

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2076 Session of  
2009

INTRODUCED BY KORTZ, BELFANTI, CALTAGIRONE, FRANKEL, HORNAMAN,  
JOSEPHS, KULA, MANN, MARSHALL, MCGEEHAN, MELIO, PASHINSKI,  
SIPTROTH AND VULAKOVICH, NOVEMBER 12, 2009

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, NOVEMBER 12, 2009

AN ACT

1 Amending the act of February 24, 1984 (P.L.92, No.17), entitled  
2 "An act regulating the purchase and sale of precious metals,"  
3 adding a short title and definitions; providing for mail-in  
4 secondhand precious metals dealers; and making editorial  
5 changes.

6 The General Assembly of the Commonwealth of Pennsylvania  
7 hereby enacts as follows:

8 Section 1. The title and table of contents of the act of  
9 February 24, 1984 (P.L.92, No.17), referred to as the Precious  
10 Metal Sale Regulation Law, are amended to read:

AN ACT

12 Regulating the purchase and sale of precious metals; and  
13 providing for mail-in secondhand precious metals dealers.

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18 Section [12] 1302. Application.

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20 Section 2. The act is amended by adding a chapter heading:

21 CHAPTER 1

22 PRELIMINARY PROVISIONS

23 Section 3. The act is amended by adding a section to read:

24 Section 101. Short title.

25 This act shall be known and may be cited as the Precious  
26 Metals Sale Regulation Law.

27 Section 4. Section 1 of the act is renumbered and amended to  
28 read:

29 Section [1] 102. Definitions.

30 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the  
2 context clearly indicates otherwise:

3 "Dealer in precious metals." An individual, partnership,  
4 association, corporation or business entity, who or which  
5 purchases precious metals from the general public for resale or  
6 refining or any individual who acts as agent for such  
7 individual, partnership, association, corporation or business  
8 entity for such purchase or purchases. Excluded from this  
9 definition are financial institutions licensed under Federal or  
10 State banking laws, the purchaser of precious metals who  
11 purchases from a seller seeking a trade-in or allowance, the  
12 manufacturers of jewelry or of other items composed, in whole or  
13 in part, of gold, silver or platinum and the purchaser of  
14 precious metals for his, her or its own use or ownership and not  
15 for resale or refining.

16 "Gold." Any alloy of the element gold, ten karat or of  
17 greater fineness. A karat is 1/24 part, by weight, of the alloy  
18 of the metallic element gold.

19 "Jewelry." A personal ornament that contains precious metals  
20 and may contain gemstones.

21 "Mail-in secondhand precious metals dealer" or "secondhand  
22 dealer." A person or entity that:

23 (1) conducts business within this Commonwealth and that  
24 contracts with other persons or entities to buy precious  
25 metals or jewelry through an Internet website, the United  
26 States mail or telemarketing; or

27 (2) conducts business within this Commonwealth and  
28 regularly engages in the business of purchasing jewelry or  
29 precious metals through the United States mail or Internet-  
30 based transactions.

1 "Platinum." Any alloy of the element platinum, 750/1000 or  
2 more parts per thousand, by weight, of pure platinum.

3 "Precious metals." Items containing or being of gold, silver  
4 or platinum, including, but not limited to, jewelry and silver  
5 services, but excluding coins, ingots, bullion or photographic  
6 film or any article containing less than 5% of gold, silver or  
7 platinum by weight.

8 "Seller." A person or entity offering precious metals or  
9 jewelry for purchase which belong solely to that person or  
10 entity and having absolute authority to sell such goods.

11 "Silver." Any alloy of the element silver, 900/1000 or more  
12 parts per thousand, by weight, of pure silver.

13 "Transaction." An event relating to the purchase of  
14 secondhand precious metals or jewelry by a mail-in secondhand  
15 precious metals dealer.

16 "Working days." Excludes Saturdays, Sundays and Federal or  
17 State legal holidays.

18 Section 5. The act is amended by adding a chapter heading to  
19 read:

20 CHAPTER 3

21 PRECIOUS METALS DEALERS

22 Section 6. Sections 2, 3, 4, 5, 6 and 7 of the act are  
23 renumbered to read:

24 Section [2] 301. License required.

25 (a) Dealer.--A dealer in precious metals shall obtain a  
26 license from the sheriff of each and every county in which the  
27 dealer purchases precious metals.

