

1 S.308

2 Introduced by Senators Baruth, Collins, and Nitka

3 Referred to Committee on

4 Date:

5 Subject: Commerce and trade; professional regulation; civil and criminal
6 liability; precious metal dealers

7 Statement of purpose of bill as introduced: This bill proposes to create a
8 certification process and regulatory framework for precious metal dealers.

9 An act relating to regulating precious metal dealers

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 Sec. 1. 9 V.S.A. § 3865 is amended to read:

12 § 3865. RECORDS OF A PAWNBROKER OR SECONDHAND DEALER

13 (a) In each year a pawnbroker ~~or secondhand dealer resells~~ makes loans or
14 advances totaling over \$2,500.00 of for items pawned, pledged, or sold to
15 pledged or deposited with the pawnbroker ~~or secondhand dealer~~, he or she
16 shall maintain the following records for each transaction in that year:

17 (1) a legible statement written at the time of the transaction stating the
18 amount of money lent or ~~paid~~ advanced for the items ~~pawned, pledged, or sold,~~
19 the time of the transaction, and the rate of interest to be paid ~~on the loan,~~
20 as applicable;

1 (2) a legible statement of the name, current address, telephone number,
2 and vehicle license number of the person ~~pawning, pledging, or selling~~
3 depositing the items;

4 (3) a legible written description and photograph, or alternatively a video,
5 of the items ~~pawned, pledged, or sold~~;

6 (4) a photocopy of a government-issued identification card issued to the
7 person ~~pawning, pledging, or selling~~ depositing the items, if available.

8 (b) At all reasonable times, the records required under subsection (a) of this
9 section shall be open to the inspection of law enforcement. A law enforcement
10 agency shall make a reasonable effort to notify a ~~dealer~~ pawnbroker before
11 conducting an inspection pursuant to this section unless providing notice
12 would interfere with a criminal investigation or any other legitimate law
13 enforcement purpose.

14 (c) ~~In this section:~~

15 (1) ~~“Precious metal” means gold, silver, platinum, or palladium.~~

16 (2) ~~“Secondhand dealer” means a person engaged in the business of~~
17 ~~purchasing used or estate precious metal, coins, jewelry, or similar items for~~
18 ~~the purpose of resale. [Repealed.]~~

19 Sec. 2. REPEAL

20 9 V.S.A. § 3872 (retention of goods) is repealed.

1 Sec. 3. 9 V.S.A. chapter 97A is added to read:

2 CHAPTER 97A. PRECIOUS METAL DEALERS

3 § 3881. DEFINITIONS

4 As used in this chapter:

5 (1) “Antique” means an item, including a collectible coin, that is:

6 (A) collected or desired due to age, rarity, condition, or other similar
7 unique feature;

8 (B) purchased for the purpose of resale; and

9 (C) sold in the same unique form or condition as when it was
10 purchased, and not for scrap.

11 (2) “Criminal history record” means all information documenting a
12 natural person’s contact with the criminal justice system, including data
13 regarding identification, arrest or citation, arraignment, judicial disposition,
14 custody, and supervision.

15 (3) “Disqualifying offense” means:

16 (A) a felony under:

17 (i) 13 V.S.A. chapter 47 (fraud);

18 (ii) 13 V.S.A. chapter 49 (fraud in commercial transaction);

19 (iii) 13 V.S.A. chapter 57 (larceny and embezzlement); or

20 (iv) 13 V.S.A. chapter 84 (possession and control of regulated
21 drugs); or

1 (B) a violent felony under 18 V.S.A. § 4474g(e); or

2 (C) one of the following misdemeanors, if a conviction for the

3 misdemeanor occurred within the ten years preceding the date on which the

4 convicted person applies for a certification to do business as a precious

5 metal dealer:

6 (i) petit larceny in violation of 13 V.S.A. § 2502;

7 (ii) receipt of stolen property in violation of 13 V.S.A. § 2561;

8 (iii) false pretenses or tokens in violation of 13 V.S.A. § 2002; or

9 (iv) false tokens in violation of 13 V.S.A. § 2003; or

10 (D) a violation of this chapter punishable under subdivision

11 3890(c)(2) of this title.

12 (4) “Engaged in the business of purchasing or selling precious metal”

13 means conducting a regular course of trade in precious metal with retail buyers

14 or sellers, and does not include:

15 (A) retail trade in new precious metal;

16 (B) trade in precious metal that is exclusively wholesale, including

17 business-to-business transactions for precious metal used in medical and dental

18 applications; or

19 (C) trade in precious metal commodities for the purpose of

20 investment, including bullion, commodities funds, or commodities futures.

