

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 956
HOUSE BILL 89

AN ACT TO REGULATE PRECIOUS METAL BUSINESSES.

Whereas, theft of all types of property, particularly theft of precious metals, has increased dramatically in North Carolina; and

Whereas, the value of such stolen property has increased due to inflation and specifically due to the fluctuation in gold and silver prices; and

Whereas, such stolen property can be quickly sold due to the demand for gold and silver in any form; and

Whereas, such property is easily converted into a nonrecognizable form by being melted down, thereby making identification of the stolen items impossible; and

Whereas, the positive identification of persons selling items made of precious metals, short term retention of such items by the purchaser, and regulation of precious metals businesses could enhance the possibility of identifying and recovering stolen property; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Chapter 66, Commerce and Business, of the General Statutes of North Carolina is amended by adding a new Article to read as follows:

"ARTICLE 22.

"Regulation of Precious Metal Businesses.

"§ 66-126. Legislative finding. — The General Assembly finds and declares that precious metal businesses in North Carolina vitally affect the general economy of the State and the public interest and public welfare, and in the exercise of its police power, it is necessary to regulate such businesses, in order to prevent thefts, disposal of stolen property, and other abuses upon its citizens.

"§ 66-127. Definitions. — Unless the context clearly indicates otherwise, the following words and phrases shall have the following meanings:

- (1) 'Dealer' means a person who engages in the business of purchasing precious metals from the public in the form of jewelry, flatware, silver services or other forms and holds himself out to the public by signs, advertising or other methods as engaging in such purchases including any independent contractor purchasing precious metals under any arrangement in any department store; provided, however, that permanently located retail merchants shall be exempted insofar as they make purchases directly from manufacturers or wholesalers of precious metals for their inventories. Provided further, a permanently located retail merchant who is primarily engaged in the business of purchasing or acquiring jewelry, secondhand furniture, antique furniture, objects of art, artifacts, nonprecious metal collector items, antiquities and other used household furnishings or fixtures for resale to the public, and who purchases precious metals, articles or items from the public only incidentally to his main business, may be exempted as provided in G.S. 66-129 if his total purchases or acquisitions of precious metals from the

public constituted ten percent (10%) or less in dollar volume of the total purchases or acquisitions in dollar volume made by such merchant for all such secondhand items or articles in the 12-month period next preceding the date of application for an exemption under G.S. 66-129.

(2) 'Local law enforcement agency' means:

- (i) The county police force; or
- (ii) The county sheriff's office in a county with no county police force for any business located outside the corporate limits of a municipality or inside the corporate limits of a municipality having no municipal police force. 'Local law enforcement agency' means the municipal police for any business located within the corporate limits of a municipality having a police force.

(3) 'Precious metal' means gold, silver, or platinum.

- (a) 'Gold' is defined as any item or article containing ten (10) karat of gold or more which may be in combination or alloy with any other metal.
- (b) 'Silver' is defined as any item or article containing 925 parts per thousand of silver which may be in combination or alloy with any nonprecious metal or which is marked 'sterling'.
- (c) 'Platinum' is defined as any item or article containing 900 parts per thousand or more of platinum which may be in combination or alloy with any metal.

For purposes of this Article, precious metal does not include coins, medals, medallions, tokens, numismatic items, art ingots, or art bars.

§ 66-128. Permits required. — Except as provided in subsection (c), it shall be unlawful for any person to engage as a dealer in the business of purchasing precious metals either as a separate business or in connection with other business operations without first obtaining a permit for the business from the local law enforcement agency. The form of the permit and application therefor shall be as approved by the Department of Crime Control and Public Safety. The application shall be given under oath and shall be notarized. A 30-day waiting period from the date of filing of the application is required prior to initial issuance of a permit. A separate permit shall be issued for each location, place, or premises within the jurisdiction of the local law enforcement agency which is used for the conduction of a precious metals business, and each permit shall designate the location, place or premises to which it applies. Such business shall not be conducted in any other place than that designated in the permit, and no business shall be conducted in a mobile home, trailer, camper, or other vehicle, or structure not permanently affixed to the ground or in any room customarily used for lodging in any hotel, motel, tourist court, or tourist home as defined in G.S. 105-61. The permit shall be posted in a prominent place on the designated premises. Permits shall be valid for a period of 12 months from the date issued and may be renewed without a waiting period upon filing of an application and payment of the annual fee. The annual fee for each dealer's permits within each jurisdiction shall be ten dollars (\$10.00) to provide for the administrative costs of the local law enforcement agency, including purchase of required forms. The fee shall not be refundable even if the permits are denied or later suspended or revoked. Such permits shall be in addition to and not in lieu of other business licenses and are not transferable.

