



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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(As Introduced)

Reps. Henne, Rogers, Schaffer

BILL SUMMARY

- Revises the definition of "precious metals dealer" to expand the express manners by which a person may hold the person's self out as willing to purchase articles containing precious metals or jewels to expressly include a person who engages in specified types of communication.
- Prohibits persons from advertising their willingness to purchase precious metals or jewels without a precious metals dealer license.
- Modifies the qualifications for a precious metals dealer's license, including increasing the amount of the required net worth or bond and requiring the applicant to have a fixed business premises for at least one year or signed a lease for such premises for a minimum period of one year.
- Prohibits the transfer of a precious metals dealer's license.
- Makes changes to the law governing the issuance of a temporary exhibition permit.
- Makes changes to the records requirements for precious metals dealers, provides specific form requirements, and allows licensees to keep electronic or computerized records in lieu of hard copies.
- Requires a dealer to provide certain information to a seller at the time of purchase.
- Extends, except for coins and industrial residue, from 5 to 15 days, the period for which a dealer must retain purchased articles.
- Changes the articles and persons that are exempted from the Precious Metals Dealer Law (PMDL).

- Eliminates the requirement that a licensed pawnbroker comply with the PMDL's requirements.
- Imposes record-keeping requirements on all persons exempt from licensing if the person engages in specified activity, instead of only imposing those requirements on two types of transactions as under current law.
- Requires certain sales, transfers, or hypothecations of any stock, security, membership, partnership, or other interest in a licensee to be approved by the Superintendent.
- Provides that the Superintendent of Financial Institutions must examine precious metals dealers at least once during the first year after initial licensure and at least once every two years after the initial examination.
- Modifies the Superintendent's investigatory powers.
- Modifies the disciplinary actions the Superintendent may take for violations of the PMDL and modifies the criminal penalties for violations of the PMDL.

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CONTENT AND OPERATION

The Precious Metals Dealer Law

Ohio's Precious Metals Dealer Law (PMDL) generally prohibits any person from acting as a precious metals dealer without first having obtained a license.¹ A "precious metals dealer" is a person who is engaged in the business of purchasing articles made of or containing gold, silver, platinum, or other precious metals or jewels of any description if, in any manner, the person holds himself, herself, or itself out to the public as willing to purchase those articles. The definition expressly includes any form of advertisement or solicitation of customers as manners by which a person may hold the person's self out as willing to purchase those articles.² The PMDL is administered and enforced by the Superintendent of Financial Institutions in the Department of Commerce.

Licensure requirement

The bill replaces the phrase "articles made of or containing gold, silver, platinum, or other precious metals or jewels of any description" and similar phrases with the term "precious metals" throughout the PMDL.³ The bill also revises the definition of "precious metals dealer" described under "**The Precious Metals Dealer Law**" above to expand the express manners by which a person may hold the person's self out as willing to purchase precious metals to expressly include signage, electronic media, including electronic mail, or other solicitation of customers. A "purchase" is the acquisition of precious metals for a consideration of cash, goods, or other precious metals.⁴

As discussed under "**The Precious Metals Dealer Law**" above, the PMDL prohibits any person from acting as a precious metals dealer without a license. The bill expands this prohibition to also prohibit any person from advertising in any form to the public of the person's willingness to purchase precious metals or jewels. The penalty under the bill for recklessly violating either of these prohibitions is a third degree

¹ R.C. 4728.02 and 4728.99.

² R.C. 4728.01.

³ R.C. 4728.01(A), with conforming changes throughout the bill.

⁴ R.C. 4728.01(A), (B), and (D).



misdemeanor (currently, unlicensed practice is a first degree misdemeanor for the first offense, and a fifth degree felony for any subsequent offense).⁵

The bill additionally prohibits any person not licensed under the PMDL from advertising as a precious metals dealer. A violation of this prohibition is a third degree misdemeanor on a first offense and a second degree misdemeanor on each subsequent offense.⁶