28 (b) Application form.--The application for such license  
29 shall be on a form as prescribed in regulations promulgated by  
30 the Attorney General.

1 (c) License fee.--The license fee shall not exceed \$50 per  
2 year as set by the Attorney General. Such fee shall be paid into  
3 the treasury of the county where the license is issued for the  
4 use of the county.

5 (d) Duration of license.--The license shall be for one year.

6 (e) Application to be public record.--Such license  
7 application shall be a public record available to the general  
8 public for inspection.

9 Section [3] 302. Records of transactions.

10 (a) Dealers to keep record.--Every dealer in precious metals  
11 shall keep a record of every transaction upon a form approved by  
12 the Attorney General. The record shall include as a minimum:

13 (1) The name, age and address of the seller which must  
14 be verified by said dealer, requiring proof of identity from  
15 the seller sufficient to insure the accuracy of the  
16 represented name and address of the seller.

17 (2) An accurate description of the property purchased,  
18 including any serial number or other identifying marks or  
19 symbols and the date and hour of the transaction.

20 (b) Record to be maintained.--Said record shall be  
21 maintained by the dealer in precious metals for a period of one  
22 year from the date of the transaction and shall be available for  
23 inspection by any law enforcement official of the Federal  
24 Government, the Commonwealth or any of its municipalities.

25 (c) Copy of record to district attorney.--A copy of every  
26 record of transaction shall be delivered or mailed to the  
27 district attorney of the county in which a purchase of precious  
28 metals is made by the close of the next working day after the  
29 day on which the metal was purchased.

30 (d) Copy of record to police department in lieu of district

1 attorney.--The district attorney may authorize such records to  
2 be delivered or mailed to the police department of the  
3 municipality in which the precious metal was purchased in lieu  
4 of delivery or mailing to the district attorney.

5 (e) Time and manner of keeping records.--The Attorney  
6 General shall, by regulation, prescribe the time and manner in  
7 which such records shall be maintained, the form of  
8 identification which a dealer must require from the seller to  
9 verify the seller's name and address and the person or persons  
10 to whom such records shall be available.

11 Section [4] 303. Dealer's retention of precious metal and  
12 availability for inspection.

13 (a) Precious metal to be retained for five days.--Each item  
14 of precious metal purchased by a dealer in precious metals shall  
15 be retained in unaltered condition for five full working days  
16 after report of its purchase has been filed with the proper  
17 district attorney or his designee.

18 (b) Precious metal to be available for inspection.--Such  
19 item of precious metal shall be available for inspection, during  
20 the five working days, by law enforcement officials of the  
21 Federal Government, the Commonwealth or any of its  
22 municipalities in the course of their law enforcement duties. A  
23 search warrant shall not be required unless the inspection is  
24 made during hours other than those when the dealer in precious  
25 metals is open for business.

26 (c) Law enforcement officials to give notice when they  
27 believe item was stolen.--If a law enforcement official has  
28 probable cause to believe an item of precious metal has been  
29 stolen, he may give written notice to the dealer in precious  
30 metals. Upon receipt of such written notice, such dealer in

1 precious metals shall retain the item in unaltered condition for  
2 an additional seven days, unless the law enforcement officer in  
3 writing recalls such notice.

4 (d) Court may order dealer to retain items.--Upon  
5 application of the district attorney, any court of proper  
6 jurisdiction, under its powers presently prescribed by law, may  
7 order the dealer in precious metals to retain such item or items  
8 of precious metal at such place and under such conditions as the  
9 court may decree.

10 (e) Where items to be retained.--Each item of precious metal  
11 to be retained, pursuant to this section, shall be retained  
12 within the county of purchase at the location where purchased by  
13 the dealer in precious metals, unless authorized in writing by  
14 the district attorney or his designee to be retained elsewhere.  
15 Section [5] 304. Purchases from minors.

