

SENATE BILL REPORT

ESHB 1716

As of March 22, 2011

Title: An act relating to the regulation of secondhand dealers.

Brief Description: Regulating secondhand dealers who deal with precious metal property.

Sponsors: House Committee on Public Safety & Emergency Preparedness (originally sponsored by Representatives Asay, Hurst, Klippert, Pearson and Miloscia).

Brief History: Passed House: 3/05/11, 85-12.

Committee Activity: Labor, Commerce & Consumer Protection: 3/17/11.

Brief Summary of Engrossed Substitute Bill

- Creates a new category of secondhand dealers called secondhand precious metal dealers.
- Requires secondhand precious metal dealers to maintain specific detailed records for transactions involving precious metals for a total of three years.
- Prohibits the removal of any precious metal property bought or received in pledge or by consignment by a secondhand precious metal dealer from the place of business or the county in which it was sold in, for a period of 30 days after the receipt of that property, except when redeemed by or returned to the owner.
- Makes it a gross misdemeanor offense, and a subsequent offense an unranked class C felony offense, to commit certain illegal transactions involving secondhand precious metals.

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Staff: Ingrid Mungia (786-7423)

Background: Secondhand dealer is defined as any person engaged, in whole or in part, in the business of purchasing, selling, trading, consignment selling, or otherwise transferring for value, secondhand property.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Record Keeping. Secondhand dealers must maintain a record of each transaction conducted for three years following the date of the transaction. The records kept by a secondhand dealer must include the following information:

- date of the transaction;
- signature of the person with whom the transaction is made;
- the name, date of birth, height, weight, race, address, and telephone number of the person with whom the transaction is made;
- a complete description of the property including brand name, serial number, or model name;
- type and identifying number of identification used by the person with whom the transaction is made;
- the nature of the transaction and number identifying the transaction;
- the name or identification number of the employee conducting the transaction;
- the price paid or amount loaned; and
- the store identification number or name and the address of the store.

Transcripts of the previous day's business, when requested by the police within the time-period required by the police, may be transmitted by facsimile, electronically, or by delivery of a computer disk.

Restrictions on Transfer of Property. Property bought or received in pledge or by consignment by a secondhand dealer may not be removed from the place of business within 30 days after the receipt of that property, except when redeemed by or returned to the owner. The property must be available for inspection by the police. Following notification from the police that an item of property has been reported as stolen, a secondhand dealer must place an identifying tag on the property and keep it safe. A secondhand dealer may not release that item for 120 days without the consent of the police or an order of the court. If the police place a verbal hold on an item that has been reported as stolen, the police must give written notice confirming the hold to the secondhand dealer holding the property within ten business days. If the police do not give written notice, the hold order will cease. The secondhand dealer must give the police written notice 20 days before the expiration of the 120-day period or the hold on the property will continue for an additional 120 days. The police may renew a hold for an additional 120-day period by giving written notice of an additional hold.

Prohibited Acts. It is a gross misdemeanor offense:

- to alter a serial number or identifying mark on a piece of personal property that has been pledged;
- to accept for pledge or secondhand purchase personal property on which the manufacturer's serial number or identifying mark has been altered;
- to make or allow a false entry or misstatement of any material matter in records required to be maintained under pawnbroker and secondhand dealer laws;
- for a secondhand dealer to accept property from anyone under 18 years of age, anyone who is under the influence of drugs or alcohol, or anyone known by the secondhand dealer to be convicted of burglary, robbery, theft, or possession of receiving stolen goods; or
- for a secondhand dealer to engage in check cashing or selling without complying with the check casher and seller laws.

Summary of Bill: A secondhand precious metal dealer is any person or entity engaged in whole or in part in the commercial activity or business of purchasing, selling, trading, consignment selling, or otherwise transferring for value, more than three times per year, secondhand property that is a precious metal. This definition applies whether or not the person or entity maintains a permanent or fixed place of business within the state, or engages in the business at flea markets or swap meets. Secondhand property, for purposes of transactions by a secondhand precious metal dealer, does not include (1) gold, silver, and platinum coins or other precious metal coins that are legal tender or precious metal coins that have numismatic or precious metal value, or (2) gold, silver, platinum, or other precious metal bullions.

Record Keeping for Receipt of Precious Metals. Secondhand precious metal dealers must maintain records for three years after the date of each transaction involving precious metals. Each secondhand precious metal dealer must maintain wherever that business is conducted, a record that includes the following information:

- The signature of the person with whom the transaction is made;
- The time and date of the transaction;
- The name of the person or employee or the identification number of the person conducting the transaction;
- The name, date of birth, sex, height, weight, race, residential address, and telephone number of the person with whom the transaction is made;
- A complete description of the precious metal property pledged, bought, or consigned, including the brand name, serial number, model number or name, any initials or engravings, size, pattern, and color of stone or stones;
- The price paid;
- The type and identifying number of identification used by the person with whom the transaction was made. The identification must consist of a valid driver's license or identification card issued by any state or two pieces of identification issued by a governmental agency. A full copy of both sides of each piece of identification used by the person with whom the transaction was made must be maintained as part of the record; and
- The nature of the transaction.

