

STATE OF VERMONT
GENERAL ASSEMBLY

Interim Study Committee on the Regulation of Precious Metal Dealers

Final Report

January 15, 2014

In accordance with 2013 Acts and Resolves No. 75, Sec. 22c (Appendix A) (Act 75), the Interim Study Committee on the Regulation of Precious Metal Dealers submits this report to the Senate Committees on Economic Development, Housing and General Affairs, on Judiciary, and on Government Operations and the House Committees on Commerce and Economic Development, on Judiciary, and on Government Operations.

Act 75 created the Committee "to examine the current practices in the trade of precious metals in Vermont and the nexus of that trade to drug-related and other illegal activity, and to provide recommendations to the General Assembly on the most effective means of regulating the trade to decrease the amount of related illegal activity and promote the recovery of stolen property." The Committee was directed by Act 75 to consult with witnesses representing a broad range of perspectives, from jewelers, coin dealers, and antique dealers to law enforcement and prosecutors. The Committee was specifically charged with studying methods for increasing cooperation between law enforcement and dealers in precious metals and other secondhand items in an effort to prevent theft and retrieve stolen property, including:

- the types of items that should be included in a regulatory scheme;
- the advisability, cost, and effectiveness of creating and maintaining a stolen property database and website for the purpose of posting pictures and information about stolen items;
- the creation of a licensing system for precious metal dealers and others, including what information would be required of applicants, who would be eligible for a license, and how the licensing program would be implemented;
- the appropriate recordkeeping requirements for precious metal dealers and others, including the possibility of requiring sales of a certain volume to be recorded electronically; and
- any other related issues that the Committee deems appropriate.

The Committee, comprising Representatives Koch (Chair), Consejo, and Dickinson, and Senators Nitka (Vice Chair), Collins, and Baruth, held hearings on September 24, October 23, November 8, and December 6, 2013. The Committee received extensive testimony on the current problems with opiate addiction in Vermont and its relationship to crime, the relationship between criminal activity and the available market outlets for selling stolen property, the nature and practices of businesses dealing in precious metal and secondhand items, and the necessary and appropriate mechanisms for regulating the purchase and sale of precious metal.

Based on this testimony and significant discussion over the course of its meetings, the Committee unanimously adopted a draft legislative proposal aimed at balancing the rights of businesses and citizens to engage in commerce, the needs of law enforcement in tracking illegal activity and enforcing Vermont law, and the burdens on State agencies and private business persons in complying with additional State regulation of the precious metal industry and its practices. The proposed legislation is included in this report as Appendix B.

Section-by-Section Summary of the Committee's Draft Legislative Proposal

The draft legislation adopted by the Committee builds upon the foundation laid in House Bill H.522, as adopted by the House in the 2013 legislative session. The proposal has been introduced in the Senate as S.308, and a companion bill will be introduced in the House as well.

Secs. 1 and 2 of the proposal effectively decouple the regulation of pawnbrokers and secondhand or precious metal dealers, removing the latter from 9 V.S.A. chapter 97, which regulates pawnbrokers in Vermont.

Sec. 3 of the proposal creates a new chapter of law, 9 V.S.A. chapter 97A, to regulate precious metal dealers. Under the proposed 9 V.S.A. § 3881 (definitions), a "precious metal dealer" means a person who:

- (i) has a physical presence in this State, whether temporary or permanent;
- (ii) is engaged in the business of purchasing or selling precious metal; and
- (iii) purchases or sells \$1,000.00 or more of precious metal in a consecutive 12-month period.

The term "precious metal dealer" does not include a charitable organization that is qualified as tax exempt under 26 U.S.C. § 501. Section 3881 also includes definitions for "precious metal," "engaged in the business of purchasing or selling precious metal," and "antique."

Sections 3882 and 3883 of the proposal provide for a new requirement that to conduct business as a precious metal dealer in Vermont, a person must be certified by the Office of Professional Regulation within the Office of the Secretary of State. To be certified, an applicant must provide personal and business information, submit to a criminal background check, and pay an annual fee of \$200.00.

