

HB 3469 By Representative NATHANSON -- Relating to precious metal buyers; declaring an emergency.

76th OREGON LEGISLATIVE ASSEMBLY--2011 Regular Session

A BILL FOR AN ACT

Relating to precious metal buyers; creating new provisions;
amending ORS 646.607; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. { + As used in sections 1 to 4 of this 2011 Act:

(1) 'Commercial account' means an agreement or arrangement between a commercial seller and a precious metal buyer for regularly or periodically selling, purchasing or receiving precious metal.

(2) 'Commercial seller' means a business entity, as defined in ORS 60.470, [SEE PAGE 8] or a governmental entity that regularly or periodically sells or delivers precious metal to a precious metal buyer as part of the entity's business or governmental function.

(3) 'Precious metal' means an item that consists of or incorporates platinum, gold or silver.

(4) '**Precious metal buyer**' means a person that is licensed to do business in this state or another state and that by any method engages in the business of soliciting, receiving, purchasing, trading or accepting delivery of precious metal from individuals in return for money or other consideration.

(5) 'Precious metal buying record' means the record described in section 2 (1)(a) of this 2011 Act.

(6)(a) '**Transaction**' means a completed sale, purchase, receipt or trade of, or a contract, agreement or pledge to sell, purchase, receive or trade, precious metal that occurs or forms between an individual and a precious metal buyer in which the precious metal buyer takes or agrees to take possession of the precious metal from the individual and the individual receives or agrees to receive money or other consideration from the precious metal buyer.

(b) 'Transaction' does not include:

(A) A transfer of precious metal that occurs without consideration; or

(B) A sale, purchase, receipt or trade of, or a contract, agreement or pledge to sell, purchase, receive or trade, precious metal that occurs or forms between:

(i) A commercial seller or an authorized employee or agent of a commercial seller; and

(ii) A precious metal buyer. + }

SECTION 2. { + **(1) Before completing a transaction with an individual** located in or residing in this state, **a precious metal buyer shall do all of the following:**

(a) Create a precious metal buying record for the transaction.

The record must:

- (A)** Be accurate and written clearly and legibly in the English language;
- (B)** Contain information in an electronic form that is:
 - (i)** Stored securely in a database and that is capable, at no charge, of readily being searched and retrieved by keyword; and
 - (ii)** Capable of being viewed and printed by means of a secure Internet connection accessible through a user name and password only by the precious metal buyer and a law enforcement official; and
- (C)** Contain all of the following information:
 - (i)** The full name, street address and telephone number of the individual with whom the precious metal buyer conducts the transaction.
 - (ii)** The signature of the individual with whom the precious metal buyer conducts the transaction.
 - (iii)** The time and date on which the precious metal buyer receives or agrees to receive delivery of the precious metal.
 - (iv)** The monetary or other value of the transaction.
 - (v)** The name of the employee, if any, who conducts the transaction on behalf of the precious metal buyer.
 - (vi)** A photocopy of a current, valid driver license or other government-issued photo identification that belongs to the individual with whom the precious metal buyer conducts the transaction.
 - (vii)** A general description of the precious metal that is the subject of the transaction. The description must include identifiable marks on the precious metal, if readily discernible, and must specify the weight, quantity or volume of the precious metal.
 - (viii)** A photograph of the precious metal that is the subject of the transaction. The photograph must be digital or capable of being scanned into digital form for storage as part of the precious metal buying record.

(b) Require the individual with whom the precious metal buyer conducts the transaction to sign and date a declaration printed in conspicuous type either on the precious metal buying record or on a separate page that the precious metal buyer issues to the individual as part of solicitation materials or materials the individual uses to deliver the precious metal to the precious metal buyer. The precious metal buyer shall scan or otherwise incorporate the declaration into the precious metal buying record, after verifying that the signature and other text shown on the declaration are clear and legible. The declaration must state:

I, _____, AFFIRM UNDER PENALTY OF LAW THAT I AM 18 YEARS OF AGE OR OLDER, THAT I AM THE LAWFUL OWNER OF THE PROPERTY I AM SELLING AND HAVE THE ABSOLUTE RIGHT AND AUTHORITY TO SELL THE PROPERTY AND THAT THE PROPERTY I AM SELLING IN THIS TRANSACTION IS NOT, TO THE BEST OF MY KNOWLEDGE, STOLEN PROPERTY.

(c) Require the employee of the precious metal buyer who conducts the transaction with the individual or the precious metal buyer to sign and date the declaration in a space provided

for the signature and date.

