

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

D

HOUSE BILL 1637
Committee Substitute Favorable 7/6/09
Committee Substitute #2 Favorable 7/20/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1637-CSSUf-83 [v.3]

8/3/2009 11:35:33 AM

Short Title: Modernize Precious Metal Business Permitting.

(Public)

Sponsors:

Referred to:

May 7, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO MODERNIZE THE RECORD KEEPING OF PRECIOUS METALS
3 PURCHASES BY DEALERS, TO SUBJECT ALL DEALERS IN PRECIOUS METALS
4 TO SIMILAR RECORD-KEEPING REQUIREMENTS, TO INCREASE PRECIOUS
5 METALS PERMITTING FEES, TO REQUIRE THAT A CRIMINAL HISTORY
6 RECORD CHECK BE CONDUCTED ON EMPLOYEES OF PRECIOUS METALS
7 DEALERS, AND TO MAKE VARIOUS OTHER CHANGES TO THE PRECIOUS
8 METALS PERMITTING STATUTES.

9 The General Assembly of North Carolina enacts:

10 SECTION 1. G.S. 66-164 reads as rewritten:

11 "§ 66-164. Definitions.

12 ~~Unless the context clearly indicates otherwise, the following words and phrases shall have~~
13 ~~the following meanings:~~ The following definitions apply in this Article:

14 (1) ~~"Dealer" means a Dealer. – A person who engages in the business of~~
15 ~~purchasing purchases~~ precious metals from the public, other than by
16 an exempted transaction, ~~in the form of jewelry, flatware, silver services~~
17 ~~services,~~ or other forms and holds himself or herself out to the public by
18 signs, advertising advertising, ~~or other methods as engaging in such~~
19 ~~purchases purchases,~~ including any independent contractor purchasing
20 precious metals under any arrangement in any department store; store.
21 ~~provided, however, that permanently located retail merchants shall be~~
22 ~~exempted insofar as they make purchases directly from manufacturers or~~
23 ~~wholesalers of precious metals for their inventories. Provided further, a~~
24 ~~permanently located retail merchant who is primarily engaged in the~~
25 ~~business of purchasing or acquiring jewelry, secondhand furniture, antique~~
26 ~~furniture, objects of art, artifacts, nonprecious metal collector items,~~
27 ~~antiquities and other used household furnishings or fixtures for resale to the~~
28 ~~public, and who purchases precious metals, articles or items from the public~~
29 ~~only incidentally to his main business, may be exempted as provided in~~
30 ~~G.S. 66-166 if his total purchases or acquisitions of precious metals from the~~
31 ~~public constituted ten percent (10%) or less in dollar volume of the total~~
32 ~~purchases or acquisitions in dollar volume made by such merchant for all~~

1 such secondhand items or articles in the 12-month period next preceding the
2 date of application for an exemption under G.S. 66-166. Provided further
3 that pawnbrokers as defined in G.S. 91A-3 shall be exempted insofar as they
4 accept An exempted transaction is one that is (i) not considered in
5 determining whether a person is a dealer under this Article and (ii) not
6 subject to the requirements of this Article, even if it is entered into by a
7 person otherwise defined and regulated as a dealer. Exempted transactions
8 are:

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

22 (2) "Local law enforcement agency" means: Local law enforcement agency. –
23 The term means the following, as applicable:

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

38 (3) "Precious metal" means gold, Precious metal. – Gold, silver, or platinum
39 platinum, or palladium, as defined below, but excluding coins, medals,
40 medallions, tokens, numismatic items, art ingots, or art bars.

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

1 d. Palladium. – Any item or article containing 950 parts per thousand or
2 more of palladium which may be in combination or alloy with any
3 other metal.

4 For purposes of this Article, "precious metal" does not include coins, medals, medallions,
5 tokens, numismatic items, art ingots, or art bars."

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

7 "**§ 66-165. Permits required.**Permits.

