

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1637
Committee Substitute Favorable 7/6/09
Committee Substitute #2 Favorable 7/20/09
Senate Commerce Committee Substitute Adopted 8/4/09

Short Title: Modernize Precious Metal Business Permitting.

(Public)

Sponsors:

Referred to:

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 SIMILAR RECORD-KEEPING REQUIREMENTS, TO INCREASE PRECIOUS METALS PERMITTING FEES, TO REQUIRE THAT A CRIMINAL HISTORY 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 purchases directly from manufacturers or wholesalers of precious metals for their 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, antiquities 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. Provided further that pawnbrokers as defined in G.S. 91A-3 shall be exempted insofar as they~~



~~accept~~ An exempted transaction is one that is (i) not considered in determining whether a person is a dealer under this Article and (ii) not subject to the requirements of this Article, even if it is entered into by a person otherwise defined and regulated as a dealer. Exempted transactions are:

- a. Purchases directly from manufacturers or wholesalers of precious metals by permanently located retail merchants for their inventories.
- b. ~~pawns or pledges~~ Pawns, pledges, or purchases of items made of precious metals under the provisions of Chapter 91A of the General Statutes. ~~metals, if the transaction is entered into by a licensed pawnbroker and the transaction is regulated under the provisions of Chapter 91A of the General Statutes.~~
- c. The acquisition of precious metals by a permanently located retail merchant through barter or exchange for other items sold in the ordinary course of the merchant's business, provided that the seller does not receive, as part of the transaction, any sum of money or any gift card or stored-value card, unless the card is redeemable only at that merchant's business.

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

- a. ~~The county police force; or force, if the dealer's business is located within a county with a county police force and outside the corporate limits of a municipality.~~
- b. ~~The county sheriff's office in a county with no county police force for any business located outside the corporate limits of a municipality or inside the corporate limits of a municipality having no municipal police force. "Local law enforcement agency" means the municipal police for any business located within the corporate limits of a municipality having a police force. The municipal police force, if the dealer's business is located within the corporate limits of a municipality having a police force.~~
- c. The county sheriff's office of the county in which the dealer's business is located, if neither sub-subdivision a. nor b. of this subdivision applies.

(3) ~~"Precious metal" means gold, platinum, or silver, or platinum, silver, or platinum, or palladium, as defined below, but excluding coins, medals, medallions, tokens, numismatic items, art ingots, or art bars.~~

- a. ~~"Gold" is defined as any Gold. – Any item or article containing ten (10) 10 karat karats of gold or more which may be in combination or alloy with any other metal.~~
- b. ~~"Silver" is defined as any Silver. – Any item or article containing 925 parts per thousand of silver which may be in combination or alloy with any nonprecious metal or which is marked 'sterling'.~~
- c. ~~"Platinum" is defined as any Platinum. – Any item or article containing 900 parts per thousand or more of platinum which may be in combination or alloy with any other metal.~~
- d. Palladium. – Any item or article containing 950 parts per thousand or more of palladium which may be in combination or alloy with any other metal.

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

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

2 "**§ 66-165. ~~Permits required.~~Permits.**

3 (a) Dealer Permit. – Except as provided in subsection (c) of this section, it ~~shall be is~~
4 unlawful for any person to engage as a dealer in the business of purchasing precious metals
5 either as a separate business or in connection with other business operations without first
6 obtaining a permit for the business from the local ~~law enforcement~~ law enforcement agency.
7 ~~The form of the permit and application therefor shall be as approved by the~~ Department of
8 Crime Control and Public ~~Safety.~~ Safety shall approve the forms for both the application and
9 the permit. The application shall be given under oath and shall be notarized. A 30-day waiting
10 period from the date of filing of the application is required prior to initial issuance of a permit.
11 A separate permit shall be issued for each location, place, or premises within the jurisdiction of
12 the local ~~law enforcement~~ law enforcement agency which is used for ~~the conduction of~~
13 conducting a precious metals business, and each permit shall designate the location, place or
14 premises to which it applies. ~~Such~~ No business shall ~~not~~ be conducted in ~~any other a place other~~
15 than that designated in the permit, ~~and no business shall be conducted or~~ in a mobile home,
16 trailer, camper, or other vehicle, or structure not permanently affixed to the ground or in any
17 room customarily used for lodging in any hotel, motel, tourist court, or tourist ~~home as defined~~
18 in G.S. 105-61.home. The permit shall be posted in a prominent place on the designated
19 premises. Permits shall be valid for a period of 12 months from the date issued and may be
20 renewed without a waiting period upon filing of an application and payment of the annual fee.
21 The annual fee for ~~each dealer's permits a permit~~ within each jurisdiction ~~shall be ten dollars~~
22 (\$10.00)is one hundred eighty dollars (\$180.00) to provide for the administrative costs of the
23 local ~~law enforcement~~ law enforcement agency, including the purchase of required forms.
24 forms and the cost of conducting the criminal history record check of the applicant. The fee
25 ~~shall not be is not~~ refundable even if the permits are denied or later suspended or revoked. ~~Such~~
26 ~~permits shall be~~ A permit issued under this section is in addition to and not in lieu of other
27 business licenses and ~~are is~~ not transferable. No person other than the dealer named on the
28 permit and that dealer's employees may engage in the business of purchasing precious metals
29 under the authority of the permit.