Any dealer applying to the local law enforcement agency for a permit shall furnish the local law enforcement agency with the following information:

(1) his full name, and any other names used by the applicant during the preceding five years. In the case of a partnership, association, or corporation, the applicant shall list any partnership, association, or corporate names used during the preceding five years;

- (2) current address, and all addresses used by the applicant during the preceding five years;
- (3) physical description;
- (4) age;
- (5) driver's license number, if any, and state of issuance;
- (6) recent photograph;
- (7) record of felony convictions; and
- (8) record of other convictions during the preceding five years.

If the applicant for a dealer's permit is a partnership or association, all persons owning a ten percent (10%) or more interest in the partnership or association shall comply with the provisions of this subsection. Any such permits shall be issued in the name of the partnership or association.

If the applicant for a dealer's permit is a corporation, each officer, director and stockholder owning ten percent (10%) or more of the corporation's stock, of any class, shall comply with the provisions of this subsection. Any such permits shall be issued in the name of the corporation.

No permit shall be issued to an applicant who, within five years prior to the date of application, has been convicted of a felony involving a crime of moral turpitude, or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or any other state. In the case of a partnership, association, or corporation, no permit shall be issued to any applicant with an officer, partner, or director who has, within five years prior to the date of application, been convicted of a felony involving a crime of moral turpitude, or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or any other state.

(b) Every employee engaged in the precious metal business shall, within two days of being so engaged, register his name and address with the local law enforcement agency and have his photograph taken by the agency. The agency shall issue to him a certificate of compliance with this section upon the applicant's payment of the sum of three dollars (\$3.00) to the agency. The permit shall be posted in the work area of the permit holder.

(c) A special occasion permit authorizes the permittee to purchase precious metals as a dealer participating in any trade shows, antique shows, and crafts shows conducted within the State. A special occasion permit shall be issued by any local law enforcement agency; provided, however, that a permittee under subsection (a) shall apply for a special occasion permit with the local law enforcement agency which issued such dealer's permit. An application for a permit shall be on a form as approved by the Department of Crime Control and Public Safety and shall be given under oath and notarized. A 30-day waiting period from the date of filing of the application is required prior to initial issuance of a permit.

Any dealer applying to a local law enforcement agency for a special occasion permit shall furnish the local law enforcement agency with the information required in an application for a dealer's permit as set forth in (a).

If the applicant for a special occasion permit is a partnership or association, all persons owning a ten percent (10%) or more interest in the partnership or association shall comply with the provisions of this subsection. Any such permits shall be issued in the name of the partnership or association.

If the applicant for a special occasion permit is a corporation, each officer, director and stockholder owning ten percent (10%) or more of the corporation's stock, of any class, shall comply with the provisions of this subsection. Any such permits shall be issued in the name of the corporation.

No permit shall be issued to an applicant who, within five years prior to the date of application, has been convicted of a felony involving a crime of moral turpitude, or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or any other

state. In the case of a partnership, association, or corporation, no permit shall be issued to any applicant with an officer, partner, or director who has, within five years prior to the date of application, been convicted of a felony involving a crime of moral turpitude, or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or any other state.

The fee for an application for a special occasion permit shall be ten dollars (\$10.00) to provide for the administrative cost of the local law enforcement agency including purchase of required forms. The fee shall not be refundable even if the permit is denied or is later suspended or revoked. Such permits shall be in addition to and not in lieu of other business licenses and are not transferable.

A special occasion permit shall be valid for 12 months from the date issued, unless earlier surrendered, suspended, or revoked. Application for renewal of a permit for an additional 12 months shall be on a form as approved by the Department of Crime Control and Public Safety and shall be accompanied by an application fee of ten dollars (\$10.00). A renewal fee shall not be refundable.

Each special occasion permit shall be posted in a prominent place on the premises of any show at which the permittee purchases precious metals.

"§ 66-129. Exemption from permits. — Any merchant claiming an exemption from the requirements of G.S. 66-128, G.S. 66-131, and G.S. 66-133 due to the percentage of his total business which constitutes precious metals purchases shall file an application therefor with the local law enforcement agency at the same time as applications for dealers' permits are required to be filed under the provisions of this act. The application shall be upon a form approved by the Department of Crime Control and Public Safety and shall contain as a minimum the following information; the name, home address and business address of the applicant; the name and location of the business at its permanent address; the primary nature of the business both as to purchases and sales; the total dollar volume of purchases of precious metals during the 12-month period next preceding the date of application; the total dollar volume of all secondhand goods purchased during the same period by the business; the percentage of precious metals purchases or acquisitions to total purchases or acquisitions of secondhand goods; and the date when the merchant commenced the business under which the exemption is claimed. Such application shall be filed under the same oath as is required for a precious metals dealer permit, shall be notarized, and shall be accompanied by a fee of five dollars (\$5.00), which fee shall be retained by the local law enforcement agency as cost for administering claims for exemptions.

The application for exemption, if granted, shall be valid for a period of 12 months. Thereafter, if the applicant seeks an exemption for the ensuing year he shall file an application for exemption 30 days before the expiration of the prior exemption.

