

1097

2011-2012 Regular Sessions

I N S E N A T E

January 5, 2011

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to mail-in second-hand precious metals dealers

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The general business law is amended by adding a new article
2 12-C to read as follows:

3 ARTICLE 12-C
4 MAIL-IN SECOND-HAND PRECIOUS
5 METALS DEALERS

6 SECTION 220. DEFINITIONS.

7 221. APPLICATION OF ARTICLE.

8 222. REGISTRATION, TRANSACTION AND RECORDKEEPING.

9 223. TENDERING PAYMENT.

10 224. INSPECTION OF RECORDS AND PREMISES.

11 225. HOLDING PERIOD.

12 226. PENALTIES.

13 227. POWERS OF THE DEPARTMENT.

14 S 220. DEFINITIONS. AS USED IN THIS ARTICLE:

15 1. "DEPARTMENT" MEANS THE DEPARTMENT OF STATE.

16 2. "JEWELRY" MEANS A PERSONAL ORNAMENT THAT CONTAINS A PRECIOUS METAL
17 AND MAY CONTAIN A GEMSTONE OR GEMSTONES.

18 3. "MAIL-IN SECOND-HAND PRECIOUS METALS DEALER" MEANS ANY PERSON OR
19 ENTITY THAT:

20 (A) CONDUCTS BUSINESS WITHIN THIS STATE, THAT CONTRACTS WITH OTHER
21 PERSONS OR ENTITIES TO BUY PRECIOUS METALS OR JEWELRY THROUGH AN INTER-
22 NET WEBSITE, THE UNITED STATES MAIL OR TELEMARKETING; OR

23 (B) CONDUCTS BUSINESS WITHIN THIS STATE, THAT REGULARLY ENGAGES IN THE
24 BUSINESS OF PURCHASING JEWELRY OR PRECIOUS METALS THROUGH THE UNITED
25 STATES MAIL OR INTERNET BASED TRANSACTIONS.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 4. "PRECIOUS METAL" MEANS ANY ITEM CONTAINING ANY GOLD, SILVER OR
2 PLATINUM, OR ANY COMBINATION THEREOF.

3 5. "SELLER" MEANS ANY PERSON OR ENTITY OFFERING PRECIOUS METALS OR
4 JEWELRY FOR SALE, WHICH BELONG SOLELY TO SUCH PERSON OR ENTITY AND WHICH
5 HAS ABSOLUTE AUTHORITY TO SELL SUCH GOODS.

6 6. "TRANSACTION" MEANS ANY EVENT RELATING TO THE SALE AND PURCHASE OF
7 SECOND-HAND PRECIOUS METALS OR JEWELRY BY A MAIL-IN SECOND-HAND PRECIOUS
8 METALS DEALER.

9 S 221. APPLICATION OF ARTICLE. THIS ARTICLE SHALL NOT APPLY TO:

10 1. ANY PERSON OR ENTITY THAT IS AVAILABLE TO THE PUBLIC FOR WALK-IN
11 SALES; OR

12 2. THE PURCHASE, CONSIGNMENT OR TRADE OF SECOND-HAND PRECIOUS METALS
13 OR JEWELRY BETWEEN SECOND-HAND PRECIOUS METALS DEALERS.

14 S 222. REGISTRATION, TRANSACTION AND RECORDKEEPING. 1. NO MAIL-IN
15 SECOND-HAND PRECIOUS METALS DEALER SHALL CONDUCT BUSINESS UNLESS IT IS
16 REGISTERED WITH THE DEPARTMENT PURSUANT TO THIS ARTICLE.

17 2. NO MAIL-IN SECOND-HAND PRECIOUS METALS DEALER SHALL REMIT PAYMENT
18 TO A SELLER UNLESS THE SELLER HAS PROVIDED SUCH DEALER WITH:

19 (A) THE SELLER'S NAME, ADDRESS, TELEPHONE NUMBER AND ELECTRONIC MAIL
20 ADDRESS, IF AVAILABLE;

21 (B) THE SELLER'S DRIVER'S LICENSE NUMBER AND ISSUING STATE, OR ANY
22 OTHER GOVERNMENT ISSUED IDENTIFICATION NUMBER; AND

23 (C) A SWORN STATEMENT MADE BY THE SELLER THAT THE DRIVER'S LICENSE
24 NUMBER OR OTHER GOVERNMENT ISSUED IDENTIFICATION NUMBER PROVIDED BY THE
25 SELLER IS TRUE AND ACCURATE, AND THAT THE SELLER IS THE TRUE AND LAWFUL
26 OWNER OF THE GOODS SOLD. SUCH STATEMENT SHALL INCLUDE THE FOLLOWING
27 LANGUAGE: "I DECLARE UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS
28 TRUE AND ACCURATE."