16 The dealer in precious metals shall require any minor seeking  
17 to sell precious metals to produce written authority of a  
18 parent, guardian or person in loco parentis authorizing the sale  
19 of such precious metals. Such authorization shall give the name  
20 and address of authorizing person. The dealer in precious metals  
21 shall verify that such sale is authorized by inquiry of such  
22 parent, guardian or person in loco parentis. Minors shall be  
23 required to wait three full working days before receiving  
24 payment from the sale of precious metals.

25 Section [6] 305. Posting of prices.

26 Prices for the purchase of precious metals shall be posted by  
27 the dealer in precious metals in compliance with rules and  
28 regulations promulgated or to be promulgated by the Department  
29 of Agriculture.

30 Section [7] 306. Scales and weighing devices.

(a) Rules and regulations of Department of Agriculture.--  
Scales and other weighing or measuring devices used by dealers  
in precious metals shall be in accordance with rules and  
regulations promulgated or to be promulgated by the Department  
of Agriculture.

(b) Supervision and inspection of scales.--Supervision and  
inspection of such scales and weighing or measuring devices  
shall be made by the appropriate State or municipal officers as  
authorized by law or by the Department of Agriculture.

Section 7. Section 8 of the act is renumbered and amended to  
read:

Section [8] 307. Local ordinances.

This [act] chapter shall not supersede or preclude the  
adoption of any municipal ordinance applicable to dealers in  
precious metals provided that such municipal ordinance meets the  
minimum requirements of this act.

Section 8. Section 9 of the act is renumbered to read:

Section [9] 308. Inspection of licensee.

The acceptance of a license by a dealer in precious metals  
implies consent to inspections of his, her or its premises by  
law enforcement officials and officials authorized to enforce  
laws and regulations pertaining to weights and measures. Such  
inspections shall pertain to items of precious metals and to  
scales and weighing or measuring devices.

Section 9. Section 10 of the act is renumbered and amended  
to read:

Section [10] 309. Penalty.

(a) Unlicensed dealers.--The purchase of an item of precious  
metal by an unlicensed dealer in precious metals shall  
constitute a violation of this act and the dealer shall be



1 guilty of a misdemeanor of the third degree.

2 (b) Licensed dealers.--Any licensed dealer in precious  
3 metals who violates any provisions of this [act] chapter shall  
4 be guilty of a misdemeanor of the third degree.

5 (c) Revocation of license and ineligibility.--Any  
6 individual, partnership, association, corporation or business  
7 entity violating any provisions of this [act] chapter shall,  
8 upon conviction, in addition to the penalties set forth in  
9 subsections (a) and (b) hereof, suffer immediately revocation of  
10 any existing license issued pursuant to the provisions of this  
11 act and shall be ineligible to apply for a dealer's license  
12 under this [act] chapter for a period of five years thereafter.

13 Section 10. The act is amended by adding a chapter to read:

14 CHAPTER 5

15 MAIL-IN SECONDHAND PRECIOUS METALS DEALERS

16 Section 501. General provisions.

17 (a) Licensure.--A mail-in secondhand precious metals dealer  
18 may not conduct business under this chapter without being  
19 licensed by the Attorney General in accordance with the  
20 licensure requirements set forth in section 301. License fees  
21 shall be remitted to the Office of Attorney General. The Office  
22 of Attorney General shall regularly transmit to each sheriff's  
23 office a list of licensees.

24 (b) Payment.--A secondhand dealer may not remit payment to a  
25 seller unless the seller has provided the following information:

26 (1) The seller's name, address, telephone number and e-  
27 mail address, if available.

28 (2) The seller's driver's license number and issuing  
29 state or other government-issued identification number.

30 (3) A sworn statement made by the seller that the seller

1 is of lawful age and that the driver's license number or  
2 other government-issued identification number and other  
3 identifying information provided by the seller is true and  
4 correct and that the seller is the lawful owner of the goods  
5 with absolute authority to sell the goods. The statement must  
6 include the following language: "I declare under penalty of  
7 perjury that the foregoing is true and correct."

8 (c) Transaction record.--For every transaction, the  
9 secondhand dealer must keep a record of the following:

10 (1) A complete and accurate description of the seller's  
11 goods, including:

12 (i) Precious metal type or, if jewelry, the type of  
13 jewelry.