30 Any dealer applying to the local ~~law enforcement~~ law enforcement agency for a permit
31 shall furnish the local ~~law enforcement~~ law enforcement agency with the following
32 information:

- 33 (1) ~~His~~ The applicant's full name, and any other names used by the applicant
34 during the preceding five years. In the case of a partnership, association, or
35 corporation, the applicant shall list any partnership, association, or corporate
36 names used during the preceding five ~~years;~~ years.
- 37 (2) Current address, and all addresses used by the applicant during the preceding
38 five ~~years;~~ years.
- 39 (3) Physical ~~description;~~ description.
- 40 (4) ~~Age;~~ Age.
- 41 (5) Driver's license number, if any, and state of ~~issuance;~~ issuance.
- 42 (6) Recent ~~photograph;~~ photograph.
- 43 (7) Record of felony ~~convictions;~~ convictions.
- 44 (8) Record of other convictions during the preceding five ~~years;~~ and years.
- 45 (9) A full set of fingerprints of the applicant.

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

50 If the applicant for a dealer's permit is a corporation, each officer, director and stockholder
51 owning ten percent (10%) or more of the corporation's stock, of any class, shall comply with

1 the provisions of this subsection. ~~Any such~~ These permits shall be issued in the name of the
2 corporation.

3 No permit shall be issued to an applicant ~~who, within five years prior to the date of~~
4 ~~application, who~~ has been convicted of a felony involving a crime of moral turpitude, or
5 larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or
6 any other ~~state~~ state, unless the applicant has had his or her rights of citizenship restored
7 pursuant to Chapter 13 of the General Statutes for five years or longer immediately preceding
8 the date of application. In the case of a partnership, association, or corporation, no permit shall
9 be issued to any applicant with an officer, partner, or director who ~~has, within five years prior~~
10 ~~to the date of application,~~ has been convicted of a felony involving a crime of moral turpitude,
11 or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this
12 or any other state, unless that person has had his or her rights of citizenship restored
13 pursuant to Chapter 13 of the General Statutes for five years or longer immediately preceding
14 the date of application.

15 The Department of Justice may provide a criminal history record check to the local
16 ~~law enforcement~~ law enforcement agency for a person who has applied for a permit through the
17 agency. The agency shall provide to the Department of Justice, along with the request, the
18 fingerprints of the applicant, any additional information required by the Department of Justice,
19 and a form signed by the applicant consenting to the check of the criminal record and to the use
20 of the fingerprints and other identifying information required by the State or national
21 repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation
22 for a search of the State's criminal history record file, and the State Bureau of Investigation
23 shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national
24 criminal history record check. The agency shall keep all information pursuant to this subsection
25 privileged, in accordance with applicable State law and federal guidelines, and the information
26 shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

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

29 (b) Employee Requirements. – Every employee engaged in the precious ~~metal~~ metals
30 purchasing business shall, within two business days of being so engaged, register his or her
31 name and address with the local ~~law enforcement~~ law enforcement agency and have his or her
32 photograph taken by the agency. The employee also shall consent to a criminal history record
33 check, which shall be performed by the local law enforcement agency. A person who refuses to
34 consent to a criminal history record check shall not be employed by a dealer required to be
35 licensed under this section. A person who has been convicted of a felony involving a crime of
36 moral turpitude, larceny, receiving stolen goods, or of similar charges shall not be employed by
37 a dealer required to be licensed under this section, unless the person has had his or her rights of
38 citizenship restored pursuant to Chapter 13 of the General Statutes for five years or longer
39 immediately preceding the date of registration. The agency shall issue to ~~him~~ the employee a
40 certificate of compliance with this section upon the applicant's payment of the sum of ~~three~~
41 ~~dollars~~ (\$3.00)ten dollars (\$10.00) to the agency. The ~~permit~~ certificate shall be renewed
42 annually for a three-dollar (\$3.00) fee and shall be posted in the work area of the permit
43 holder.registered employee. An employee is not subject to the requirements of this subsection if
44 the employee is engaged in the precious metals purchasing business only incidentally to his or
45 her main job responsibilities, and each precious metals transaction with which the employee is
46 involved is overseen by a licensed dealer or registered employee. All records of transactions
47 must be signed by the licensed dealer or registered employee at the time of the transaction, as
48 required under G.S. 66-169(a).