If in any calendar month the percentage of precious metals purchased by an exempted merchant exceeds ten percent (10%) of his total purchases, he shall file notice thereof with the local law enforcement agency.

"§ 66-130. Perjury; punishment. — Any person who shall willfully commit perjury in any application for a permit or exemption filed pursuant to this Article shall be guilty of a misdemeanor.

"§ 66-131. Bond or trust account required. — Before any permit shall be issued to a dealer pursuant to G.S. 66-128, the dealer shall execute a satisfactory cash or surety bond or establish a trust account with a licensed and insured bank or savings institution located in the State of North Carolina in the sum of ten thousand dollars (\$10,000). The bond or trust account shall be in favor of the State of North Carolina. A surety bond is to be executed by the dealer and by two responsible sureties or a surety company licensed to do business in the State of North Carolina, and subject to the approval of the law enforcement agency. Any bond shall be kept in full force and effect and shall be delivered to the law enforcement agency which first issued a

current permit to the dealer. A bond or trust account shall be for the faithful performance of the requirements and obligations of the dealer's business in conformity with this Article. Any law enforcement agency shall have full power and authority to revoke the permit and sue for forfeiture of the bond or trust account upon a breach thereof. Any person who shall have suffered any loss or damage by any act of the permittee that constitutes a violation of this Article shall have the right to institute an action to recover against such permittee and the surety or trust account. Upon termination of the bond or trust account the permit shall become void.

"§ 66-132. Records to be kept. — Every dealer to whom a permit has been issued pursuant to G.S. 66-128 shall maintain a tightly bound book or books (not loose-leaf), with pages numbered in sequence, in which shall be recorded, at the time of any purchase of precious metal, a serially numbered account and description of the specific items purchased, including, if applicable, the manufacturer's name, the model, the model number, the serial number, and any engraved numbers or initials found on the items, the date of the transaction, and the name, sex, race, residence, telephone number and driver's license number, if any, of the person selling the items purchased. Both the dealer and the seller shall sign the record entry. In the event the seller cannot furnish his driver's license, passport, or military identification card bearing his photograph, the dealer shall require two forms of positive identification.

The record book shall be open at all reasonable times to inspection on the premises by law enforcement agencies and shall not be destroyed until two years following the last transaction which the record book reflects. A copy of each record book entry shall be filed within 48 hours of the transaction in the office of the local law enforcement agency. Mailing the required copy to the local law enforcement agency within 48 hours shall constitute compliance with this section.

The files of local law enforcement agencies which contain such copies of record book entries shall not be subject to inspection and examination as authorized by G.S. 132-6. Any public official or employee who shall knowingly and willfully permit any person to have access to or custody or possession of any portion of such files, unless the person is one specifically authorized by the local law enforcement agency to have access thereto for purposes of law enforcement investigation or civil or criminal proceedings, shall be guilty of a misdemeanor and upon conviction shall be fined in the discretion of the court but not in excess of five hundred dollars (\$500.00).

Every merchant to whom an exemption has been issued pursuant to G.S. 66-129 shall maintain a book in which shall be recorded, at the time of any purchase of precious metal, a description of the specific items purchased and the date of the transaction. This book shall be open at all reasonable times to inspection on the premises by law enforcement agencies and shall not be destroyed until two years following the last transaction which the record book reflects.

"§ 66-133. Items not to be modified. — No item included in a dealer purchase shall be sold, traded or otherwise disposed of, melted, cut or otherwise changed in form nor shall any such item be removed from the licensed premises for a period of five days from the date the purchase was made.

"§ 66-134. Purchasing from juvenile. — No dealer or employee or agent thereof shall purchase from any juvenile under 18 years of age any article made, in whole or in part, of precious metal.

"§ 66-135. Penalties. — Any dealer who violates the provisions of this Article shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars (\$500.00) or imprisoned for not more than six months, or both. In addition any dealer so convicted shall be ineligible for a dealer's permit for a period of three years from the date of conviction. Each and every violation shall constitute a separate and distinct offense.

"§ 66-136. Portable smelters prohibited. — It shall be unlawful for any person to possess or operate a smelter in any mobile home, trailer, camper, or other vehicle or structure not

permanently affixed to the ground, for the purpose of refining precious metals. Violation of the provisions of this section shall constitute a misdemeanor and shall be punishable by a fine of not more than five hundred dollars (\$500.00) or imprisoned for not more than six months, or both."

Sec. 2. If any provisions of this act or the application thereof to any person or circumstances are held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application and to this end the provisions of this act are declared to be severable.

Sec. 3. All general or local laws governing precious metals businesses in counties or towns are repealed.

Sec. 4. Local law enforcement agencies shall commence processing filed applications for permits and exemptions no later than August 1, 1981.

Sec. 5. This act shall become effective October 1, 1981, except for Section 4 which is effective upon ratification.

In the General Assembly read three times and ratified, this the 10th day of July, 1981.