8 (a) Dealer Permit. – Except as provided in subsection (c) of this section, it shall be is
9 unlawful for any person to engage as a dealer in the business of purchasing precious metals
10 either as a separate business or in connection with other business operations without first
11 obtaining a permit for the business from the local ~~law enforcement~~ law enforcement agency.
12 ~~The form of the permit and application therefor shall be as approved by the Department of~~
13 ~~Crime Control and Public Safety. Safety shall approve the forms for both the application and~~
14 ~~the permit.~~ The application shall be given under oath and shall be notarized. A 30-day waiting
15 period from the date of filing of the application is required prior to initial issuance of a permit.
16 A separate permit shall be issued for each location, place, or premises within the jurisdiction of
17 the local ~~law enforcement~~ law enforcement agency which is used for ~~the conduction of~~
18 conducting a precious metals business, and each permit shall designate the location, place or
19 premises to which it applies. ~~Such~~ No business shall ~~not~~ be conducted in ~~any other a place other~~
20 than that designated in the permit, ~~and no business shall be conducted or~~ in a mobile home,
21 trailer, camper, or other vehicle, or structure not permanently affixed to the ground or in any
22 room customarily used for lodging in any hotel, motel, tourist court, or tourist ~~home as defined~~
23 ~~in G.S. 105-61.~~ home. The permit shall be posted in a prominent place on the designated
24 premises. Permits shall be valid for a period of 12 months from the date issued and may be
25 renewed without a waiting period upon filing of an application and payment of the annual fee.
26 The annual fee for ~~each dealer's permits a permit~~ within each jurisdiction ~~shall be ten dollars~~
27 ~~(\$10.00)~~ is one hundred eighty dollars (\$180.00) to provide for the administrative costs of the
28 local ~~law enforcement~~ law enforcement agency, including the purchase of required forms.
29 forms and the cost of conducting the criminal history record check of the applicant. The fee
30 ~~shall not be is not~~ refundable even if the permits are denied or later suspended or revoked. ~~Such~~
31 ~~permits shall be~~ A permit issued under this section is in addition to and not in lieu of other
32 business licenses and ~~are is~~ not transferable. No person, other than the dealer named on the
33 permit and that dealer's employees, may engage in the business of purchasing precious metals
34 under the authority of the permit.

35 Any dealer applying to the local ~~law enforcement~~ law enforcement agency for a permit
36 shall furnish the local ~~law enforcement~~ law enforcement agency with the following
37 information:

- 38 (1) ~~His~~ The applicant's full name, and any other names used by the applicant
39 during the preceding five years. In the case of a partnership, association, or
40 corporation, the applicant shall list any partnership, association, or corporate
41 names used during the preceding five ~~years;~~ years.
- 42 (2) Current address, and all addresses used by the applicant during the preceding
43 five ~~years;~~ years.
- 44 (3) Physical ~~description;~~ description.
- 45 (4) ~~Age;~~ Age.
- 46 (5) Driver's license number, if any, and state of ~~issuance;~~ issuance.
- 47 (6) Recent ~~photograph;~~ photograph.
- 48 (7) Record of felony ~~convictions;~~ convictions.
- 49 (8) Record of other convictions during the preceding five ~~years;~~ and years.
- 50 (9) A full set of fingerprints of the applicant.

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

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

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

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

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

35 (b) Employee Requirements. – Every employee engaged in the precious metal
36 purchasing business shall, within two business days of being so engaged, register his or her
37 name and address with the local ~~law enforcement~~ law enforcement agency and have his or her
38 photograph taken by the agency. The employee shall also consent to a criminal history record
39 check, which shall be performed by the local law enforcement agency. A person who refuses to
40 consent to a criminal history record check shall not be employed by a dealer required to be
41 licensed under this section. A person who has been convicted of a felony involving a crime of
42 moral turpitude, larceny, receiving stolen goods, or of similar charges shall not be employed by
43 a dealer required to be licensed under this section, unless the person has had his or her rights of
44 citizenship restored pursuant to Chapter 13 of the General Statutes for five years or longer
45 immediately preceding the date of registration. The agency shall issue to ~~him~~ the employee a
46 certificate of compliance with this section upon the applicant's payment of the sum of ~~three~~
47 ~~dollars~~ (ten dollars (\$10.00)) to the agency. The ~~permit~~ certificate shall be renewed
48 annually for a three-dollar (\$3.00) fee and shall be posted in the work area of the permit
49 holder-registered employee. An employee is not subject to the requirements of this subsection if
50 the employee is engaged in the precious metals purchasing business only incidentally to his or
51 her main job responsibilities, and each precious metals transaction with which the employee is

1 involved is overseen by a licensed dealer or registered employee. All records of transactions
2 must be signed by the licensed dealer or registered employee at the time of the transaction, as
3 required under G.S. 66-169(a).

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

16 The Department of Justice may charge each employee a fee for conducting the checks of
17 criminal history records authorized by this subsection.

18 (c) Special Occasion Permit. – A special occasion permit authorizes the permittee to
19 purchase precious metals as a dealer participating in any trade shows, antique shows, and crafts
20 shows conducted within the State. A special occasion permit shall be issued by any local
21 law enforcement law enforcement agency; provided, however, that a permittee under
22 subsection (a) of this section shall apply for a special occasion permit with the local
23 law enforcement law enforcement agency which that issued such the dealer's permit. An
24 application for a permit shall be on a form as approved by the The Department of Crime
25 Control and Public Safety shall approve the forms for both the application and the permit. The
26 application and shall be given under oath and notarized. A 30-day waiting period from the date
27 of filing of the application is required prior to initial issuance of a permit.