Qualifications for license

Under current law, to receive a license as a precious metals dealer, in addition to satisfying other requirements one must have sufficient "experience and fitness in the capacity involved" to be a precious metals dealer and have a specified net worth. The bill eliminates the requirement that a person have experience and fitness in the capacity involved. With respect to the latter requirement, under the bill, a person must have a net worth of at least \$50,000, increased from \$10,000 under current law, and, as under continuing law, maintain that increased net worth for as long as the person holds the license. In lieu of that net worth, as under current law, the person may file a bond with the Division of Financial Institutions in that increased amount.⁷

In addition to satisfying the requirement that the applicant demonstrates sufficient financial responsibility, under the bill, the applicant must satisfy both of the following:

(1) The applicant must submit proof that the applicant and all of the following have submitted to a criminal records check (which the Superintendent may request under existing law):

- Any owner, manager, director, and officer of the applicant;
- Any agent engaged in the purchase of precious metals for the applicant under the requested license;
- If the applicant is a nonpublicly traded corporation, any stockholder of the applicant.

⁵ R.C. 4728.02(A) and 4728.99.

⁶ R.C. 4728.17(B) and 4728.99(A).

⁷ R.C. 4728.03(A) and (H).



(2) The applicant must have either owned or leased for at least one year a fixed premises in Ohio as a place of business or signed a lease for a minimum period of one year for a fixed premises in Ohio to be used as a place of business.⁸

The bill allows the Superintendent to refuse to issue to or renew the license of any person who violates the bill's renewal provisions (see "**License renewal**," below) or a requirement of existing law, unchanged by the bill, regarding the appointment of agents for certain applicants. Under that existing law, a license may not be granted to any person who is not a resident of or the principal office of which is not located in the municipal corporation or county designated in the license, unless and until the applicant files with the Division, and the Division approves, a form appointing an agent in that municipality or county to receive judicial and other process or legal notice for the applicant.⁹

License renewal

The bill prohibits the Superintendent from renewing the license of a dealer who does not have a place of business as required (see "**Qualifications for license**," above). The bill sets the initial license fee and the renewal fee at \$300 (current law allows the Superintendent to set these fees, up to \$300). Any licensee who fails to renew a license on or before the date the license expires must reapply for a new license, unless the licensee applies for renewal by August 31 of the year the license expires and pays a \$100 penalty in addition to the renewal fee. A licensee who fails to renew before the expiration date or by August 31 is prohibited from acting as a precious metals dealer until the license is renewed or a new license is issued.¹⁰

Transferability of license

Under the bill, a license is not transferable.¹¹

Temporary exhibition permits

Under the bill, the Superintendent may issue a temporary exhibition permit only to a precious metals dealer licensed in Ohio or another state. Currently, the Superintendent also may issue this permit to a licensed pawnbroker. Under the bill, the permit allows the holder to host an auction, convention, exhibition, fair, or show for the

⁸ R.C. 4728.03(A).

⁹ R.C. 4728.03(D)(2) and (6).

¹⁰ R.C. 4728.03(C) and (D)(3), (4), and (5), with conforming changes in R.C. 1321.20.

¹¹ R.C. 4728.03(F).



purpose of displaying, trading, and selling precious metals, rather than providing or purchasing precious metals at such an event as under current law. The fee for the permit under the bill is \$1,000. The permit holder may, for up to seven days, host such an event. Participants in the event must be licensed by Ohio or another state to engage in the business of purchasing precious metals, and they must conspicuously display their licenses when participating in the event. The permit holder may set fees to attend or participate in the event.

The bill requires the holder of a temporary exhibition permit to display the permit at the event's location. The holder also must submit all of the following information to the Superintendent and the local law enforcement agency at least two weeks before the event opens:

(1) The holder's name;

(2) The location of the event;

(3) The names and permanent business address of each precious metals dealer participating in the event as that information appears on the participant's license.

All purchases of precious metals by an event participant are subject to the same regulations as purchases made by a precious metals dealer at the dealer's ordinary place of business.¹²

Dealer's records

The PMDL requires licensed precious metals dealers to keep records of their purchases and use books and forms approved by the Superintendent. The bill eliminates the requirement that the forms be approved by the Superintendent, elaborates on the requirements, and authorizes licensees to use electronic, computerized, or other methods of recordkeeping if written printouts or hard copies of the required data are readily available.¹³

The bill requires that the books and forms in which the dealer records purchases be intelligible, written in English, and used exclusively for the records of purchases. Under existing law, the dealer must record a full and accurate description of the articles purchased, including any identifying letters or marks; the maker of the articles; and the seller's name, age, place of residence, driver's or commercial driver's license number, or other personal identification and a short physical description of the seller. With regard

¹² R.C. 4728.04(C) and (D), with conforming changes in R.C. 4727.04.

