Ohio Legislative Service Commission

Bill Analysis

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H.B. 164

130th General Assembly
(As Introduced)

Reps. Henne, Hackett, Pelanda, McGregor, Lundy, Fedor

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 by (1) increasing the amount of the required net worth or bond from $10,000 to $100,000, (2) requiring criminal records checks, and (3) 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.
- Extends the duration of a precious metals dealer's license from one to two years.
- Requires the renewal fee be equivalent to the initial license fee.
- Prohibits the transfer of a precious metals dealer's license.
- Prohibits the Superintendent of Financial Institutions from issuing a temporary exhibition permit to a licensee if the sole purpose of the licensee is to buy precious metals or jewels at a location other than that listed on the licensee's license or to a pawnbroker.
- 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.

- Requires a dealer to deliver within five days after the record or form was used daily reports of articles received to the local law enforcement agency if the agency does not pick them up.

- Extends from 5 to 15 days the period for which a dealer must retain purchased articles.

- Limits the amount a dealer may charge the true owner of stolen property when restoring that property to the true owner.

- 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 may investigate precious metals dealers and related persons and entities at least once a year.

- 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.

Currently, the PMDL is largely not being enforced pursuant to a court order. Specifically, a federal district court held that the plaintiffs in the case were likely to succeed on the merits that the PMDL is unconstitutional on its face due to a potential violation of commercial speech rights under the First Amendment to the United States Constitution. The case primarily focused on the definition of "precious metals dealer."[3]

Subsequently, the court held that persons may voluntarily comply with the PMDL, although the Superintendent is required to notify those people of the status of the PMDL. Additionally, the Superintendent may enforce certain requirements placed

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[1] R.C. 4728.02 and 4728.99.

[2] R.C. 4728.01.

[3] *Liberty Coins, LLC v. Goodman*, S.D. Ohio No. 2:12-cv-998 (December 5, 2012).

on exempt persons.[4] (See **COMMENT** for additional information regarding the case and the case's potential affect on the bill's provisions concerning licensure and licensee duties.)

Licensure requirement

The bill 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 articles containing precious metals or jewels to expressly include signage, electronic media, including electronic mail, or other solicitation of customers. "Person" under the bill, means any individual, firm, partnership, corporation, association, or other business entity, but does not include a person, corporation, partnership, or other entity engaged in business that is exempted from the PMDL. A "purchase" is the acquisition of precious metals, jewels, or jewelry of any description, or both, for a consideration of cash, goods, or other precious metals, jewels, or jewelry.[5]

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 violating either of these prohibitions is a fifth degree felony (currently, unlicensed practice is a first degree misdemeanor for the first offense, and a fifth degree felony for any subsequent offense).[6]

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.[7]

The effect of these changes, especially in light of the court order, is unclear. By definition, one must advertise to the public as willing to purchase precious metals to be considered a precious metals dealer under the PMDL. Thus, it does not appear that a person can be a precious metals dealer without advertising, so enforcement of the prohibitions against advertising without a license is unclear. Additionally, the bill

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[4] *Liberty Coins, LLC v. Goodman*, S.D. Ohio No. 2:12-cv-998 (December 28, 2012).

[5] R.C. 4728.01(A), (C), and (D).

[6] R.C. 4728.02(A) and 4728.99.

[7] R.C. 4728.17(B) and 4728.99(A).

appears to be adding methods of commercial speech to the definition, which raises questions under the court's order.

Qualifications for license

Under continuing 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. With respect to the latter requirement, under the bill, a person must have a net worth of at least $100,000, 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.[8]

The bill expands the requirements for a person to be considered to have the experience and fitness capacity involved. In addition to satisfying the current law requirement that the applicant have sufficient financial responsibility, reputation, and experience in the business of precious metals dealer, or a related business, to act as a precious metals dealer in compliance with the PMDL, under the bill, both of the following must be fulfilled:

(1) The applicant and any of the applicant's stockholders, owners, managers, directors, officers, and employees must have submitted to a criminal records check (which the Superintendent may request under existing law);

(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.[9]

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 "**Renewal of license**," 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

[8] R.C. 4728.03(B) and (H).