Restrictions on Transfer of Property. Property consisting of a precious metal bought or received in pledge or by consignment by a secondhand precious metal dealer, with a permanent place of business in Washington, may not be removed from the place of business for 30 days after the receipt of that property, except when redeemed by or returned to the owner. If the secondhand precious metal dealer does not have a permanent place of business in the state, the precious metal property must be stored and held within the city or county in which the property was received for a total of 30 days after the receipt of the property, except consigned property returned to the owner. All precious metal property received by a secondhand precious metal dealer must be available for inspection by the police.

Secondhand precious metal dealers do not have to comply with the storage and holding requirement if the precious metal was bought or received from a pawn shop, jeweler, secondhand dealer or secondhand precious metal dealer, who has provided a signed declaration showing the property is not stolen.

Licensed scrap processors are exempt from the provisions of the Business Regulation (chapter 19.60 RCW) statute referencing pawnbrokers and secondhand dealers.

License Requirement. All secondhand precious metal dealers doing business in Washington must obtain a business license from the local government in which the business is situated prior to operating a business.

Prohibited Acts. A secondhand precious metal dealer is guilty of a gross misdemeanor offense when the dealer:

- knowingly makes, causes, or allows to be made any false entry or misstatement of any material matter in any book, writing, or record required to be maintained by a secondhand precious metal dealer relating to transactions involving secondhand precious metals;
- receives any precious metal property from any person known to the secondhand precious metal dealer as having been convicted of burglary, robbery, theft, or possession of or receiving stolen property within the past 10 years whether the person is acting in his or her own behalf or as the agent of another; or
- fails to maintain specific detailed records for transactions involving precious metals or fails to abide by the restrictions and holding requirements for secondhand precious metal property that has been bought or received by the secondhand precious metal dealer.

A secondhand precious metal dealer is guilty of an unranked class C felony offense if found guilty of committing a second or subsequent gross misdemeanor offense relating to secondhand precious metal transactions.

If a law enforcement agency has compiled and published a list of persons who have been convicted of a theft offense, than secondhand precious metal dealers must use the list for any transactions involving property. If the property involved is a precious metal then the secondhand precious metal dealer may not engage or continue with the transaction with the (theft) offender on the list.

Hosted Home Parties. A hosted home party means a gathering of persons at a private residence where a host or hostess has invited friends or other guests into his or her residence where individual person-to-person sales of precious metals occur. A host or hostess must be the owner, renter, or lessee of the private residence where the hosted home party takes place.

A secondhand precious metal dealer who attends a hosted home party and purchases or sells precious metals from the invited guests must issue a receipt for each item sold or purchased at the hosted home party. Every receipt must include the following: (1) the name, residential address, telephone number, and driver's license number of the person hosting the home party; (2) the name, residential address, phone number, and driver's license number of the person selling the item; (3) the name, residential address, phone number, and driver's license number of the person purchasing the item; (4) a complete description of the item being sold, including the brand name, serial number, model number or name, any initials or engravings, size, pattern, and color of stone or stones; (5) time and date of the transaction; and (6) the amount and form of any consideration paid for the item.

The secondhand precious metal dealer must make four copies of each transaction receipt: one for the seller, one for the host or hostess, one for the purchaser, and one for local authorities, if they should ask. The secondhand precious metal dealer and the host must maintain copies of all transaction receipts and records for three years following the date of the precious metal transaction.

A secondhand precious metal dealer of a hosted home party who purchases precious metals at a hosted home party and complies with state law relating to precious metal transactions and record retention, is exempt from:

1. the record requirements mandated for all other secondhand precious metal dealers;
2. the holding requirements (before reselling) for purchases of precious metals; and
3. the requirement that mandates secondhand precious metal dealers to reference any list that has been compiled by law enforcement consisting of a list of persons who have been convicted of a theft offense.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill deals less with precious metal and more with personal safety. This bill gives the police the tools to go in and stop the illegitimate dealers who are exchanging the gold for the cash and send the gold out of town immediately. The bill needs an amendment to address the needs of coin dealers and gold panners and the short turn around time they need to sell their products. This bill keeps the honest dealers honest. In Federal Way and King County we have a serious burglary issue, specifically in jewelry burglary. Once the jewelry is stolen it is pooled and resold immediately. This will allow local law enforcement to follow-up on local advertisement and check it out. This bill is attempting to stop the black market. It is very similar to what was done a couple of years ago to combat copper theft. This is a serious problem, but it is a problem that can be combated with this bill. The pawnshops have set the standard and if we can get the gold brokers to the same standard this would combat the problem. The government recognizes victims of burglary as a violent offense. Victims feel violated and don't feel safe in their residences after a burglary. This will help us take a proactive approach to fighting burglary. Pawnshops have been strictly regulated for decades. The 30-day holding provision is intended to help recover stolen goods. The bill's provisions don't pertain to pawnshops, but are mimicked after the pawn provisions. There are serious inequities that need to be corrected. This addresses the street second-hand dealers and will help law enforcement recover stolen goods. I do have a question regarding the reporting requirements. Pawnbrokers report to police everyday, and this activity is very helpful. I would like to see some language requiring reporting of home parties. It is not clear who is exempt.

Persons Testifying: PRO: Representative Asay, prime sponsor; Jim Ferrell, Federal Way City Council; Grant Bassett, Federal Way Police Department; Tamara Warnke, Washington

State Association of Pawn Brokers; Nick Buell, WSPA; Mike Bowerman, American pawnbrokers.