1 (5) “Precious metal” means used gold, silver, platinum, palladium, coins
2 sold for more than face value, jewelry, or similar items, but does not include
3 an antique.

4 (6)(A) “Precious metal dealer” means a person who:

5 (i) has a physical presence in this State, whether temporary
6 or permanent;

7 (ii) is engaged in the business of purchasing or selling precious
8 metal; and

9 (iii) purchases or sells \$1,000.00 or more of precious metal in a
10 consecutive 12-month period.

11 (B) “Precious metal dealer” does not include a charitable
12 organization that is qualified as tax exempt under 26 U.S.C. § 501.

13 (7) “Principal” means a natural person who is a director, officer,
14 member, manager, partner, or creditor.

15 § 3882. CERTIFICATION REQUIRED

16 (a) Certification from the Office of Professional Regulation within the
17 Office of the Secretary of State is required to conduct business as a precious
18 metal dealer in this State.

19 (b) An application for certification shall include for each applicant and
20 its principals:

1 (1) the name, address, telephone number, and valid e-mail address or
2 other electronic contact information;

3 (2) the name of, and the nature of the affiliation with, any business
4 involving the purchase or sale of precious metal within the past five years;

5 (3) the age and date and place of birth of each natural person;

6 (4) the residential address and place of employment of each natural
7 person; and

8 (5) any crime of which a natural person has been convicted and the date
9 and place of conviction.

10 (c) The Office of Professional Regulation shall not issue or renew a
11 certification if an applicant or one of its principals has been convicted on or
12 after January 1, 2015 of a disqualifying offense.

13 (d)(1) Prior to issuing or renewing a certification pursuant to this section,
14 the Office of Professional Regulation shall obtain a Vermont criminal history
15 record, an out-of-state criminal history record, and a criminal history record
16 from the Federal Bureau of Investigation for an applicant and each of
17 its principals.

18 (2) A person for whom a record is requested shall consent to the release
19 of criminal history records to the Office on forms substantially similar to the
20 release forms developed in accordance with 20 V.S.A. § 2056c.

1 (3) Upon obtaining a criminal history record, the Office shall promptly
2 provide a copy of the record to the person who is the subject of the record and
3 shall inform the person of the right to appeal the accuracy and completeness of
4 the record pursuant to rules adopted by the Office.

5 (4) The Office shall comply with all laws regulating the release of
6 criminal history records and the protection of individual privacy.

7 (5) No person shall confirm the existence or nonexistence of criminal
8 history record information to any person who would not be eligible to receive
9 the information pursuant to this chapter.

10 § 3883. FEES; RENEWAL; REVOCATION OF CERTIFICATION

11 (a)(1) A person who applies for certification pursuant to section 3882 of
12 this title shall pay a nonrefundable fee of \$200.00 to the Office of Professional
13 Regulation within the Office of the Secretary of State.

14 (2) A certification shall expire two years from the date it is issued, and
15 may be renewed upon payment of \$200.00 and approval of the Office of
16 Professional Regulation.

17 (3) A fee collected under this section shall be used to administer the
18 precious metal dealer certification process established pursuant to section 3882
19 of this title.

1 (b) The Office may revoke a certification for cause at any time during the
2 period of the certification after notice and a hearing pursuant to 3 V.S.A.
3 chapter 25.

4 (c)(1) The Office shall revoke a certification upon the conviction, on or
5 after January 1, 2015, for a disqualifying offense by a precious metal dealer or
6 one of its principals.

7 (2) The Office may revoke a certification upon the conviction, on or
8 after January 1, 2015, for a disqualifying offense by an employee of a precious
9 metal dealer acting within his or her scope of employment when he or she
10 committed the offense.

11 (d) A precious metal dealer shall prominently display his or her
12 certification number at his or her place of business, and shall include his or her
13 certification number in each advertisement, in any medium, that promotes the
14 business or services of the precious metal dealer.

15 § 3884. PRIVATE RIGHT OF ACTION

16 A person injured by a precious metal dealer's violation of this chapter may
17 bring an action against the dealer for damages arising from the violation.