14 (ii) Any other unique identifying marks, numbers or  
15 letters. The description must be in an electronic format  
16 established by the Office of Attorney General.

17 (2) The date that the seller's goods were received by  
18 the secondhand dealer.

19 This information must be provided to the appropriate law  
20 enforcement agency within 24 hours after entering into the  
21 contract unless other arrangements are made between the  
22 secondhand dealer and the law enforcement agency.

23 (d) Electronic files.--For every transaction, pictures of  
24 the secondhand goods which are the subject of the transaction  
25 must be available online for electronic viewing, via an Internet  
26 website accessible by user name and password only, by a law  
27 enforcement agency at no charge. In addition, the electronic  
28 files must be searchable by a law enforcement agency for queries  
29 concerning property descriptions, secondhand dealer transaction  
30 information and the seller's personal identification, including

1 address, state of residence and zip code.

2 (e) Record.--A secondhand dealer must maintain, for a period  
3 of not less than two years, all information provided under  
4 subsections (b) and (c) and all records of any transaction  
5 between the dealer and seller in a form that is easily  
6 retrievable upon request by a law enforcement agency.

7 (f) Information to law enforcement.--A secondhand dealer  
8 must provide the appropriate law enforcement agency with an  
9 electronic copy of the name, address, telephone number, driver's  
10 license number or government-issued identification number and  
11 issuing state of the person from whom the dealer purchased or  
12 acquired the precious metals or jewelry.

13 (g) Verification.--

14 (1) If a seller fails to provide the information  
15 required under subsection (b)(1) and (2), the secondhand  
16 dealer may verify the identity and information of the seller  
17 through a national provider of personal identification  
18 verification services. Evidence from the personal  
19 identification verification service must be maintained by the  
20 secondhand dealer and available for review by a law  
21 enforcement agency upon request.

22 (2) Alternatively, a secondhand dealer must give written  
23 notice to the seller, by United States mail or e-mail, if an  
24 e-mail address is provided by the seller, that information  
25 otherwise required to be given by the seller under this  
26 section has not been provided by the seller to the secondhand  
27 dealer. Notice of the deficient information must be sent by  
28 the secondhand dealer no later than ten days after the  
29 transaction is received by the secondhand dealer. The  
30 secondhand dealer must specify in the notice that:

1           (i) The seller must provide the missing information  
2           or must request the return of the property from the  
3           secondhand dealer within 30 days after receiving notice  
4           from the secondhand dealer.

5           (ii) The failure of the seller to provide the  
6           missing information or request return of the property  
7           within the applicable 30-day time period shall result in  
8           abandonment of the seller's property under Article XIII.1  
9           of the act of April 9, 1929 (P.L.343, No.176), known as  
10          The Fiscal Code.

11          (3) If the seller fails to remedy the deficiency in  
12          information or request return of the property within 30 days  
13          after receiving the notice, the seller's property is deemed  
14          abandoned and unclaimed property under the The Fiscal Code if  
15          the property's true market value is greater than \$50.

16          (4) Within 24 hours after the expiration of the 30-day  
17          hold period for the property, the secondhand dealer must  
18          notify the appropriate law enforcement agency of the  
19          abandonment of the property by electronic transmission or by  
20          sending a copy of the completed form authorized under this  
21          chapter to the Office of Attorney General.

22          (h) Duties of secondhand dealer.--

23          (1) If there is probable cause that goods held by a  
24          secondhand dealer are stolen, the law enforcement agency with  
25          jurisdiction over the secondhand dealer may place a 90-day  
26          written hold on the goods and may take possession of the  
27          goods from the dealer during the 90-day hold period. The 90-  
28          day hold period may be extended beyond 90 days by a court of  
29          competent jurisdiction upon a finding of probable cause that  
30          the property is stolen and further holding is necessary for

1 the purpose of trial or to safeguard the property.

2 (2) If the secondhand dealer maintains possession of the  
3 goods during any hold period, the secondhand dealer assumes  
4 all responsibility, civil and criminal, for the safekeeping  
5 of the property or evidence in question, including  
6 responsibility for the actions of any employee of the dealer.