[9] R.C. 4728.03(A).

in that municipality or county to receive judicial and other process or legal notice for the applicant.[10]

Renewal of license

The bill extends the duration of a license. Under current law, a license expires on June 30 following the date of issuance. License fees are split evenly between the state and the municipal corporation in which the licensee's office is located (or the county, if the office is not in a municipal corporation), with the local government's half payable as the fees accrue (annually). Under the bill, a license issued on or after January 1, 2012, expires on June 30 of the even-numbered year following the date of issuance. The bill requires that licenses issued or renewed after January 1, 2012, be renewed by June 30 biennially rather than annually. The bill also makes the portion of license fees due the municipal corporation or county after January 1, 2012, payable biennially by the Treasurer of State on vouchers issued by the Director of Budget and Management.[11]

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 stipulates that the renewal fee be equivalent to the fee for an initial license (set by the Superintendent under continuing law). Under continuing law, that fee cannot exceed $300. A licensee who fails to renew before the license expires must either pay a penalty of $100 in addition to the regular renewal fee by August 31 of the year in which the license expires or apply for licensure as if applying for the first time. 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.[12]

Transferability of license

The bill provides that a license is not transferable.[13]

Temporary exhibition permit

The bill eliminates the Superintendent's authority to issue temporary exhibition permits to pawnbrokers and prohibits the Superintendent from issuing a permit to a precious metals dealer if the sole purpose of the dealer's application for a permit is to buy precious metals or jewels at a location other than the one listed on the dealer's

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[10] R.C. 4728.03(D)(2) and (6).

[11] R.C. 4728.03(C)(2) and (D).

[12] R.C. 4728.03(C) and (D)(3), (4), and (5), by reference to R.C. 1321.20, not in the bill.

[13] R.C. 4728.03(F).

license. Currently, the permit allows a precious metals dealer or pawnbroker to engage in the business of purchasing articles made of or containing gold, silver, platinum, or other precious metals or jewels from the public at a bona fide auction, convention, exhibition, fair, or show that has as its primary purpose the display, trade, and sale of articles made of or containing precious metals or jewels. A permit is good for up to seven days for any one auction, convention, exhibition, fair, or show.[14]

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 elaborates upon 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 in a form approved in advance by the Superintendent.[15]

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. It also requires that the form on which specified information is recorded be approved by the Superintendent. 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 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 date and time of purchase; and the purchase price. 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, or other number), and a physical description (not a *short* physical description).[16]

The bill mandates that the dealer require the seller, on a form approved by the Superintendent, to 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.[17]

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[14] R.C. 4728.04(C)(1).

[15] R.C. 4728.06(A) and (F).

[16] R.C. 4728.06(A).

[17] R.C. 4728.06(B).

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.[18] 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.[19]

The bill adds the following requirements and prohibitions:

(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.[20]

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.[21]

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[18] R.C. 4728.01(E), 4728.04, 4728.06, 4728.07, 4728.09, 4728.10, and 4728.12.

[19] R.C. 4728.06(C)(1).

[20] R.C. 4728.06(C)(2), (3), and (4).

[21] R.C. 4728.06(D).

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.[22]

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 full 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. Each statement must be numbered and maintained consecutively, commencing with the number "one," but the licensee may maintain statements in a file.[23]

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, which must be a full description under the bill, together with the number of the record or form issued (instead of "receipt" under current law). The bill also requires that if the local law enforcement agency does not pick up or make arrangements to receive the daily reports, the dealer must deliver them to the agency within five business days after the day the record or form was issued.[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]

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[22] R.C. 4728.06(E).

[23] R.C. 4728.061.

[24] R.C. 4728.07.

[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.

