

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1637
Committee Substitute Favorable 7/6/09

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, 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. 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



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1 subject to the requirements of this Article, even if it is entered into by a
 2 person otherwise defined and regulated as a dealer. Exempted transactions
 3 include:

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

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

- 19 a. ~~The county police force; or force, if the dealer's business is located~~
 20 ~~within a county with a county police force and outside the corporate~~
 21 ~~limits of a municipality.~~
 22 b. ~~The county sheriff's office in a county with no county police force for~~
 23 ~~any business located outside the corporate limits of a municipality or~~
 24 ~~inside the corporate limits of a municipality having no municipal~~
 25 ~~police force. "Local law enforcement agency" means the municipal~~
 26 ~~police for any business located within the corporate limits of a~~
 27 ~~municipality having a police force. The municipal police force, if the~~
 28 ~~dealer's business is located within the corporate limits of a~~
 29 ~~municipality having a police force.~~
 30 c. The county sheriff's office of the county in which the dealer's
 31 business is located, if neither sub-subdivision a. nor b. of this
 32 subdivision applies.

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

- 36 a. ~~'Gold' is defined as any Gold. – Any item or article containing ten~~
 37 ~~(10) 10 karat karats of gold or more which may be in combination or~~
 38 ~~alloy with any other metal.~~
 39 b. ~~'Silver' is defined as any Silver. – Any item or article containing 925~~
 40 ~~parts per thousand of silver which may be in combination or alloy~~
 41 ~~with any nonprecious metal or which is marked 'sterling'.~~
 42 c. ~~'Platinum' is defined as any Platinum. – Any item or article~~
 43 ~~containing 900 parts per thousand or more of platinum which may be~~
 44 ~~in combination or alloy with any other metal.~~

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

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

48 **"§ 66-165. Permits required.**

49 (a) Except as provided in subsection (c) of this section, it shall be unlawful for any
 50 person to engage as a dealer in the business of purchasing precious metals either as a separate
 51 business or in connection with other business operations without first obtaining a permit for the

1 business from the local ~~law enforcement~~ law enforcement agency. The form of the permit and
2 application therefor shall be as approved by the Department of Crime Control and Public
3 Safety. The application shall be given under oath and shall be notarized. A 30-day waiting
4 period from the date of filing of the application is required prior to initial issuance of a permit.
5 A separate permit shall be issued for each location, place, or premises within the jurisdiction of
6 the local ~~law enforcement~~ law enforcement agency which is used for the conduction of a
7 precious metals business, and each permit shall designate the location, place or premises to
8 which it applies. Such business shall not be conducted in any other place than that designated in
9 the permit, and no business shall be conducted in a mobile home, trailer, camper, or other
10 vehicle, or structure not permanently affixed to the ground or in any room customarily used for
11 lodging in any hotel, motel, tourist court, or tourist ~~home as defined in G.S. 105-61-home~~. The
12 permit shall be posted in a prominent place on the designated premises. Permits shall be valid
13 for a period of 12 months from the date issued and may be renewed without a waiting period
14 upon filing of an application and payment of the annual fee. The annual fee for each dealer's
15 permits within each jurisdiction shall be ~~ten dollars (\$10.00)~~ two hundred fifty dollars (\$250.00)
16 to provide for the administrative costs of the local ~~law enforcement~~ law enforcement agency,
17 including purchase of required forms. The fee shall not be refundable even if the permits are
18 denied or later suspended or revoked. Such permits shall be in addition to and not in lieu of
19 other business licenses and are not transferable. No person, other than the dealer named on the
20 permit and that dealer's employees, may engage in the business of purchasing precious metals
21 under the authority of the permit.

22 Any dealer applying to the local ~~law enforcement~~ law enforcement agency for a permit
23 shall furnish the local ~~law enforcement~~ law enforcement agency with the following
24 information:

- 25 (1) His or her full name, and any other names used by the applicant during the
26 preceding five years. In the case of a partnership, association, or corporation,
27 the applicant shall list any partnership, association, or corporate names used
28 during the preceding five years;
- 29 (2) Current address, and all addresses used by the applicant during the preceding
30 five years;
- 31 (3) Physical description;
- 32 (4) Age;
- 33 (5) Driver's license number, if any, and state of issuance;
- 34 (6) Recent photograph;
- 35 (7) Record of felony convictions;
- 36 (8) Record of other convictions during the preceding five years; and
- 37 (9) A full set of fingerprints of the applicant.