(d) Retain a copy of the precious metal buying record and the signed and dated declaration for not less than two years after the date of the transaction. The precious metal buyer shall at all times keep a copy of the precious metal buying record and the declaration at the precious metal buyer's current place of business.

(2) **Before purchasing** or receiving precious metal **from a commercial seller**, a precious metal buyer shall:

(a) Create and maintain a commercial account with the commercial seller. As part of the commercial account, the precious metal buyer shall record information that:

- (A) Is accurate and written clearly and legibly in the English language;
- (B) Is in an electronic form that is:
 - (i) Stored securely in a database and that is capable, at no charge, of readily being searched and retrieved by keyword; and
 - (ii) Capable of being viewed and printed by means of a secure Internet connection accessible through a user name and Password only by the precious metal buyer and a law enforcement official; and
- (C) Includes all of the following:
 - (i) The full name of the commercial seller.
 - (ii) The business address and telephone number of the commercial seller.
 - (iii) The full name of each employee or agent that the commercial seller authorizes to deliver precious metal to the precious metal buyer.

(b) Record as part of the commercial account at the time the precious metal buyer receives delivery of the precious metal from the commercial seller all of the following information:

- (A) The time and date on which the precious metal buyer receives delivery of the precious metal.
- (B) The monetary or other value of the precious metal.
- (C) A general description of the precious metal.
- (D) The signature of the authorized individual who delivered the precious metal to the precious metal buyer.

(3) A precious metal buyer shall make available to a duly authorized law enforcement official all records and accounts that this section requires the precious metal buyer to create or retain. If the law enforcement official asks to inspect the records or accounts at the precious metal buyer's place of business, the precious metal buyer shall make the records or accounts available to the law enforcement official during the precious metal buyer's normal business hours.

(4) **A precious metal buyer may not:**

(a) **Conduct a transaction with an individual if the individual does not at the time of the transaction:**

- (A) Consent to the precious metal buyer's creating a precious

metal buying record in accordance with this section;

(B) Provide the information and documents required for creating the precious metal buying record; and

(C) Provide the signed declaration required under this section.

(b) **Conduct a transaction by paying** or providing other consideration to **the individual in a form other than by mailing,** not **earlier than 10 business days after the date of the transaction,** a nontransferable check for the amount of the transaction **to the street address** the individual provided for the precious metal buying record. The precious metal buyer must draw the check on an account that the precious metal buyer maintains with an institution, as defined in ORS 706.008.

(c) Cash a check issued in payment for a transaction or release a check issued in payment for a transaction other than as provided in paragraph (b) of this subsection. If a check is returned as undelivered or undeliverable, the precious metal buyer shall retain the check until the individual with whom the precious metal buyer conducted the transaction provides a valid street address for the individual. If after 30 days following the date of the transaction, the individual fails to provide a valid street address, the precious metal buyer may cancel the check and retain the amount due as payment.

(5) This section does not apply to a person licensed under ORS 726.080. + }

SECTION 3. { + **(1)** If a precious metal buyer receives precious metal from an individual who fails to supply information necessary to complete a precious metal buying record, the precious metal buyer, within seven business days after receiving the precious metal, shall use any means the individual provided for written communication with the individual to:

(a) Notify the individual in writing that information necessary to complete the precious metal buying record is missing;

(b) Ask the individual to supply the necessary information; and

(c) Notify the individual that the individual must supply the necessary information or the precious metal buyer must hold the precious metal as provided in subsection (2) of this section.

(2) If an individual fails to provide the information necessary to complete a precious metal buying record under section 2 of this 2011 Act within 30 days after delivering precious metal to a precious metal buyer, the precious metal buyer shall hold the precious metal for delivery to a removing authority, as defined in ORS 98.245.

(3) Within 10 days after the 30-day period described in subsection (2) of this section has expired, the precious metal buyer shall notify the Attorney General that an individual has delivered precious metal to the precious metal buyer and has failed to provide the information necessary to complete a precious metal buying record.

(4) The Attorney General, within a reasonable time after receiving the notice described in subsection (3) of this section, shall retrieve or delegate to a removing authority, as defined in ORS 98.245, the duty to retrieve the precious metal from the precious metal buyer. Except as provided in subsection (5) of this section, the Attorney General shall treat the precious metal as unclaimed property in accordance with ORS 98.302 to 98.436.