Continuing law prescribes procedures regarding if a licensed precious metals dealer is notified by local law enforcement that an article purchased by the dealer may have been stolen. Currently, if the true owner has been identified, the true owner may reimburse the dealer for the amount the licensee paid for the article. The bill allows the amount to be an amount not exceeding the amount the licensee paid for the article. Similarly, if the true owner elects not to file charges against the person responsible for the alleged theft (as opposed to theft under current law), the bill allows a licensee to charge the true owner an amount not exceeding that which the licensee paid, as opposed to the amount paid under current law.[26]

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.[27]

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.[28]

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 prior to 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.[29]

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[26] R.C. 4728.09(A), (C), and (D).

[27] R.C. 4728.17(A).

[28] R.C. 4728.18, by reference to R.C. 319.55, not in the bill.

[29] R.C. 4728.16.

Enforcement

Investigations

The bill allows the Superintendent, if the Superintendent considers it advisable, to investigate at least once a year the business of every person licensed as a precious metals dealer and of every person, partnership, and corporation by whom or for which any purchase is made, whether the person, partnership, or corporation acts, or claims to act, as principal, agent, or broker, or under, or without the authority of the PMDL. Current law does not specify any timing with respect to these investigations.

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.[30]

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.[31]

The bill gives the Superintendent the following specific enforcement powers:

(1) To issue a cease and desist order against any person the Superintendent reasonably suspects has violated, is currently violating, or is about to violate the provisions of the PMDL and to apply to a court of common pleas for an order compelling a person to comply with any cease and desist order or any subpoena (this appears to be in addition to the Superintendent's current authority to issue a cease and desist order with respect to unlicensed practice);

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[30] R.C. 4728.05(A) and (E).

[31] R.C. 4728.10.

(2) To obtain from the court of common pleas any form of injunctive relief against any person that has violated, is currently violating, or is reasonably suspected of being about to violate the provisions of the PMDL;

(3) To issue a subpoena to any person to compel the production of any item, record, or writing, including an electronic writing;

(4) To issue a subpoena to compel any person to appear and render testimony in regard to a violation of the PMDL;

(5) To examine and investigate the business of any person the Superintendent reasonably suspects to be advertising, transacting, or soliciting business as a precious metals dealer. This authority includes the authority to examine and investigate the person's business location and any books, records, writings (including electronic writings), safes, files, or storage areas located in or utilized by the business location. The Superintendent may request the attendance and assistance of the appropriate local law enforcement agency or the State Highway Patrol during the examination and investigation of the business. This authority also appears to be in addition to the Superintendent's current law authority to conduct investigations (see "**Investigations**," above).[32]

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.[33]

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, 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;

[32] R.C. 4728.10(B).

[33] R.C. 4728.13(A).

(2) Upon the criminal conviction of a licensee or the licensee's employee, manager, officer, director, shareholder, member, or partner for the violation of the Criminal Law[34] 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 license of the licensee in accordance with the provisions of 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 suspend the license of the licensee in accordance with the provisions of the Administrative Procedure Act.[35]

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 PMDL is a third degree misdemeanor on a first offense and a second degree misdemeanor on each subsequent offense.[36]

Civil actions

A person who is injured by the failure of someone engaged in the business of purchasing articles that are made of or contain gold, silver, platinum, or other precious metals or jewels of any description to comply with the PMDL may commence a civil action to recover compensatory damages. The bill adds jewelry, including watches, to the articles that the violator may be in the business of purchasing.[37]

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 eliminates the following exemptions from the PMDL:

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[34] R.C. Title 29.

[35] R.C. 4728.13(B).

[36] R.C. 4728.99.

[37] R.C. 4728.14.

(1) Any person licensed under the Small Loans Law to make loans at a single place of business or any person registered as a second mortgage lender or broker;

(2) Any purchase of silverware or an article of jewelry made of or containing gold, silver, platinum, or other precious metals or jewels that is made by a person who (a) is engaged in the business of selling, at retail, articles of jewelry and silverware, (b) holds a valid vendor's license issued under the Sales Tax Law, (c) maintains a fixed place of business in Ohio at which the person regularly exhibits articles of jewelry and silverware that are for sale at retail, and (d) establishes to the satisfaction of the Superintendent or local police, upon their request, that the person's purchases of silverware and articles of jewelry that are made of or contain precious metals or jewels are incidental to the person's primary business as defined under current law.

