29 12-month period next preceding the date of application; the total dollar volume of all
30 secondhand goods purchased during the same period by the business; the percentage of
31 precious metals purchases or acquisitions to total purchases or acquisitions of secondhand
32 goods; and the date when the merchant commenced the business under which the exemption is
33 claimed. Such application shall be filed under the same oath as is required for a precious metals
34 dealer permit, shall be notarized, and shall be accompanied by a fee of five dollars (\$5.00),
35 which fee shall be retained by the local ~~law enforcement~~ law enforcement agency as cost for
36 administering claims for exemptions.

37 The application for exemption, if granted, shall be valid for a period of 12 months.
38 Thereafter, if the applicant seeks an exemption for the ensuing year he shall file an application
39 for exemption 30 days before the expiration of the prior exemption.

40 If in any calendar month the percentage of precious metals purchased by an exempted
41 merchant exceeds ten percent (10%) of his total purchases, he shall file notice thereof with the
42 local ~~law enforcement~~ law enforcement agency.

43 (b) Every merchant to whom an exemption has been issued pursuant to subsection (a)
44 of this section shall maintain a record of each precious metals purchase that includes a clear and
45 accurate description of the specific item or items purchased and the date of the transaction.
46 Each record entry shall be made at the time of the transaction. These records shall be kept
47 either (i) in a book or (ii) electronically.

48 The records kept by merchants to whom an exemption has been issued pursuant to
49 subsection (a) of this section shall be open at all reasonable times to inspection on the premises
50 by law enforcement agencies. If the merchant maintains a record book rather than electronic
51 records, the book shall not be destroyed until two years after the last recorded transaction in the

1 book. If the merchant maintains electronic records, a record entry shall not be deleted until two
2 years after a transaction and the merchant shall provide a hard copy of the records upon the
3 request of a law enforcement agency.

4 (c) Local law enforcement shall not issue an exemption under subsection (a) of this
5 section after September 30, 2009. Exemptions issued by local law enforcement under
6 subsection (a) of this section on or before September 30, 2009, shall remain in effect until 12
7 months after the date of issuance."

8 **SECTION 4.** G.S. 66-166 is repealed.

9 **SECTION 5.** G.S. 66-169 reads as rewritten:

10 **"§ 66-169. Records to be kept.**

11 Every dealer to whom a permit has been issued pursuant to G.S. 66-165 shall maintain a
12 tightly bound book or books (not loose leaf), with pages numbered in sequence, in which shall
13 be recorded, at the time of any purchase of precious metal, a serially numbered account and
14 description of the specific items purchased, including, if applicable, serially numbered records
15 of each and every precious metals transaction. Each serially numbered record shall be made at
16 the time of the transaction and shall contain a clear and accurate description of the transaction.
17 A valid description shall include each of the following applicable and available items of
18 information: the manufacturer's name, the model, the model number, the serial number, and any
19 engraved numbers or initials found on the items, items; the date of the transaction, transaction;
20 and the name, sex, race, residence, telephone number and driver's license number, if any,
21 number of the person selling the items purchased. Both the dealer and the seller shall sign the
22 record entry, purchased; and the signature of both the dealer and the seller. In the event the
23 seller cannot furnish his driver's license, valid, unexpired photographic identification in the
24 form of a drivers license, State-issued identification card, passport, or military identification
25 card bearing his photograph, card, the dealer shall require two forms of positive identification.

26 The serially numbered records required by this section shall be kept either (i) in a
27 paginated, bound book or set of books with pages numbered in sequence or (ii) in an electronic
28 database that prevents record deletion and tracks all modifications to records and that provides
29 for electronic signatures.

30 The record book records shall be open at all reasonable times to inspection on the premises
31 by law enforcement agencies law enforcement agencies, and an individual record shall not be
32 destroyed retained for at least two years after a transaction. If a dealer maintains a record book
33 rather than an electronic database, the book shall be retained until at least two years following
34 the last transaction which the record book reflects, recorded transaction. A copy of each serially
35 numbered record book entry shall be filed within 48 hours of the transaction in the office of the
36 local law enforcement law enforcement agency. Mailing the required copy to the local
37 law enforcement law enforcement agency within 48 hours of the transaction shall constitute
38 compliance with this section. If a dealer maintains an electronic database, these records may be
39 electronically reported to the local law enforcement agency by transmission over a computer
40 network, including the Internet, or by facsimile machine in a manner authorized by the local
41 law enforcement agency. Regardless of whether the local law enforcement agency allows
42 electronic reporting, a dealer shall provide a hard copy of records upon the request of a law
43 enforcement agency.

44 The files of local law enforcement law enforcement agencies which contain such copies of
45 record book entries records shall not be subject to inspection and examination as authorized by
46 G.S. 132-6. Any public official or employee who shall knowingly and willfully permit any
47 person to have access to or custody or possession of any portion of such files, unless the person
48 is one specifically authorized by the local law enforcement law enforcement agency to have
49 access thereto for purposes of law enforcement law enforcement investigation or civil or
50 criminal proceedings, shall be guilty of a Class 3 misdemeanor and upon conviction shall only

1 be ~~fin~~ed, in the discretion of the ~~court~~ court, ~~but not in excess of~~ up to five hundred
2 dollars (\$500.00).

3 ~~Every merchant to whom an exemption has been issued pursuant to G.S. 66-166 shall~~
4 ~~maintain a book in which shall be recorded, at the time of any purchase of precious metal, a~~
5 ~~description of the specific items purchased and the date of the transaction. This book shall be~~
6 ~~open at all reasonable times to inspection on the premises by law enforcement agencies and~~
7 ~~shall not be destroyed until two years following the last transaction which the record book~~
8 ~~reflects."~~

9 **SECTION 6.** G.S. 66-170 reads as rewritten:

10 "**§ 66-170. Items not to be modified.**

11 No item included in a dealer purchase shall be sold, traded or otherwise disposed of,
12 melted, cut or otherwise changed in form nor shall any such item be removed from the licensed
13 premises ~~for a period of five days from the date the purchase was made, before the earlier of~~
14 seven days after the date the purchase ticket record is electronically reported in accordance with
15 G.S. 66-169 or 30 days after the transaction."

16 **SECTION 7.** Article 25 of Chapter 66 of the General Statutes is amended by
17 adding a new section to read:

18 "**§ 66-174. County and municipal ordinances.**

19 Each county and city may by ordinance adopt additional rules and regulations consistent
20 with and in furtherance of the provisions of this Article, including a requirement that applicants
21 for a permit required by this Article consent to be fingerprinted or produce additional
22 identifying information."

23 **SECTION 8.** Sections 1 and 2 of this act become effective October 1, 2009.
24 Section 4 of this act becomes effective October 1, 2012. The remainder of this act is effective
25 when it becomes law.