¹³ R.C. 4728.06(A) and (G).

to any article purchased, the bill additionally requires the dealer to record identifying features as well as letters or marks; the name of the manufacturer instead of maker; any serial and model number; the size and color of any metal; the date and time of purchase; the purchase price; and a photograph of the article. With regard to the seller, the bill eliminates the need to record the seller's place of residence or commercial driver's license number, but it adds to the required information the seller's address, date of birth, *valid* personal identification number (driver's license, military identification, Social Security, or other number), and a general physical description (not a *short* physical description).¹⁴

The bill mandates that the dealer require the seller to present a government-issued form of photo identification and sign a statement verifying that the seller is the legal owner of the article or is the agent of the legal owner authorized to sell the article to the dealer.¹⁵

Under current law, a licensed dealer must maintain the dealer's books in numerical order and keep them open to the inspection of the Superintendent "or chief of or head of the local police department, a police officer deputied by the chief or head of police, or the chief executive officer of the political subdivision thereof." Throughout the bill, the latter phrase, and similar references to local law enforcement, are replaced by the term "local law enforcement agency," which is defined as, for a business located within a municipal corporation's jurisdiction, the chief or head of the police department for that municipal corporation, or, for a business not located within a municipal corporation's jurisdiction, the sheriff of the county in which the business is located.¹⁶ The bill requires the dealer to keep the records and forms in numerical order and to be kept open to the Superintendent and the local law enforcement agency, similar to the current law requirements regarding the dealer's books. Additionally, under the bill, the dealer must, upon demand of any of these officials, produce and show any records, forms, or purchases within the dealer's possession, as opposed to only the article under current law.¹⁷

The bill adds the following requirements and prohibitions:

¹⁴ R.C. 4728.06(A).

¹⁵ R.C. 4728.06(B) and (C).

¹⁶ R.C. 4728.01(E), 4728.04, 4728.06, 4728.07, 4728.09, 4728.10, and 4728.12.

¹⁷ R.C. 4728.06(D)(1).



(1) The licensee must keep all purchases at the licensee's place of business and may not remove purchased items from the place of business for the licensee's personal use or gain.

(2) The licensee must keep a copy of each form used for a purchase, at all times, in numerical order and account for all form numbers.

(3) A licensee may not require a seller to sign a blank or partially filled-out form that is required as described above in connection with a purchase.¹⁸

Each form required by the bill must include the name under which the licensee is registered with the Superintendent and the complete address of the place of business. Each form must contain two or more pages and be identical and consecutively numbered. One part of each form must be detachable; when completed, it serves as the statement given by the licensee to the seller (see "**Statement of purchase**," below). The dealer must keep the remaining part of the form in the dealer's permanent records and must account for all forms.¹⁹

The bill requires each licensee to preserve the licensee's books, forms, accounts, and records for at least two years after making the final entry regarding any purchase of property recorded therein.²⁰

Statement of purchase

The bill requires each licensed precious metals dealer to give to a seller at the time of a purchase a statement, legibly written in ink, printed, or typed, containing the licensee's name and address, the purchase price, the time and date of the purchase, and a general and accurate description of the articles sold, including any serial or model numbers or identifying marks on the articles. The dealer must retain a copy of the statement for two years from the date of the last entry of the purchase account.²¹

Fines for record-keeping violations

Under the bill, the Superintendent must issue a fine against a licensee who fails to comply with the Law's record-keeping requirements. The fine is \$100 for each

¹⁸ R.C. 4728.06(D)(2), (3), and (4).

¹⁹ R.C. 4728.06(E).

²⁰ R.C. 4728.06(F).

