

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2014

Bill Number: H.637/S.308 Name of Bill: : Act related to regulating precious metal dealers

Agency/Dept: State Police Author of Bill Review: Captain JP Sinclair

Date of Bill Review: 1/24/2014 Status of Bill: (check one):

☒ Upon Introduction ☐ As passed by 1st body ☐ As passed by both bodies

Analysis of Bill

1. Summary of bill and issue it addresses. *Describe what the bill is intended to accomplish and why*

Both bills are introduced with same language as per the Interim study committee on the regulation of precious metals dealers final report dated 01/15/14 as seen below:

Final Report

January 15, 2014

In accordance with 2013 Acts and Resolves No. 75, Sec. 22c (Appendix A) (Act 75), the Interim Study Committee on the Regulation of Precious Metal Dealers submits this report to the Senate Committees on

Economic Development, Housing and General Affairs, on Judiciary, and on Government Operations and

the House Committees on Commerce and Economic Development, on Judiciary, and on Government Operations.

Act 75 created the Committee "to examine the current practices in the trade of precious metals in Vermont and the nexus of that trade to drug-related and other illegal activity, and to provide recommendations to the General Assembly on the most effective means of regulating the trade to decrease the amount of related illegal activity and promote the recovery of stolen property." The Committee was directed by Act 75 to consult with witnesses representing a broad range of perspectives,

from jewelers, coin dealers, and antique dealers to law enforcement and prosecutors. The Committee was specifically charged with studying methods for increasing cooperation between law enforcement and dealers in precious metals and other secondhand items in an effort to prevent theft and retrieve stolen property, including:

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

The Committee, comprising Representatives Koch (Chair), Consejo, and Dickinson, and Senators Nitka

(Vice Chair), Collins, and Baruth, held hearings on September 24, October 23, November 8, and December 6, 2013. The Committee received extensive testimony on the current problems with opiate addiction in Vermont and its relationship to crime, the relationship between criminal activity and the

available market outlets for selling stolen property, the nature and practices of businesses dealing in precious metal and secondhand items, and the necessary and appropriate mechanisms for regulating the purchase and sale of precious metal.

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Based on this testimony and significant discussion over the course of its meetings, the Committee unanimously adopted a draft legislative proposal aimed at balancing the rights of businesses and citizens

to engage in commerce, the needs of law enforcement in tracking illegal activity and enforcing Vermont

law, and the burdens on State agencies and private business persons in complying with additional State

regulation of the precious metal industry and its practices. The proposed legislation is included in this report as Appendix B.

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

The draft legislation adopted by the Committee builds upon the foundation laid in House Bill H.522, as

adopted by the House in the 2013 legislative session. The proposal has been introduced in the Senate as

S.308, and a companion bill will be introduced in the House as well.

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

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

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

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

the business of purchasing or selling precious metal," and "antique."

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

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

Section 3885 imposes extensive record-keeping requirements for a precious metal dealer. Under this section, for each item or lot of items, the dealer must assign a lot or sub-lot number and record the amount paid, information about the seller, a description of the item, a digital photograph or video of the

item, certain photographic identification of the seller, and documentation of lawful ownership. A dealer

who sells over \$50,000.00 in a year must maintain these records in electronic format, and all dealers must retain the records for three years.

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

Section 3887 prohibits the purchase of precious metal from minors.

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

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

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

Sec. 4 of the proposal assigns jurisdiction over civil violations of chapter 97A to the Judicial Bureau.

Sec. 5 of the proposal assigns jurisdiction over precious metal dealers to the Office of Professional Regulation. Sec. 6 provides for the implementation of the certification process by OPR, and Sec. 7 provides the effective dates for the legislation.

2. Is there a need for this bill? Please explain why or why not

Yes, there has been a great need for greater regulation and scrutiny of the issues surrounding precious metal dealers and their direct correlation with property crimes from opiate addicted criminals.

3. What are likely to be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?

The direct impact will be on the Secretary of State's office who would be tasked with professional regulation and licensing. Their initial perspective was negative because of increased workload.

4. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it?

None

5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it? (for example, public, municipalities, organizations, business, regulated entities, etc)

It would have impact on other law enforcement organizations because it would also allow them the same abilities to curtail the current problems associated with precious metal dealers

6. Other Stakeholders:

6.1. Who else is likely to support the proposal and why?

Many victims of property crimes have sent letters and testified regarding their traumatic experiences in losing family heirlooms to burglaries to then find out they were pawned for a fraction of their value and quickly melted down, making identification impossible. There should also be support from other stakeholders in the effort to curb opiate addiction and the money sources that keep it going.

6.2. Who else is likely to oppose the proposal and why?

There has been opposition from certain precious metal dealers although there has also been opposing testimony from others as well as the antique dealers.

7. Rationale for recommendation: Justify recommendation stated above.

The issues that this bill addresses has been dealt with in surrounding states. They have long ago written strong bills to address the same problems that we are experiencing in Vermont concerning the theft of precious metals and the regulation of those who deal in them. The huge upswing in gold prices saw a spike in places that would buy "scrap" gold and jewelry. There have been many criminal investigations that revealed property victims' jewelry stolen and brought to a precious metals dealer where the criminal would take a couple hundred dollars for an item clearly worth thousands. The jewelry was then quickly sent out of state to large smelting operations. Investigators have experienced great difficulty in being able to have a chance to recover stolen precious metals because of the lack of a holding period and the lack of required documentation at precious metal dealers.

8. Specific modifications that would be needed to recommend support of this bill: Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended positions.

The bills have been well written but there are a couple modifications that should be considered. The

Vermont League of Cities and Towns in conjunction with a meeting with Vermont Police Chiefs drafted a letter to Senator Mullen outlining their thoughts which will be attached to this review in PDF format. The letter outlines proposals to add the theft and sale of portable electronic devices, inclusion of antiques in the definition of precious metals (to address antique coins and antique precious metal items), inclusion of disqualifying offenses occurring prior to January 1, 2015 as a basis for denial or revocation of dealer certification (as stated in the letter, those convicted criminals should not have a "free pass" to operate a precious metals dealership), expansion of the list of disqualifying offenses to include the crime of burglary, lengthening of the 10 day holding period to a 30 day holding period, requirement of a statement of the holding period to be prominently posted in the dealership, requirement of criminal background checks for all dealership employees. They also requested legislative authority for municipalities to adopt ordinances licensing dealers and charge a license fee to suspend or revoke licenses, to impose waiting periods and reporting requirements and to impose enhanced civil and criminal penalties notwithstanding the limitations under 24 VSA 1974. We should support each of the points spelled out by the VLCT.

Secretary/Commissioner has reviewed this documents:



Date: 1/27/2014

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