28 Any dealer applying to a local law enforcement law enforcement agency for a special
29 occasion permit shall furnish the local law enforcement law enforcement agency with the
30 information required in an application for a dealer's permit as set forth in (a) subsection (a) of
31 this section. In addition, the applicant shall provide a physical address where any item included
32 in a dealer purchase will be held for the period required under G.S. 66-170. The physical
33 address shall be the location where the purchase was made, unless another physical address
34 within the law enforcement jurisdiction where the purchase was made is approved by the law
35 enforcement agency that issues the permit. The items shall be available at all reasonable times
36 for inspection on the premises by law enforcement agencies.

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

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

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

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

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

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

20 The filing fee for an application for a special occasion permit application shall be ten
21 dollars (\$10.00) is one hundred eighty dollars (\$180.00) to provide for the administrative cost
22 of the local ~~law-enforcement-law enforcement~~ agency including purchase of required ~~forms-~~
23 forms and the cost of conducting the criminal history record check of the applicant. The fee
24 ~~shall not be-~~ is not refundable even if the permit is denied or is later suspended or revoked. ~~Such~~
25 ~~permits shall be-~~ A special occasion permit is in addition to and not in lieu of other business
26 licenses and ~~are-~~ is not transferable. No person, other than the dealer named on the permit and
27 that dealer's employees, may engage in the business of purchasing precious metals under the
28 authority of the permit.

29 A special occasion permit ~~shall be-~~ is valid for 12 months from the date issued, unless earlier
30 surrendered, suspended, or revoked. Application for renewal of a permit for an additional 12
31 months shall be on a form ~~as-~~ approved by the Department of Crime Control and Public Safety
32 and shall be accompanied by ~~an application-a nonrefundable renewal fee of ten dollars~~
33 ~~(\$10.00)-one hundred eighty dollars (\$180.00). A renewal fee shall not be refundable.~~

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

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

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

38 "**§ 66-169. Records to be kept.**

39 (a) Every dealer to whom a permit has been issued pursuant to G.S. 66-165 shall
40 maintain a ~~tightly bound book or books (not loose leaf), with pages numbered in sequence, in~~
41 ~~which shall be recorded, at the time of any purchase of precious metal, a serially numbered~~
42 ~~account and description of the specific items purchased, including, if applicable, consecutively~~
43 numbered records of each precious metals transaction. Each consecutively numbered record
44 shall be made at the time of the transaction and shall contain a clear and accurate description of
45 the transaction. A valid description shall include each of the following applicable and available
46 items of information: the manufacturer's name, the model, the model number, the serial
47 number, and any engraved numbers or initials found on the ~~items,~~ items; the date of the
48 ~~transaction,~~ transaction; and the name, sex, race, residence, telephone number and driver's
49 license ~~number, if any,~~ number of the person selling the items ~~purchased. Both the dealer and~~
50 ~~the seller shall sign the record entry. purchased; and the signature of both the dealer or~~
51 registered employee and the seller. In the event the seller cannot furnish ~~his driver's license,~~

1 valid, unexpired photographic identification in the form of a drivers license, State-issued
2 identification card, passport, or military identification card bearing his photograph, card, the
3 dealer shall require two forms of positive identification.

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

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

13 (d) A copy of each consecutively numbered record book entry shall be filed within 48
14 hours of the transaction in the office of the local ~~law enforcement~~ law enforcement agency.
15 Mailing the required copy to the local law enforcement agency within 48 hours shall constitute
16 compliance with this section. Records shall be filed in the manner authorized by the local law
17 enforcement agency, which may include reporting electronically by transmission over a
18 computer network, by facsimile machine, or by hand delivering hard copies to the local law
19 enforcement agency. In any case where a technological failure prevents a dealer from reporting
20 electronically or by facsimile, the dealer shall have the option of hand delivering a hard copy of
21 the record to the local law enforcement agency. Regardless of the manner in which the local
22 law enforcement agency allows reporting, a dealer shall provide a hard copy of records upon
23 the request of a law enforcement agency.

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

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

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

40 "**§ 66-170. Items not to be modified.**

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

46 **SECTION 6.** This act becomes effective October 1, 2009. No dealer who is
47 required to be licensed under this act, but who was not required to be licensed prior to the
48 effective date of this act, shall be guilty of engaging as a dealer in the business of purchasing
49 precious metals without a license during the period between October 1, 2009, and January 1,
50 2010.