7 (3) While a hold order is in effect, the secondhand  
8 dealer must, if in possession of the goods, release the  
9 property subject to the hold order to the custody of a law  
10 enforcement agency for use in a criminal investigation.  
11 Release of the property to the law enforcement agency is not  
12 considered a waiver or release of the secondhand dealer's  
13 rights or interest in the property unless the secondhand  
14 dealer is not owed restitution for the property.

15 (4) The property must be returned to the secondhand  
16 dealer upon completion of the criminal proceeding unless the  
17 court orders an alternative disposition or the secondhand  
18 dealer is not due restitution for the property. When another  
19 disposition is ordered, the court shall additionally order  
20 the person from whom the secondhand dealer acquired the  
21 property to pay restitution to the secondhand dealer in the  
22 amount that the secondhand dealer paid for the property  
23 together with reasonable attorney fees and costs.

24 (i) Action for replevin.--

25 (1) If the secondhand dealer contests the identification  
26 or ownership of the property, the person alleging ownership  
27 of the property may, if a timely report of the theft of the  
28 goods was made to the proper authorities, bring an action for  
29 replevin in a court of common pleas.

30 (2) The filing fees shall be waived by the clerk of the

1 court and the service fees shall be waived by the sheriff.  
2 The court shall award the prevailing party attorney fees and  
3 costs. In addition, if the filing party prevails in the  
4 replevin action, the court shall order payment of filing fees  
5 to the clerk and service fees to the sheriff.

6 (3) Upon the filing of the petition, the court shall set  
7 a hearing to be held at the earliest possible time. Upon  
8 receipt of a petition for a writ by a secondhand dealer, the  
9 dealer shall hold the property at issue until the court  
10 determines the respective interests of the party.

11 (4) In addition to the civil petition for return remedy,  
12 the Commonwealth may file a motion as part of a pending  
13 criminal case related to the property. The court in a  
14 criminal action has jurisdiction to determine ownership, to  
15 order return or other disposition of the property, and to  
16 order any appropriate restitution to any person. The order  
17 must be entered upon hearing after proper notice has been  
18 given to the secondhand dealer, the victim and the defendant  
19 in the criminal case.

20 Section 502. Tendering payment.

21 Any payment by a mail-in secondhand precious metals dealer  
22 resulting from the sale, purchase, consignment or trade of  
23 precious metals or jewelry must be made to the person or entity  
24 by check to a lawful bank account or via a money services  
25 business licensed under the laws of this Commonwealth.

26 Section 503. Inspection of records and premises.

27 A mail-in secondhand precious metals dealer must allow a law  
28 enforcement agency to inspect its business records, inventory  
29 and premises during normal business hours to ensure compliance  
30 with this chapter.

1 Section 504. Holding period.

2 (a) General rule.--A mail-in secondhand precious metals  
3 dealer may not sell, barter, exchange, alter, adulterate, use or  
4 in any way dispose of goods purchased from a seller within ten  
5 calendar days after the date payment is issued for the  
6 acquisition of the goods.

7 (b) Records.--Records of the sale, purchase, consignment or  
8 trade of precious metals or jewelry must be maintained by the  
9 secondhand dealer for at least two years after the date of the  
10 transaction.

11 Section 505. Penalties.

12 (a) Registration requirement.--Any mail-in secondhand  
13 precious metals dealer not licensed by the Office of Attorney  
14 General as a mail-in secondhand precious metals dealer, or who  
15 fails to comply with this chapter, commits a misdemeanor of the  
16 third degree for each completed transaction. If an officer or  
17 corporation is convicted of or pleads nolo contendere to any  
18 such offense, the officer or corporation may not operate  
19 thereafter for one year as a mail-in secondhand precious metals  
20 dealer within this Commonwealth.

21 (b) False statements.--Any person who knowingly gives false  
22 personal identifying information to a mail-in secondhand  
23 precious metals dealer, who provides a driver's license number  
24 or government-issued identification number that does not belong  
25 to the person or who makes any false statement with respect to  
26 being of lawful age or the person's ownership of goods, and who  
27 receives payment from the dealer commits:

28 (1) If the value of the money received is less than  
29 \$300, a felony of the third degree.

30 (2) If the value of the money received is \$300 or more,

