ENGROSSED HOUSE
BILL NO. 1440 By: Lamons of the House

and

Bass of the Senate

An Act relating to professions and occupations; amending 59 O.S. 2001, Sections 1522, 1531 and 1532, which relate to the Precious Metal and Gem Dealer Licensing Act; modifying definition of dealer; requiring report on buy transactions; providing exemption from reporting requirement; modifying reports of theft of precious metal; authorizing Department of Consumer Credit Administrator and law enforcement to examine certain records of dealer; prescribing penalty for dealer that fails or refuses to comply with examination; providing for cost of examination; providing for hold on property; providing procedure for release of property to law enforcement; authorizing Administrator to investigate violations; directing dealer to make certain records available for a certain period of time; directing dealer to file report for each licensed place of business; authorizing Administrator to promulgate rules; declaring the Administrative Procedures Act governs all actions and proceedings taken by Administrator; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 59 O.S. 2001, Section 1522, is amended to read as follows:

Section 1522. As used in ~~this act~~ <u>the Precious Metal and Gem Dealer Licensing Act</u>:

1. "Administrator" means the Administrator of the Department of Consumer Credit;

2. "Dealer" means any person, partnership, sole proprietorship, corporation or association which, in the regular course of business, takes, receives, pays for or transfers used precious metals or gems excluding any supervised financial institution as defined by the Consumer Credit Code, pawnbrokers licensed pursuant to Section 1501 et seq. of this title, and jewelers whose principal business is the sale of items purchased directly from the original manufacturer, wholesaler or their authorized representative and who in the regular course of such business, accept trade-in of items defined in this act as precious metals or gems, so long as the item or items to be traded are not greater in value than the item or items to be purchased. For purposes of this exception, retail jewelers may not buy used precious metals or gems for cash consideration only. For the purpose of this section, any person who advertises for, solicits or holds himself out as willing to buy and sell precious metals and gems shall be presumed to be a dealer;

3. "Employee" means any person working for a dealer, whether or not the person is in the direct employment of the dealer or works full time or part time, who handles used precious metals or gems for the dealer. "Employee" shall not mean a person employed by a bank, armored car company or other business entity acting in the sole capacity of bailee-for-hire relationship with a dealer;

4. "Gem" means any precious or semiprecious stone or item containing a precious or semiprecious stone customarily used in jewelry or ornamentation;

5. "Precious metal" means platinum, gold or silver, but shall not mean any ingot or bar manufactured by a commercial mint nor shall it mean any or all coins; and

6. "Used" means previously sold or traded.

SECTION 2. AMENDATORY 59 O.S. 2001, Section 1531, is amended to read as follows:

Section 1531. A. Every dealer must keep at the business location designated in the license application, all used articles made, in whole or in part, of precious metals or gems, for inspection by any law enforcement officer at reasonable times for a period of ten (10) days or until the articles have been released by written authorization of any law enforcement officer authorized by the law enforcement agency or its designee, except as provided for in subsection C of Section ~~5~~ 1525 of this ~~act~~ title. During this period, the appearance of such articles shall not be altered in any way. A dealer is not prohibited from selling or arranging to sell such articles during the ten-day period as long as such articles remain in ~~his~~ the possession of the dealer as required by this section.

B. Every dealer shall make available a copy or report within three (3) days of any buy transaction to the local law enforcement

agency of the municipality or county in which the dealer is located; provided, merchandise bought on invoice from a manufacturer or wholesaler with an established place of business is exempt from this reporting requirement. However, the invoice shall be shown upon request to the Administrator of the Department of Consumer Credit or the duly authorized representative of the Administrator or any authorized peace officer. The copy or report shall include:

1. The name and address of the dealer;

2. The name, address, race, sex, weight, height, date of birth and either identification number of the seller as verified by either a state-issued identification card, driver license or federal-government-issued identification card or by readable fingerprint of the right or left index finger on the back of the transaction copy to be retained for the dealer's record;

3. The buy transaction number;

4. The date and time of the transaction;

5. The manufacturer of the item;

6. A description of the item; and

7. The serial number and model number, where available, and any other identifying markings.

C. The dealer shall obtain a written declaration of ownership from the seller on all transactions, except merchandise bought from a manufacturer or wholesaler with an established place of business. The seller shall be required to state how long the seller has owned

the property described in the transaction. The declaration of ownership shall appear on the bill of sale, to be completed by the seller at the time of the transaction.