²¹ R.C. 4728.061.

violation, but if multiple violations arise from a single transaction, the total amount of fines related to that transaction cannot exceed \$500.²²

Daily reports of purchases

Continuing law requires a dealer, every business day, to make available to the local police a description of all articles received by the licensee on the preceding business day, together with the number of the form issued under the bill (instead of "receipt" under current law).²³

Confidentiality of records

Under the bill, records and information generated by a person under the PMDL are generally confidential and are not public records under Ohio's Public Records Law. The records can, however, be disclosed, discovered, or introduced as evidence as follows:

- (1) To a law enforcement agency;
- (2) In connection with criminal proceedings;
- (3) In any action or litigation by or against the Superintendent in connection with enforcement of the PMDL.²⁴

Prohibited purchases

Continuing law prohibits a licensed precious metals dealer from making purchases from certain persons. Under the bill, a licensed dealer cannot purchase from any person known to be intoxicated or under the influence of a controlled substance (current law does not reference that the person is known to be intoxicated). The bill eliminates the prohibition against purchasing from any person who is believed by the licensee to be a thief or a receiver of stolen property. Under continuing law, a licensee cannot purchase from a minor or a person who is known by the licensee to be a thief or receiver of stolen property.²⁵

²² R.C. 4728.062.

²³ R.C. 4728.07.

²⁴ R.C. 4728.19, by reference to R.C. 149.43, not in the bill.

²⁵ R.C. 4728.08.



Retention of articles

The bill extends the time period a licensed precious metals dealer must retain any article purchased to 15 days from five days under current law. The retention requirement does not apply to coins or industrial residue.²⁶

Continuing law prescribes procedures regarding when a licensed precious metals dealer is notified by local law enforcement that an article purchased by the dealer may have been stolen. Under the bill, if a local law enforcement agency informs a licensed precious metals dealer that the agency has probable cause to believe an article is stolen, the licensee must retain the article until a court of competent jurisdiction determines who has the right to possess the article. Currently, the licensee must retain the item until 30 days after the day on which the licensee reported the purchase to the law enforcement agency as required under continuing law, unless the chief or the head of the law enforcement agency notifies the licensee in writing that the licensee is not required to retain the article.²⁷

Under the bill, after a court determines the true owner's identity, the licensee must return the item to the true owner. The licensee may only seek reimbursement from the true owner for the cost of the item if the true owner does not file a charge against the person responsible for the theft (similar to current law).

Under current law, if the chief or the head of the local police department determines the identity of the item's true owner, and informs the licensee of the true owner's identity, then any of the following can occur depending on the circumstances:

- (1) The licensee may restore the item to its true owner directly.
- (2) The true owner may reimburse the licensee for the amount the licensee paid for the allegedly stolen article.
- (3) The true owner may recover the article and reasonable attorney fees from the licensee in a lawsuit.²⁸

²⁶ R.C. 4728.09(A)

²⁷ R.C. 4728.09(B).

²⁸ R.C. 4728.09(C) and (D).



Additional licensee duties

The bill requires a person licensed as a precious metals dealer to state the license number issued by the Superintendent in all advertisements, offers, and solicitations.²⁹

The bill also requires any precious metals dealer who purchases precious metals from the public to have and use a national type evaluation program certified, legal for trade scale, which must be inspected and certified annually by the auditor, as the county sealer of weights and measures, of the county in which the person's business is located.³⁰

Transfer of interest in business

Under the bill, every sale, transfer, or hypothecation of any stock, security, membership, partnership, or other equitable, beneficial, or ownership interest in a person licensed as a precious metals dealer, in an amount representing a 10% or greater equitable, membership, partnership, beneficial, or other ownership interest in the licensee, must be approved in writing by the Superintendent before the sale, transfer, or hypothecation. Every person acquiring or receiving such an interest is subject to the licensing requirements of the PMDL as if the person were a new and separate license applicant.³¹

Enforcement

Examinations

The bill requires the Superintendent, or the Superintendent's appointee, to examine (rather than investigate, as under current law) the business of every licensed precious metals dealer. The Superintendent must provide between 24 and 48 hours' notice before an examination, unless the person is under criminal investigation by a local law enforcement agency. Each business must be examined at least once during the first year after the date of initial licensure and at least once every two years after the date of the first examination. Current law does not specify a timeline for investigations. The Superintendent may examine a business more frequently if the Superintendent considers it advisable. Continuing law allows the Superintendent to also examine any entity that uses a precious metals dealer to purchase precious metals.

