

1 H.637

2 Introduced by Representatives Consejo of Sheldon, Dickinson of St. Albans
3 Town, Koch of Barre Town, Conquest of Newbury, Donaghy of
4 Poultney, Fay of St. Johnsbury, Goodwin of Weston, Grad of
5 Moretown, Lanpher of Vergennes, Lippert of Hinesburg,
6 Malcolm of Pawlet, Marek of Newfane, McCarthy of
7 St. Albans City, Nuovo of Middlebury, Russell of Rutland City,
8 Savage of Swanton, Strong of Albany, Townsend of South
9 Burlington, Van Wyck of Ferrisburgh, Wizowaty of Burlington,
10 and Yantachka of Charlotte

11 Referred to Committee on

12 Date:

13 Subject: Commerce and trade; professional regulation; civil and criminal
14 liability; precious metal dealers

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

17 An act relating to regulating precious metal dealers

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

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

2 § 3865. RECORDS OF A PAWNBROKER OR SECONDHAND DEALER

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

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

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

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

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

18 (b) At all reasonable times, the records required under subsection (a) of this
19 section shall be open to the inspection of law enforcement. A law enforcement
20 agency shall make a reasonable effort to notify a ~~dealer~~ pawnbroker before
21 conducting an inspection pursuant to this section unless providing notice

1 would interfere with a criminal investigation or any other legitimate law
2 enforcement purpose.

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

4 ~~(1) "Precious metal" means gold, silver, platinum, or palladium.~~

5 ~~(2) "Secondhand dealer" means a person engaged in the business of~~
6 ~~purchasing used or estate precious metal, coins, jewelry, or similar items for~~
7 ~~the purpose of resale. [Repealed.]~~

8 Sec. 2. REPEAL

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

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

11 CHAPTER 97A. PRECIOUS METAL DEALERS

12 § 3881. DEFINITIONS

13 As used in this chapter:

14 (1) "Antique" means an item, including a collectible coin, that is:

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

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

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

20 (2) "Criminal history record" means all information documenting a
21 natural person's contact with the criminal justice system, including data

1 regarding identification, arrest or citation, arraignment, judicial disposition,
2 custody, and supervision.

3 (3) “Disqualifying offense” means:

4 (A) a felony under:

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

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

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

8 (iv) 13 V.S.A. chapter 84 (possession and control of regulated

9 drugs); or

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

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

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

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

14 metal dealer:

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

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

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

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

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

20 3890(c)(2) of this title.

1 (4) “Engaged in the business of purchasing or selling precious metal”
2 means conducting a regular course of trade in precious metal with retail buyers
3 or sellers, and does not include:

4 (A) retail trade in new precious metal;

5 (B) trade in precious metal that is exclusively wholesale, including
6 business-to-business transactions for precious metal used in medical and dental
7 applications; or

8 (C) trade in precious metal commodities for the purpose of
9 investment, including bullion, commodities funds, or commodities futures.

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

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

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

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

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

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

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

3 § 3882. CERTIFICATION REQUIRED

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

7 (b) An application for certification shall include for each applicant and
8 its principals:

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

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

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

14 (4) the residential address and place of employment of each natural
15 person; and

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

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

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

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

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

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

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

18 § 3883. FEES; RENEWAL; REVOCATION OF CERTIFICATION

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

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

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

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

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

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

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

1 § 3884. PRIVATE RIGHT OF ACTION

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

4 § 3885. RECORDS OF A PRECIOUS METAL DEALER

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

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

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

11 (A) the amount of money paid and the date and time of
12 the transaction;

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

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

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

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

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

5 (F) documentation of lawful ownership, including a bill of sale,
6 receipt, letter of authorization, or similar evidence, provided that if these forms
7 of documentation are unavailable, the seller shall submit an affidavit
8 of ownership.

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

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

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

18 § 3886. HOLDING PERIOD

19 A precious metal dealer shall retain precious metal that he or she purchases
20 for no fewer than 10 days before offering an item for sale or for scrap, and he

1 or she shall not remove an item from the State prior to the expiration of this
2 10-day period.

3 § 3887. PURCHASE OF PRECIOUS METAL FROM PERSONS UNDER 18

4 YEARS OF AGE

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

7 § 3888. METHOD OF PAYMENT

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

10 § 3889. STOLEN PROPERTY NOTIFICATION SYSTEM

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

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

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

6 (3) Notwithstanding subdivision (2) of this subsection, the Department
7 shall redact any personally identifiable information in a notification issued
8 pursuant to this section concerning the identity or any communications with a
9 purported victim and any precious metal dealer unless the victim or dealer
10 expressly waives confidentiality in a writing submitted to the Department for
11 that purpose.

12 § 3890. PENALTIES

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

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

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

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

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

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

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

7 (d) The Attorney General or a State’s Attorney shall have the authority to
8 pursue an injunction to prohibit the conduct of a person in violation of
9 this chapter.

10 (e) For purposes of this section, each transaction in which a person violates
11 a provision of this chapter shall constitute a single violation, regardless of the
12 number of violations of this chapter that occur in the transaction.

13 Sec. 4. 4 V.S.A. § 1102 is amended to read:

14 § 1102. JUDICIAL BUREAU; JURISDICTION

15 (a) A ~~judicial bureau~~ Judicial Bureau is created within the ~~judicial branch~~
16 Judicial Branch under the supervision of the Supreme Court.

17 (b) The Judicial Bureau shall have jurisdiction of the following matters:

18 * * *

19 (25) Violations of 9 V.S.A. chapter 97A that are subject to civil
20 penalties pursuant to 9 V.S.A. § 3890(a), relating to the purchase and sale of
21 precious metal by a precious metal dealer, as defined in 9 V.S.A. § 3881.

1 Sec. 5. 3 V.S.A. § 122 is amended to read:

2 § 122. OFFICE OF PROFESSIONAL REGULATION

3 An Office of Professional Regulation is created within the Office of the
4 Secretary of State. The Office shall have a director who shall be appointed by
5 the Secretary of State and shall be an exempt employee. The following boards
6 or professions are attached to the Office of Professional Regulation:

7 * * *

8 (43) Precious Metal Dealers.

9 Sec. 6. IMPLEMENTATION

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

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

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

16 Sec. 7. EFFECTIVE DATES

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

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