Section 3884 creates a private right of action for a person injured by a precious metal dealer's violation of chapter 97A.

Section 3885 imposes extensive record-keeping requirements for a precious metal dealer. Under this section, for each item or lot of items, the dealer must assign a lot or sub-lot number and record the amount paid, information about the seller, a description of the item, a digital photograph or video of the item, certain photographic identification of the seller, and documentation of lawful ownership. A dealer who sells over \$50,000.00 in a year must maintain these records in electronic format, and all dealers must retain the records for three years.

Section 3886 imposes a 10-day holding period for precious metal items (consistent with current law).

Section 3887 prohibits the purchase of precious metal from minors.

Section 3888 requires that payment for precious metal be by check, draft, or money order only.

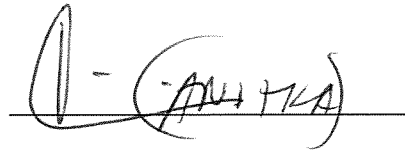
Section 3889 provides for the creation of a stolen property notification system by the Department of Public Safety, in coordination with the Office of Professional Regulation. The system is intended to allow law enforcement to communicate electronically with dealers and law enforcement throughout the State concerning property that is stolen and may be offered for sale.

Section 3890 imposes the penalties for violations of chapter 97A.

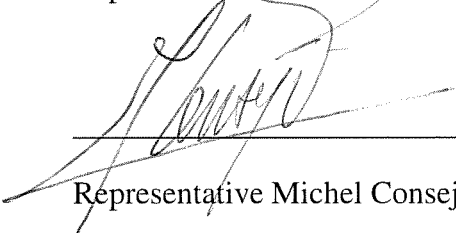
Sec. 4 of the proposal assigns jurisdiction over civil violations of chapter 97A to the Judicial Bureau. Sec. 5 of the proposal assigns jurisdiction over precious metal dealers to the Office of Professional Regulation. Sec. 6 provides for the implementation of the certification process by OPR, and Sec. 7 provides the effective dates for the legislation.



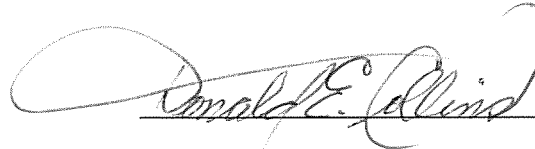
Representative Thomas Koch



Senator Alice Nitka



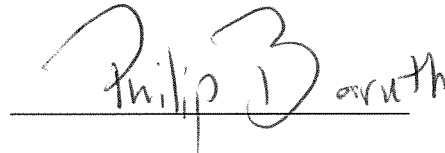
Representative Michel Consejo



Senator Donald Collins



Representative Lynn Dickinson



Senator Philip Baruth

Appendix A: Act 75 (2013) § 22c

Sec. 22c. INTERIM STUDY COMMITTEE ON THE REGULATION OF
PRECIOUS METAL DEALERS

(a) Creation of committee. There is created an Interim Study Committee on the Regulation of Precious Metal Dealers, the purpose of which shall be to examine the current practices in the trade of precious metals in Vermont and the nexus of that trade to drug-related and other illegal activity, and to provide recommendations to the General Assembly on the most effective means of regulating the trade to decrease the amount of related illegal activity and promote the recovery of stolen property.

(b) Membership. The Committee shall be composed of the following members:

(1) three members of the House of Representatives, not all of the same party, appointed by the Speaker of the House, one each from the Committees on Judiciary, on Commerce and Economic Development, and on Government Operations; and

(2) three members of the Senate, not all of the same party, appointed by the Committee on Committees, one each from the Committees on Judiciary, on Economic Development, Housing and General Affairs, and on Government Operations.

(c) Powers and duties.

(1) The Committee shall study methods for increasing cooperation between law enforcement and dealers in precious metals and other secondhand items in an effort to prevent the theft of these items and retrieve stolen property, including the following:

(A) the types of items that should be included in a regulatory scheme;

(B) the advisability, cost, and effectiveness of creating and maintaining a stolen property database and website for the purpose of posting pictures and information about stolen items;

(C) the creation of a licensing system for precious metal dealers and others, including what information would be required of applicants, who would be eligible for a license, and how the licensing program would be implemented;

(D) the appropriate recordkeeping requirements for precious metal dealers and others, including the possibility of requiring sales of a certain volume to be recorded electronically; and

(E) any other related issues that the Committee deems appropriate.