29 3. FOR EVERY TRANSACTION, A MAIL-IN SECOND-HAND PRECIOUS METALS DEAL-
30 ER SHALL RETAIN A RECORD OF THE FOLLOWING:

31 (A) A COMPLETE AND ACCURATE DESCRIPTION OF THE SELLER'S GOODS, INCLUD-
32 ING:

33 (I) PRECIOUS METAL TYPE OR, IF JEWELRY, THE TYPE OF JEWELRY, AND

34 (II) ANY OTHER UNIQUE IDENTIFYING MARKS, NUMBERS OR LETTERS.

35 SUCH DESCRIPTION SHALL BE IN SUCH AN ELECTRONIC FORMAT AS SHALL BE
36 DETERMINED BY THE SECRETARY OF STATE; AND

37 (B) THE DATE THAT THE SELLER'S GOODS WERE RECEIVED BY THE MAIL-IN
38 SECOND-HAND PRECIOUS METALS DEALER.

39 THE INFORMATION REQUIRED BY THIS SUBDIVISION SHALL BE TRANSMITTED TO A
40 LAW ENFORCEMENT AGENCY HAVING JURISDICTION IN THE MUNICIPALITY WHERE
41 SUCH DEALER IS SITUATE WITHIN TWENTY-FOUR HOURS AFTER ENTERING INTO THE
42 TRANSACTION.

43 4. EVERY MAIL-IN SECOND-HAND PRECIOUS METALS DEALER SHALL MAINTAIN,
44 FOR NOT LESS THAN TWO YEARS, ALL INFORMATION RECEIVED PURSUANT TO SUBDI-
45 VISIONS TWO AND THREE OF THIS SECTION IN A FORM THAT IS EASILY RETRIEVA-
46 BLE UPON THE REQUEST OF ANY LAW ENFORCEMENT AGENCY.

47 5. UPON REQUEST FROM A LAW ENFORCEMENT AGENCY, A MAIL-IN SECOND-HAND
48 PRECIOUS METALS DEALER SHALL PROVIDE SUCH AGENCY WITH AN ELECTRONIC COPY
49 OF ALL INFORMATION ON ANY SELLER THAT SUCH DEALER IS REQUIRED TO MAIN-
50 TAIN PURSUANT TO SUBDIVISIONS TWO AND THREE OF THIS SECTION.

51 S 223. TENDERING PAYMENT. EVERY PAYMENT BY A MAIL-IN SECOND-HAND
52 PRECIOUS METALS DEALER RESULTING FROM THE SALE, PURCHASE, CONSIGNMENT OR
53 TRADE OF PRECIOUS METALS OR JEWELRY SHALL BE MADE TO THE SELLER BY A
54 CHECK OR MONEY ORDER.

55 S 224. INSPECTION OF RECORDS AND PREMISES. EVERY MAIL-IN SECOND-HAND
56 PRECIOUS METALS DEALER SHALL ALLOW A LAW ENFORCEMENT AGENCY TO INSPECT

1 ITS BUSINESS RECORDS, INVENTORY AND BUSINESS PREMISE DURING NORMAL BUSI-
2 NESS HOURS.

3 S 225. HOLDING PERIOD. NO MAIL-IN SECOND-HAND PRECIOUS METALS DEALER
4 SHALL SELL, BARTER, EXCHANGE, ALTER, ADULTERATE, USE OR IN ANY MANNER
5 DISPOSE OF GOODS PURCHASED FROM A SELLER WITHIN TEN CALENDAR DAYS OF THE
6 DATE OF PAYMENT FOR SUCH GOODS.

7 S 226. PENALTIES. 1. ANY PERSON ACTING AS A MAIL-IN SECOND-HAND
8 PRECIOUS METALS DEALER WHO IS NOT REGISTERED AS SUCH WITH THE DEPARTMENT
9 OR ANY MAIL-IN, SECOND-HAND PRECIOUS METALS DEALER WHICH VIOLATES ANY
10 PROVISION OF THIS ARTICLE SHALL BE GUILTY OF A CLASS E FELONY AND SHALL
11 BE PROHIBITED FROM ACTING AS A MAIL-IN SECOND-HAND PRECIOUS METALS DEAL-
12 ER FOR NOT LESS THAN ONE YEAR.

13 2. ANY SELLER WHO KNOWINGLY PROVIDES FALSE INFORMATION TO A MAIL-IN
14 SECOND-HAND PRECIOUS METALS DEALER AND RECEIVES PAYMENT FROM SUCH DEALER
15 SHALL BE GUILTY OF A:

16 (A) CLASS E FELONY IF THE PAYMENT RECEIVED IS LESS THAN THREE HUNDRED
17 DOLLARS; AND

18 (B) CLASS D FELONY IF THE PAYMENT RECEIVED IS THREE HUNDRED DOLLARS OR
19 MORE.

20 S 227. POWERS OF THE DEPARTMENT. THE DEPARTMENT SHALL PROMULGATE ANY
21 RULES AND REGULATIONS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS
22 ARTICLE.

23 S 2. This act shall take effect on the first of January next succeed-
24 ing the date on which it shall have become a law; provided that, effec-
25 tive immediately any actions necessary to implement the provisions of
26 this act on its effective date are authorized and directed to be
27 completed on or before such date.