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

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

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

1 be issued to any applicant with an officer, partner, or director who ~~has, within five years prior~~
2 ~~to the date of application,~~ has been convicted of a felony involving a crime of moral turpitude,
3 or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this
4 or any other ~~state-state,~~ unless that person has had his or her rights of citizenship restored
5 pursuant to Chapter 13 of the General Statutes for five years or longer immediately preceding
6 the date of application.

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

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

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

40 (c) A special occasion permit authorizes the permittee to purchase precious metals as a
41 dealer participating in any trade shows, antique shows, and crafts shows conducted within the
42 State. A special occasion permit shall be issued by any local ~~law enforcement~~ law enforcement
43 agency; provided, however, that a permittee under subsection (a) of this section shall apply for
44 a special occasion permit with the local ~~law enforcement~~ law enforcement agency which issued
45 such dealer's permit. An application for a permit shall be on a form as approved by the
46 Department of Crime Control and Public Safety and shall be given under oath and notarized. A
47 30-day waiting period from the date of filing of the application is required prior to initial
48 issuance of a permit.

49 Any dealer applying to a local ~~law enforcement~~ law enforcement agency for a special
50 occasion permit shall furnish the local ~~law enforcement~~ law enforcement agency with the
51 information required in an application for a dealer's permit as set forth in ~~(a).~~ subsection (a) of

1 this section. In addition, the applicant shall provide a physical address in this State where any
2 item included in a dealer purchase will be held for the period required under G.S. 66-170. The
3 items shall be available at all reasonable times for inspection on the premises by law
4 enforcement agencies.

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

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

13 No permit shall be issued to an applicant ~~who, within five years prior to the date of~~
14 ~~application, who~~ has been convicted of a felony involving a crime of moral turpitude, or
15 larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or
16 any other state-state, unless the applicant has had his or her rights of citizenship restored
17 pursuant to Chapter 13 of the General Statutes for five years or longer immediately preceding
18 the date of application. In the case of a partnership, association, or corporation, no permit shall
19 be issued to any applicant with an officer, partner, or director who ~~has, within five years prior~~
20 ~~to the date of application, has~~ been convicted of a felony involving a crime of moral turpitude,
21 or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this
22 or any other state-state, unless that person has had his or her rights of citizenship restored
23 pursuant to Chapter 13 of the General Statutes for five years or longer immediately preceding
24 the date of application.

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

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

39 The fee for an application for a special occasion permit shall be ~~ten dollars (\$10.00)~~ two
40 hundred fifty dollars (\$250.00) to provide for the administrative cost of the local
41 ~~law enforcement~~ law enforcement agency including purchase of required forms. The fee shall
42 not be refundable even if the permit is denied or is later suspended or revoked. Such permits
43 shall be in addition to and not in lieu of other business licenses and are not transferable. No
44 person, other than the dealer named on the permit and that dealer's employees, may engage in
45 the business of purchasing precious metals under the authority of the permit.

46 A special occasion permit shall be valid for 12 months from the date issued, unless earlier
47 surrendered, suspended, or revoked. Application for renewal of a permit for an additional 12
48 months shall be on a form as approved by the Department of Crime Control and Public Safety
49 and shall be accompanied by an application fee of ~~ten dollars (\$10.00)~~ two hundred fifty dollars
50 (\$250.00). A renewal fee shall not be refundable.

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

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

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

5 **"§ 66-169. Records to be kept.**

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

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

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

31 (d) A copy of each consecutively numbered record book entry shall be filed within 48
32 hours of the transaction in the office of the local law enforcement law enforcement agency.
33 Mailing the required copy to the local law enforcement agency within 48 hours shall constitute
34 compliance with this section. Records shall be filed in the manner authorized by the local law
35 enforcement agency, which may include reporting electronically by transmission over a
36 computer network, by facsimile machine, or by hand delivering hard copies to the local law
37 enforcement agency. In any case where a technological failure prevents a dealer from reporting
38 electronically or by facsimile, the dealer shall have the option of hand delivering a hard copy of
39 the record to the local law enforcement agency. Regardless of the manner in which the local
40 law enforcement agency allows reporting, a dealer shall provide a hard copy of records upon
41 the request of a law enforcement agency.

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

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

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

8 "**§ 66-170. Items not to be modified.**

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

14 **SECTION 6.** This act becomes effective October 1, 2009. No dealer who is
15 required to be licensed under this act, but who was not required to be licensed prior to the
16 effective date of this act, shall be guilty of engaging as a dealer in the business of purchasing
17 precious metals without a license during the period between October 1, 2009, and January 1,
18 2010.