(3) Any purchase of coins, hallmark bars, registered ingots, and other items as numismatic objects, and not for their content of precious metals.

Under the bill, the PMDL does not apply to either of the following:

(1) Any person doing business under the laws of Ohio or the United States relating to any broker-dealer, commodity futures commission merchant, or commodity trading advisor or agent duly registered and regulated by the Division of Securities under Ohio law or the United States Commodity Futures Trading Commission under federal law;

(2) Any transactions involving the sale or transfer of gold, silver, platinum, or other precious metals or jewels and jewelry of any description, including watches, by a wholesale jeweler to a retail jeweler or licensed dealer.

The bill modifies the existing exemption for any purchase of an article that is made of or contains precious metals or jewels of any description if both the buyer and seller, or the respective agents, brokers, or other intermediaries of both the buyer and seller, deal in such articles or otherwise by their respective occupations. The bill adds jewelry and watches and eliminates the ability of collectors, speculators, or investors, who hold themselves out as having knowledge or skill peculiar to those articles or the practices involved in their purchase or sale, to take advantage of the exemption.

The bill retains the exemptions for national banks, state banks, credit unions, or savings and loan associations; state-licensed salvage motor vehicle dealers license who purchase or sell precious metal which, in its original form, is a motor vehicle component part; a scrap metal processor subject to Ohio law; and a purchase made pursuant to a probate court order. The bill also retains the exemption for licensed pawnbrokers except as provided in the PMDL. However, the bill eliminates the current law requirement that, while a licensed pawnbroker is not required to be licensed under the PMDL the pawnbroker must comply with the requirements of the PMDL placed on licensed precious metals dealers. Thus, it is unclear as to what the exception is referring.[38]

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 articles made of or containing gold, silver, platinum, or other precious metals or jewels of any description 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 and adds that it applies to purchases of jewelry, including watches.

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).

The bill eliminates the current law requirement to indicate the means of payment in the record.[39]

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[38] R.C. 4728.02(B) and 4728.11.

[39] R.C. 4728.12(A).

The bill also expands the current law prohibition against purchasing any article that is made of or contains gold, silver, platinum, or other precious metals or jewels of any description 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) and covers jewelry, including watches, in that prohibition.

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.[40]

COMMENT

In enjoining enforcement of much of the PMDL, the court held that the PMDL only regulated those engaging in commercial speech; someone who did not advertise but purchased precious metals could do so without a license, but if the person advertised, the person had to obtain a license. This potentially violates the First Amendment, as the underlying activity is not illegal, and thus the speech regarding the activity is protected under the First Amendment.[41]

The bill does not remove the portion of the definition that requires a person to hold the person's self out to the public as willing to buy precious metals (the commercial speech portion of the definition about which the court was concerned). Although the bill expressly adds two prohibitions regarding advertising and precious metals, it is unclear whether those prohibitions remedy the issue raised by the court: that one must engage in commercial speech in order to be required to obtain a license. Thus, it is unclear whether any of the changes to the licensure requirements or any of the duties imposed on licensees under the bill could be enforced.

[40] R.C. 4728.12.

[41] *Liberty Coins, LLC v. Goodman*, S.D. Ohio No. 2:12-cv-998 (December 5, 2012).

Note that, as pointed out by the court, the PMDL has not been declared unconstitutional. Rather, the court found that the plaintiff in the case is likely to succeed on the merits that the PMDL is unconstitutional. Thus, additional litigation may occur regarding the PMDL; it appears that the court's decision has been appealed.[42] Only a court could determine whether the PMDL is constitutional and whether the changes to the PMDL as proposed by the bill are enforceable.

HISTORY

ACTION	DATE
Introduced	05-14-13

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[42] *Liberty Coins, LLC v. Goodman*, 6th Dist. C.A. 13-3012.