18 § 3885. RECORDS OF A PRECIOUS METAL DEALER

19 (a) For each item of precious metal sold to a precious metal dealer, he or
20 she shall:

1 (1) assign a distinct entry number or, in the case of a lot of items, an
2 entry number for the lot and a sub-lot number for each unmatched item in
3 the lot;

4 (2) maintain the following records for each item or lot of items:

5 (A) the amount of money paid and the date and time of
6 the transaction;

7 (B) the name, current address, and telephone number of the seller;

8 (C) a legible description written on the day of the transaction that
9 includes for each item any distinguishing mark and name of any kind, such as
10 brand and model name, model and serial number, engraving, etching,
11 affiliation with any institution or organization, date, initials, color, vintage, or
12 image represented;

13 (D) a digital photograph or video, taken at the time of the transaction,
14 that references the entry number required under subdivision (a)(1) of this
15 section and the date of the transaction;

16 (E)(i) a government-issued identification card issued to the seller that
17 bears his or her photograph; or

18 (ii) a government-issued identification card and a digital
19 photograph of the seller's face; and

20 (F) documentation of lawful ownership, including a bill of sale,
21 receipt, letter of authorization, or similar evidence, provided that if these forms

1 of documentation are unavailable, the seller shall submit an affidavit
2 of ownership.

3 (b) A precious metal dealer who sells \$50,000.00 or more of precious metal
4 in a consecutive 12-month period shall maintain the records required in this
5 section in a computerized format that can be readily accessed, electronically
6 transmitted, and reproduced in physical form.

7 (c)(1) A precious metal dealer shall retain the records required in this
8 section for at least three years at his or her normal place of business or other
9 readily accessible and secure location.

10 (2) At all reasonable times, the records required under this section shall
11 be open to the inspection of law enforcement.

12 § 3886. HOLDING PERIOD

13 A precious metal dealer shall retain precious metal that he or she purchases
14 for no fewer than 10 days before offering an item for sale or for scrap, and he
15 or she shall not remove an item from the State prior to the expiration of this
16 10-day period.

17 § 3887. PURCHASE OF PRECIOUS METAL FROM PERSONS UNDER 18
18 YEARS OF AGE

19 A precious metal dealer shall not purchase precious metal offered for sale
20 by a person under 18 years of age.

1 § 3888. METHOD OF PAYMENT

2 A precious metal dealer shall pay only by check, draft, or money order for
3 precious metal purchased for the purpose of resale.

4 § 3889. STOLEN PROPERTY NOTIFICATION SYSTEM

5 (a) The Department of Public Safety, in coordination with the Office of
6 Professional Regulation within the Office of the Secretary of State, shall
7 develop and implement a statewide stolen property notification system, the
8 purpose of which shall be to facilitate timely electronic communication
9 concerning the reported theft of precious metal among precious metal dealers
10 and law enforcement agencies throughout the State.

11 (b)(1) Upon receiving an official report of theft of precious metal, the
12 Department shall use the System to contact each precious metal dealer at the e-
13 mail address provided pursuant to subdivision 3882(c)(1) of this title and each
14 law enforcement agency that provides an e-mail address for that purpose.

15 (2) The Department shall include in its notification any information it
16 determines in its discretion is appropriate to assist precious metal dealers and
17 law enforcement agencies in identifying stolen precious metal and in
18 expediting both the return of the stolen property to its owner and the
19 identification and apprehension of suspects.

20 (3) Notwithstanding subdivision (2) of this subsection, the Department
21 shall redact any personally identifiable information in a notification issued

1 pursuant to this section concerning the identity or any communications with a
2 purported victim and any precious metal dealer unless the victim or dealer
3 expressly waives confidentiality in a writing submitted to the Department for
4 that purpose.

5 § 3890. PENALTIES

6 (a) Except as otherwise provided in this section, a person who violates a
7 provision of this chapter shall be assessed a civil penalty of not more
8 than \$1,000.00.

9 (b) A person who operates as precious metal dealer without the
10 certification required by section 3882 of this title shall be:

11 (1) for a first offense, imprisoned for not more than six months or fined
12 not more than \$10,000.00, or both;

13 (2) for a second or subsequent offense, imprisoned not more than three
14 years or fined not more than \$50,000.00, or both.

15 (c) A person who violates a provision of sections 3885–3888 of this title
16 shall be:

17 (1) for a first offense, imprisoned for not more than six months or fined
18 not more than \$10,000.00, or both;

19 (2) for a second or subsequent offense, imprisoned not more than three
20 years or fined not more than \$50,000.00, or both.

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(43) Precious Metal Dealers.

Sec. 6. IMPLEMENTATION

The Office of Professional Regulation within the Office of the Secretary
of State:

(1) shall create an application and certification process for the
certification required under 9 V.S.A. § 3882; and

(2) may adopt rules necessary to implement his or her duties under
this act.

Sec. 7. EFFECTIVE DATES

(a) This section, Sec. 6, and 9 V.S.A. § 3889 in Sec. 3 (stolen property
notification system) shall take effect on July 1, 2014.

(b) Secs. 1–5, other than 9 V.S.A. § 3889, shall take effect on
January 1, 2015.