²⁹ R.C. 4728.17(A).

³⁰ R.C. 4728.18, by reference to R.C. 319.55, not in the bill.

³¹ R.C. 4728.16.



Continuing law permits the Superintendent, after notice and a hearing, to issue a cease and desist order and a fine against a person who is engaging in or threatening to engage in activities for which a license is required under the PMDL. The bill increases the minimum amount of the fine to \$500 from \$100 under current law. The maximum remains \$10,000. Any cease and desist order and any penalty issued are enforceable in and may be appealed to a court of common pleas pursuant to Ohio's Administrative Procedure Act.³²

Additional enforcement powers

The PMDL charges the Superintendent with enforcing the PMDL and with making all reasonable effort to discover alleged violators, notifying the proper prosecuting officer whenever the Superintendent has reasonable grounds to believe that a violation has occurred, acting as complainant in the prosecution of suspected violations, and aiding officers in prosecutions. The Superintendent must adopt reasonable rules for implementing the PMDL.³³

Under the bill, the Superintendent may do any of the following to enforce the PMDL:

- Issue a cease and desist order against any person the Superintendent reasonably suspects has violated, is currently violating, or is about to violate the PMDL (this appears to be in addition to current law authority to issue a cease and desist order for unlicensed practice);
- Obtain an injunction from a court against any person that has violated, is currently violating, or is reasonably suspected of being about to violate the PMDL (similar to current law with respect to investigations);
- Subpoena any person to compel the production of any item, record, or writing (similar to current law with respect to investigations);
- Subpoena any person to appear and provide testimony in regard to a violation of the PMDL (similar to current law with respect to investigations);
- Examine and investigate the business of any person the Superintendent reasonably suspects to be advertising, transacting, or soliciting business as a precious metals dealer (similar to current law).

³² R.C. 4728.05.

³³ R.C. 4728.10.



The Superintendent may apply to a court for an order compelling a person to comply with any cease and desist order or any subpoena issued by the Superintendent. The Superintendent's authority to examine and investigate includes the power to examine a person's business location and any books, records, writings, safes, files, or storage areas located in or utilized by the business location. The Superintendent also may request assistance from a local law enforcement agency or the state highway patrol during the examination and investigation of a business.³⁴ This authority appears to be in addition to the Superintendent's authority to conduct examinations (investigations under current law) (see "**Examinations**," above).

Disciplinary actions

The bill prohibits any person licensed as a precious metals dealer, or the licensee's agent, officer, or employee, from violating the PMDL. This is narrower than current law, which prohibits any person, firm, partnership, or association, or agent, officer, or employee of such an entity, from violating the PMDL.³⁵

Under current law, a license is revoked upon a criminal conviction. The bill eliminates the mandatory revocation and authorizes the Superintendent to do any of the following:

(1) Upon the criminal conviction of a licensee or the licensee's employee, manager, officer, director, shareholder (in the case of a nonpublicly traded company), member, or partner for a violation of the PMDL, suspend the license of the licensee without a prior hearing to protect the public interest and subsequently revoke the license in accordance with the Administrative Procedure Act;

(2) Upon the criminal conviction of a licensee or the licensee's employee, manager, officer, director, shareholder (in the case of a nonpublicly traded company), member, or partner for the violation of the Criminal Law³⁶ or under federal law for theft, receiving stolen property, or money laundering, suspend the license of the licensee without a prior hearing to protect the public interest and subsequently revoke the licensee's license in accordance with the Administrative Procedure Act;

(3) Upon the criminal conviction of a licensee for the violation of any provision of the Criminal Law or under federal law for a violation other than theft, receiving stolen property, or money laundering, assess a penalty against the licensee or revoke or

³⁴ R.C. 4728.10(B).

³⁵ R.C. 4728.13(A).