(2) The Committee shall consult with the following people during its deliberations:

(A) a Vermont-based representative from the New England Jewelers Association;

(B) a representative from the Vermont Antique Dealers Association;

(C) Vermont-based coin dealers;

(D) Vermont-based auctioneers;

(E) a private citizen who has been affected by the theft of precious metals;

(F) a representative from a Vermont-based business that uses precious metals for manufacturing or industrial purposes;

(G) a representative from the jewelry manufacturing industry;

(H) a representative from the Vermont Department of State's Attorneys and Sheriffs;

(I) a representative of local law enforcement from the Vermont Police Association;

(J) the Commissioner of Public Safety; and

(K) the Vermont Attorney General.

(3) For purposes of its study of these issues, the Committee shall have the administrative, technical, and legal assistance of the Office of Legislative Council and the Joint Fiscal Office.

(d) Report. On or before January 15, 2014, the Committee shall report its findings and any recommendations for legislative action to the Senate Committees on Economic Development, Housing and General Affairs, on Judiciary, and on Government Operations, and the House Committees on Commerce and Economic Development, on Judiciary, and on Government Operations.

(e) Meetings.

(1) Four members of the Committee shall be physically present at the same location to constitute a quorum.

(2) Action shall be taken only if there is both a quorum and an affirmative vote of the majority of members physically present and voting.

(3) The Committee may meet no more than five times and shall cease to exist on January 16, 2014.

Appendix B: Draft Legislation Proposal

An act relating to regulating precious metal dealers

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

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

§ 3865. RECORDS OF A PAWNBROKER OR SECONDHAND DEALER

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

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

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

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

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

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

(c) ~~In this section:~~

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

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

Sec. 2. REPEAL

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

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

CHAPTER 97A. PRECIOUS METAL DEALERS

§ 3881. DEFINITIONS

As used in this chapter:

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

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

(B) purchased for the purpose of resale; and

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

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

(3) “Disqualifying offense” means:

(A) a felony under:

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

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

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

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

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

(C) one of the following misdemeanors, if a conviction for the misdemeanor occurred within the ten years preceding the date on which the convicted person applies for a certification to do business as a precious metal dealer:

- (i) petit larceny in violation of 13 V.S.A. § 2502;
- (ii) receipt of stolen property in violation of 13 V.S.A. § 2561;
- (iii) false pretenses or tokens in violation of 13 V.S.A. § 2002; or
- (iv) false tokens in violation of 13 V.S.A. § 2003; or

(D) a violation of this chapter punishable under subdivision 3890(c)(2) of this title.

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

(A) retail trade in new precious metal;

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

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

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

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

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

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

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

period.

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

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

§ 3882. CERTIFICATION REQUIRED

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 3883. FEES; RENEWAL; REVOCATION OF CERTIFICATION

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

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

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

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

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

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

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

§ 3884. PRIVATE RIGHT OF ACTION

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

§ 3885. RECORDS OF A PRECIOUS METAL DEALER

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 3886. HOLDING PERIOD

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

§ 3887. PURCHASE OF PRECIOUS METAL FROM PERSONS UNDER 18

YEARS OF AGE

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

§ 3888. METHOD OF PAYMENT

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

§ 3889. STOLEN PROPERTY NOTIFICATION SYSTEM

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

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

(2) The Department shall include in its notification any information it determines in its discretion is appropriate to assist precious metal dealers and law enforcement agencies in identifying stolen

precious metal and in expediting both the return of the stolen property to its owner and the identification and apprehension of suspects.

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

§ 3890. PENALTIES

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

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

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

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

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

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

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

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

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

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

§ 1102. JUDICIAL BUREAU; JURISDICTION

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

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

* * *

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

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

§ 122. OFFICE OF PROFESSIONAL REGULATION

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

* * *

(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.