49 The Department of Justice may provide a criminal history record check to the local law
50 enforcement agency for an employee engaged in the precious metals business. The agency shall
51 provide to the Department of Justice, along with the request, the fingerprints of the employee,

1 any additional information required by the Department of Justice, and a form signed by the
2 employee consenting to the check of the criminal record and to the use of the fingerprints and
3 other identifying information required by the State or national repositories. The employee's
4 fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's
5 criminal history record file, and the State Bureau of Investigation shall forward a set of the
6 fingerprints to the Federal Bureau of Investigation for a national criminal history record check.
7 The agency shall keep all information pursuant to this subsection privileged, in accordance with
8 applicable State law and federal guidelines, and the information shall be confidential and shall
9 not be a public record under Chapter 132 of the General Statutes.

10 The Department of Justice may charge each employee a fee for conducting the checks of
11 criminal history records authorized by this subsection.

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

22 Any dealer applying to a local ~~law enforcement~~ law enforcement agency for a special
23 occasion permit shall furnish the local ~~law enforcement~~ law enforcement agency with the
24 information required in an application for a dealer's permit as set forth in ~~(a)~~ subsection (a) of
25 this section. In addition, the applicant shall provide a physical address where any item included
26 in a dealer purchase will be held for the period required under G.S. 66-170. The physical
27 address shall be the location where the purchase was made, unless another physical address
28 within the law enforcement jurisdiction where the purchase was made is approved by the law
29 enforcement agency that issues the permit. The items shall be available at all reasonable times
30 for inspection on the premises by law enforcement agencies.

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

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

39 No permit shall be issued to an applicant ~~who, within five years prior to the date of~~
40 ~~application, who~~ has been convicted of a felony involving a crime of moral turpitude, or
41 larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or
42 any other state-state, unless the applicant has had his or her rights of citizenship restored
43 pursuant to Chapter 13 of the General Statutes for five years or longer immediately preceding
44 the date of application. In the case of a partnership, association, or corporation, no permit shall
45 be issued to any applicant with an officer, partner, or director who ~~has, within five years prior~~
46 ~~to the date of application,~~ has been convicted of a felony involving a crime of moral turpitude,
47 or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this
48 or any other state-state, unless that person has had his or her rights of citizenship restored
49 pursuant to Chapter 13 of the General Statutes for five years or longer immediately preceding
50 the date of application.

1 The Department of Justice may provide a criminal history record check to the local
2 ~~law enforcement~~ law enforcement agency for a person who has applied for a permit through the
3 agency. The agency shall provide to the Department of Justice, along with the request, the
4 fingerprints of the applicant, any additional information required by the Department of Justice,
5 and a form signed by the applicant consenting to the check of the criminal record and to the use
6 of the fingerprints and other identifying information required by the State or national
7 repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation
8 for a search of the State's criminal history record file, and the State Bureau of Investigation
9 shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national
10 criminal history record check. The agency shall keep all information pursuant to this subsection
11 privileged, in accordance with applicable State law and federal guidelines, and the information
12 shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

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

15 The filing fee for an application for a special occasion permit ~~application shall be ten~~
16 ~~dollars (\$10.00) is one hundred eighty dollars (\$180.00)~~ to provide for the administrative cost
17 of the local ~~law enforcement~~ law enforcement agency including purchase of required ~~forms.~~
18 forms and the cost of conducting the criminal history record check of the applicant. The fee
19 ~~shall not be~~ is not refundable even if the permit is denied or is later suspended or revoked. ~~Such~~
20 ~~permits shall be~~ A special occasion permit is in addition to and not in lieu of other business
21 licenses and ~~are~~ is not transferable. No person other than the dealer named on the permit and
22 that dealer's employees may engage in the business of purchasing precious metals under the
23 authority of the permit.

24 A special occasion permit ~~shall be~~ is valid for 12 months from the date issued, unless earlier
25 surrendered, suspended, or revoked. Application for renewal of a permit for an additional 12
26 months shall be on a form ~~as approved by the Department of Crime Control and Public Safety~~
27 and shall be accompanied by ~~an application a nonrefundable renewal fee of ten dollars~~
28 ~~(\$10.00) one hundred eighty dollars (\$180.00). A renewal fee shall not be refundable.~~

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

31 **SECTION 3.** G.S. 66-166 is repealed.

