

**Remarks prepared for 3/13/2013 by Michael R. Gadue, Esq., on behalf of John Martin, Owner, Martin's Coins and Jewelry, S. Burlington, Vermont**

**Matters of Concern on S. 308 or H.367 as they are the same as Referred to EDHDA Committee for Discussion at Hearing Scheduled for Thursday, 3/13/2014 in Montpelier:**

For each section, the section, its substance, and objection shall be stated:

- So, excluded from regulation is “collectible coins, antiques, including antique jewelry”, which is sold in the same condition as when purchased. Such would exclude the Alburg case where gold sovereigns and Canadian gold coins were stolen, and subsequently purchased by a precious metal dealer, and which was the arguable basis that first prompted State Police perception that legislative action for regulation was necessary in this area.
- What is a “new precious metal”, under Section 3881, definitions, (4) (A)?
- What is “exclusively wholesale”, in regard to Section 3881, definitions, (4)(B)?
- A precious metal dealer means “a person having a physical presence in the state”, 3881 (6)(A), so a kiosk owner that is located in NH that collects precious metals for shipment, out of state, valuation, and payment by mail is not regulated, as he has no personal physical presence? Does the language mean an owner that has “physical business presence” in the State? Such would exclude the many persons in state who buy and sell precious metals but have no “brick and mortar” establishment. Will law enforcement target out of state dealers who set up at hotels and motels, and come in to buy for 24-48 hours without license?
- A “Principal” is defined to include a creditor of a precious metal dealer, 3881 (7), so a Bank that has financed the business loan to a PMD must submit to a criminal record check and application as part of the licensing of PMD process? Literally yes.
- The application process for certification requires that any crime be disclosed by an applicant 3882(b)(5); yet it is only certain defined crimes that are disqualification to first or renewed license. So why would the application require disclosure of other than disqualifying convictions? Arguably they are not relevant.
- Section 3883 Renewal (C)(2), allows the certifying office to revoke certification to PMD when employee commits offense cognizable by act, such as failure to note information. Thus, a hired employee who steals from a PMD employer, and does not report/collect the information required by the Act to cover his theft, may then upon discovery, prove to be the basis for a license suspension or revocation against PMD?
- Section 3884 allows a private person who is injured by reason of PMD failure to keep records, may recover loss based on the very existence of the records violation, not that the loss was the

proximate cause of the failure to keep mandated record. So let's say PMD does not get license plate of seller, a technical violation of law. Statute makes it liability per se for \$10,000 of stolen goods to be recovered civilly from PMD if he is charged and convicted of incomplete records kept in this transaction, even if thief gave him affidavit of ownership. Why should there be additional rights given to those that lose property by theft?

- The records requirements of Section 3885 is simply too onerous:
  - Sub-lot numbers for each unmatched item in lot.
  - Photograph or video with entry or sub-lot numbers attached to photograph or video
- I believe the requirement that every seller produce a document of lawful ownership is unconstitutional. It violates freedom of contract under both the Vermont and US Constitutions. The affidavit of ownership is useless if it comes from a thief, unless it gives Good-faith Purchaser for Value status to the PMD buyer.
- The computerized format, readily accessible and transmittable, is a smokescreen for police officers to demand a transmission copy as it must be open to all law enforcement 3885 (b),(2). Such does not specify when it must be produced and it is a thinly veiled approach that police may obtain a copy even when they are checking to see if a PMD has complied with the law without any probable cause to believe that the law has been violated. It violates rights of contract under the Constitutions, but fundamentally violates search and seizure of business records without probable cause.

Additionally, an importantly, the creation of a computerized data-base will be a very large expense to PMDs. It can not be designed without a systems designer, and it is not as simple as creating a page of info on Word-pro as it must marry up pictures with narrative. Additionally, unless standardized, it would be very difficult to sort through based by law enforcement unless common format and order of information is standardized for all PMDs.

- Why have a statewide theft notification system unless the PMD is going to be required to read it, take notice, and face prosecution for not taking appropriate action? The system is unworkable and poses a burden on law enforcement that they will honor by not doing more than it will help to identify/ track crime.
- Have a civil penalty of \$1,000.00 for violation of the whole chapter; then tack on a criminal penalty of 6 months prison and \$10,000.00 fine. Let's take a case study that could apply to any Senators or Representative: your significant other decides to sell precious metals from their family estate of \$25,000.00. He or she requests that John Martin keep her transaction "secret" because they don't want to publicize the extent of the valuable estate and location they have just received. John Martin, to honor that request refuses to provide his electronic information containing this information to police who just "want to look at it". He is charged and now faces

loss of his license and prison and a 6 months sentence for respecting the right of privacy of a customer. Is this fair is it reasonable?

- The above are merely some of the problems with the drafted precious metal regulation law.

Conclusion: Ask yourself this. Will this law cut down on the grey-market sale of stolen precious metals that occur out-of-state or to grey market Vermont dealers that have no brick and mortar facility? Likely no, it will push the precious metal market into these hands where there is even less chance that police and law enforcement will have the chance to identify stolen goods based on the information which is mandated under current and existing law.

There are several key points:

1. Currently, John Martin sees 8-12 police or law enforcement officers a year that visit his shop. In Chittenden County there must be hundreds of small and large thefts, burglaries, B&Es per year. Will the proposed law increase this law enforcement/PMD coordination and visits or does the law become an additional basis of enforcement against the PMD to hold them responsible for the string of unsolved thefts?
2. Without prosecutors targeting 24/7 dealers who advertise by phone#; out-of-state owned kiosks; hotel/motel weekend or overnight transit buyers, and drop by mail precious metal dealers for cash, the law will punish only the Vermont brick and mortar owner and put them out of business.
3. Pick another business in Vermont where the records of all transactions must be reduced to a data base that can be instantaneously demanded by the police, and produced without any right to know what the focus of investigation is, or whether the business it-self is the target of investigation. Representative and Senators, would you support a law that made all of your expenses mandated to be kept in a database transmittable to any law enforcement upon the mere asking, without showing of any probable cause that a crime had been committed or that the records were necessary for a specific prosecution or case? I think not.