(5) If a law enforcement official or agency has probable cause to believe that precious metal in the possession of a precious metal buyer or the Attorney General is stolen property, the law enforcement official or agency, subject to limits on the jurisdiction of the law enforcement official or agency under applicable law, may order the precious metal buyer to hold or request that the Attorney General hold the precious metal for a period that does not exceed 90 days. The law enforcement official or agency may extend the 90-day period by applying to a circuit court in this state for a finding that probable cause exists to believe that the precious metal is stolen and that extending the hold is necessary to safeguard the precious metal for trial or as evidence in another proceeding.

(6) For the period during which a law enforcement official or agency has placed precious metal that a precious metal buyer possesses under a hold in accordance with subsection (5) of this section, the precious metal buyer:

(a) Assumes all responsibility and liability for safekeeping of the precious metal, including responsibility for the actions of an employee of the precious metal buyer; and

(b) Must release the precious metal to the law enforcement official or agency upon demand and production of a subpoena for the precious metal. + }

SECTION 4. { + Violating a provision of section 2 or 3 of this 2011 Act is an unlawful practice under ORS 646.607 that is subject to an investigative demand under ORS 646.618 and enforcement under ORS 646.632. + }

SECTION 5. ORS 646.607 is amended to read:

646.607. A person engages in an unlawful practice { - when - } { + if + } in the course of the person's business, vocation or occupation the person:

(1) Employs { - any - } { + an + } unconscionable tactic in connection with { - the sale, rental or other disposition - } { + selling, renting or otherwise disposing + } of real estate, goods or services, or

{ - collection or enforcement of - } { + collecting or enforcing + } an obligation;

(2) Fails to deliver all or { - any - } { + a + } portion of real estate, goods or services as promised, and upon request of the customer, fails to refund { - any - } money that { + the person + } { - has been - } received from the customer that was for the purchase of the undelivered real estate, goods or services and that { - is not retained by the seller - }

{ + the person does not retain + } pursuant to { - any - }
{ + a + } right, claim or defense asserted in good faith. This subsection does not create a warranty obligation and does not apply to a dispute over the quality of real estate, goods or services delivered to a customer;

(3) Violates ORS 401.965 (2);

(4) Violates a provision of ORS 646A.725 to 646A.750;

(5) Violates ORS 646A.530; { - or - }

(6) Employs a collection practice that is unlawful under ORS 646.639 { - . - } { + ; or

(7) Violates a provision of section 2 or 3 of this 2011 Act. + }

SECTION 6. { + (1) Sections 1 to 4 of this 2011 Act and the amendments to ORS 646.607 by section 5 of this 2011 Act become operative on the 91st day following the effective date of this 2011 Act.

(2) The Attorney General may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the Attorney General to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the Attorney General by sections 1 to 4 of this 2011 Act and the amendments to ORS 646.607 by section 5 of this 2011 Act. + }

SECTION 7. { + This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage. + }

ORS § 60.470

Definitions for ORS 60.470 to 60.501

As used in ORS [60.470 \(Definitions for ORS 60.470 to 60.501\)](#) to [60.501 \(Merger or share exchange with foreign corporation\)](#):

(1) "Business entity" means:

(a) Any of the following for-profit entities:

(A) A professional corporation organized under ORS chapter 58, predecessor law or comparable law of another jurisdiction;

(B) A corporation organized under this chapter, predecessor law or comparable law of another jurisdiction;

(C) A limited liability company organized under ORS chapter 63 or comparable law of another jurisdiction;

(D) A partnership organized in Oregon after January 1, 1998, or that is registered as a limited liability partnership, or that has elected to be governed by ORS chapter 67, and a partnership governed by law of another jurisdiction that expressly provides for conversions and mergers;

and

(E) A limited partnership organized under ORS chapter 70, predecessor law or comparable law of another jurisdiction;

and

(b) A cooperative organized under ORS chapter 62, predecessor law or comparable law of another jurisdiction.

(2) "Organizational document" means the following for an Oregon business entity or, for a foreign business entity, a document equivalent to the following:

(a) In the case of a corporation, professional corporation or cooperative, articles of incorporation;

(b) In the case of a limited liability company, articles of organization;

(c) In the case of a partnership, a partnership agreement and, for a limited liability partnership, its registration; and

(d) In the case of a limited partnership, a certificate of limited partnership.

(3) "Owner" means a:

(a) Shareholder of a corporation or of a professional corporation;

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- (b) Member or shareholder of a cooperative;
- (c) Member of a limited liability company;
- (d) Partner of a partnership; and
- (e) General partner or limited partner of a limited partnership. [1999 c.362 §6; 2003 c.80 §14]