32 **SECTION 4.** G.S. 66-169 reads as rewritten:

33 "**§ 66-169. Records to be kept.**

34 (a) Every dealer to whom a permit has been issued pursuant to G.S. 66-165 shall
35 maintain a ~~tightly bound book or books (not loose leaf), with pages numbered in sequence, in~~
36 ~~which shall be recorded, at the time of any purchase of precious metal, a serially numbered~~
37 ~~account and description of the specific items purchased, including, if applicable, consecutively~~
38 numbered records of each precious metals transaction. Each consecutively numbered record
39 shall be made at the time of the transaction and shall contain a clear and accurate description of
40 the transaction. A valid description shall include each of the following applicable and available
41 items of information: the manufacturer's name, the model, the model number, the serial
42 number, and any engraved numbers or initials found on the ~~items,~~ items; the date of the
43 ~~transaction,~~ transaction; and the name, sex, race, residence, telephone number and driver's
44 license ~~number, if any,~~ number of the person selling the items ~~purchased. Both the dealer and~~
45 ~~the seller shall sign the record entry.~~ purchased; and the signature of both the dealer or
46 registered employee and the seller. In the event the seller cannot furnish ~~his driver's license,~~
47 valid, unexpired photographic identification in the form of a drivers license, State-issued
48 identification card, passport, or military identification eard bearing his photograph, card, the
49 dealer shall require two forms of positive identification.

50 (b) The consecutively numbered records required by this section shall be kept either (i)
51 in a paginated, bound book or set of books with pages numbered in sequence or (ii) in an

1 electronic database that prevents record deletion, tracks all modifications to records, and
2 provides for electronic signatures.

3 (c) ~~The record book records~~ shall be open at all reasonable times to inspection on the
4 premises by ~~law enforcement agencies~~ law enforcement agencies, and an individual record
5 shall ~~not be destroyed~~ retained for at least two years after a transaction. If a dealer maintains a
6 record book rather than an electronic database, the book shall be retained until at least two
7 years following the last transaction which the record book reflects. ~~recorded transaction.~~

8 (d) A copy of each consecutively numbered record book entry shall be filed within 48
9 hours of the transaction in the office of the local ~~law enforcement~~ law enforcement agency.
10 ~~Mailing the required copy to the local law enforcement agency within 48 hours shall constitute~~
11 ~~compliance with this section.~~ Records shall be filed in the manner authorized by the local law
12 enforcement agency, which may include reporting electronically by transmission over a
13 computer network, by facsimile machine, or by hand delivering hard copies to the local law
14 enforcement agency. In any case where a technological failure prevents a dealer from reporting
15 electronically or by facsimile, the dealer shall have the option of hand delivering a hard copy of
16 the record to the local law enforcement agency. Regardless of the manner in which the local
17 law enforcement agency allows reporting, a dealer shall provide a hard copy of records upon
18 the request of a law enforcement agency.

19 (e) The files of local ~~law enforcement~~ law enforcement agencies ~~which contain such~~
20 ~~that contain~~ copies of ~~record book entries~~ records shall not be subject to inspection and
21 examination as authorized by G.S. 132-6. Any public official or employee who shall knowingly
22 and willfully permit any person to have access to or custody or possession of any portion of
23 such files, unless the person is one specifically authorized by the local ~~law enforcement~~ law
24 enforcement agency to have access ~~thereto~~ for purposes of ~~law enforcement~~ law enforcement
25 investigation or civil or criminal proceedings, shall be guilty of a Class 3 misdemeanor and
26 upon conviction shall only be fined up to five hundred dollars (\$500.00) in the discretion of the
27 ~~court but not in excess of five hundred dollars (\$500.00).~~

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

34 **SECTION 5.** G.S. 66-170 reads as rewritten:

35 "**§ 66-170. Items not to be modified.**

36 No item included in a dealer purchase shall be sold, traded or otherwise disposed of,
37 melted, cut or otherwise changed in form nor shall any ~~such~~ item be removed from the licensed
38 ~~premises~~ premises, or other location specified on the application for a special occasion permit,
39 for a period of ~~five~~ seven days from the date the ~~purchase was made~~ transaction was reported in
40 accordance with G.S. 66-169."

41 **SECTION 6.** This act becomes effective October 1, 2009. No dealer who is
42 required to be licensed under this act, but who was not required to be licensed prior to the
43 effective date of this act, shall be guilty of engaging as a dealer in the business of purchasing
44 precious metals without a license during the period between October 1, 2009, and January 1,
45 2010.