³⁶ R.C. Title 29.



suspend the license of the licensee in accordance with the Administrative Procedure Act.³⁷

Criminal penalties

Existing law penalizes any violation of the PMDL as a first degree misdemeanor and a fifth degree felony on each subsequent offense. Under the bill, except with respect to unlicensed practice as discussed under "**Licensure requirement**," above, a violation of the prohibitions in the PMDL is a third degree misdemeanor on a first offense and a second degree misdemeanor on each subsequent offense.³⁸

Exemptions from the PMDL

Exempt articles and persons

The bill modifies the list of articles, persons, and institutions to which the PMDL does not apply. The bill exempts the following people and transactions from the requirements of the PMDL:

- (1) Any person doing business as a broker-dealer, commodity futures commission merchant, or commodity trading advisor or agent regulated by the Division of Securities under the Ohio Securities Law³⁹ or the U.S. Commodity Futures Trading Commission under the Commodity Exchange Act;
- (2) Any transactions involving the sale or transfer of precious metals by a wholesale jeweler to a retail jeweler or licensed dealer;
- (3) Any upgrade or trade-in of jewelry by a customer to a retail jeweler.

The bill eliminates the following exemptions from the PMDL:

- (1) An exemption for a licensed vendor, engaged in the business of selling jewelry and silverware at retail from a fixed location, whose purchases of precious metals and jewelry are incidental to the person's business as a retail jewelry vendor;
- (2) An exemption for transactions in which both the buyer and seller – by their respective avocations – are collectors, speculators, or investors, who hold themselves out as having knowledge or skill peculiar to items containing precious metals;

³⁷ R.C. 4728.13(B).

³⁸ R.C. 4728.99.

³⁹ R.C. Chapter 1707.



(3) An exemption for a person who is licensed under the Small Loans Law;⁴⁰

(4) An exemption for purchases of coins, hallmark bars, registered ingots, and other items for their value as numismatic objects and not for their content of precious metals.⁴¹

Obligations of persons exempt from licensing

Existing law requires that persons who are exempt from licensing under the incidental-sales and numismatics exemptions (see "**Exempt articles and persons**," above) and who in the ordinary course of business obtain ownership by purchase of precious metals from the public maintain certain records at each business location for at least 12 months immediately succeeding any such transaction. The bill applies the record-keeping requirement to all persons exempt from licensing who engage in these transactions in the ordinary course of business. This includes licensed pawnbrokers, who are currently subject to the same record-keeping requirements as licensed precious metals dealers.⁴²

The records must include all of the following information:

(1) The date and time of the purchase;

(2) The seller's name, address, and date of birth (current law requires the seller's residential address);

(3) A physical description of the seller;

(4) A complete and accurate description of the purchased article, including the name of the manufacturer, any serial and model numbers, or other any identifying letters or marks, and any identifying features (the bill removes the specific requirements to include brand names, initials, monograms, or symbols);

(5) The price paid for each article;

(6) A valid driver's license number, military identification number, or other valid personal identification number (instead of the means used to establish the seller's identity under current law)

(7) The size of the article purchased and the color of any metal purchased;

⁴⁰ R.C. Chapter 1321., not in the bill.

⁴¹ R.C. 4728.11.

⁴² R.C. 4728.02, 4728.11, and 4728.12.

(8) A photograph of the article purchased.

The bill eliminates the current law requirement to indicate the means of payment in the record.⁴³

The bill also expands the current law prohibition against purchasing any precious metals from any individual whom the person knows or has reason to believe is under 18 years of age to apply to anyone subject to the exempt-recordkeeping requirement described immediately above (instead of just the incidental transactions and numismatic transactions under current law).

The bill also requires anyone subject to the exempt-recordkeeping requirement described immediately above to notify in writing the local law enforcement agency that has jurisdiction in the place where the business is located of the location of the records the person maintains pursuant to the bill. These records must be available during normal business hours for inspection by the Superintendent, the Superintendent's designee, or by the local law enforcement agency. This is similar to the current law requirement placed on the incidental transactions and numismatic transactions that are subject to the recordkeeping requirements under current law, except that the bill eliminates the requirement that this notice be made within 60 days after opening a new business location.⁴⁴

HISTORY

ACTION	DATE
Introduced	03-08-17

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⁴³ R.C. 4728.12(A).

⁴⁴ R.C. 4728.12.