D. A dealer may also designate an additional location for storage of items required to be held under the provisions of this act. This location shall be either a vault or a bank. The address of the designated additional location shall be filed with the Administrator. The Administrator shall release the designated location only to law enforcement agencies. The designated additional location shall be available for inspection by any law enforcement officer of this state authorized by the law enforcement agency to inspect the same.

SECTION 3. AMENDATORY 59 O.S. 2001, Section 1532, is amended to read as follows:

Section 1532. A. Upon receiving a reported theft of precious metals, all law enforcement agencies shall transmit such reports to the Oklahoma State Bureau of Investigation. The reporting law enforcement agencies shall include any municipality, city, or town or county law enforcement agencies.

B. At such times as the Administrator of the Department of Consumer Credit deems necessary, the Administrator or the duly authorized representative of the Administrator may make an examination of the place of business of each dealer and may inquire into and examine the transactions, books, accounts, papers,

correspondence and records of such dealer insofar as they pertain to the business regulated by the Precious Metal and Gem Dealer Licensing Act. Such books, accounts, papers, correspondence, records and property taken, purchased or received shall also be open for inspection at any reasonable time to federal law enforcement officials and the chief of police, district attorney, sheriff or written designee of the law enforcement body in whose jurisdiction the dealer is located, without any need of judicial writ or other process. In the course of an examination, the Administrator or the duly authorized representative of the Administrator or any authorized peace officer shall have free access to the office, place of business, files, safes and vaults of such dealer, and shall have the right to make copies of any books, accounts, papers, correspondence and records insofar as they pertain to the business regulated by the Precious Metal and Gem Dealer Licensing Act. The Administrator or the duly authorized representative of the Administrator may, during the course of the examination, administer oaths and examine any person under oath upon any subject pertinent to any matter about which the Administrator is authorized or required by the Precious Metal and Gem Dealer Licensing Act to consider, investigate or secure information. Any dealer who fails or refuses to permit the Administrator or the duly authorized representative of the Administrator or any authorized peace officer to examine or make copies of such books or other relevant documents

shall thereby be deemed in violation of this section, and such failure or refusal shall constitute grounds for the suspension or revocation of such license. The information obtained in the course of any examination or inspection shall be confidential, except in civil or administrative proceedings conducted by the Administrator, or criminal proceedings instituted by the state. Each dealer shall pay to the Administrator an amount assessed by the Administrator to cover the direct or indirect cost of the examination, not to exceed Two Hundred Dollars ($200.00) in any calendar year.

C. Whenever a peace officer has probable cause to believe that property in possession of a licensed dealer is stolen or embezzled, the peace officer of the local law enforcement agency of the municipality or county in which the dealer resides may place a written hold order on the property. The initial term of the written hold order shall not exceed thirty (30) days. However, the holding period may be extended in successive thirty-day increments upon written notification to the licensed dealer prior to the expiration of the initial holding period. If the holding period has expired and has not been extended, the hold order shall be considered expired and no longer in effect, and title shall vest in the dealer. The initial written hold order shall contain the following information:

1. Signature of the dealer or the designee of the dealer;

2. Name, title and identification number of the peace officer placing the hold order;

3. Name and address of the agency to which the peace officer is attached and the offense number;

4. Complete description of the property to be held, including model number, serial number and transaction number;

5. Name of agency reporting the property to be stolen or embezzled;

6. Mailing address of the dealer where the property is held; and

7. Expiration date of the holding period.

D. While a hold order is in effect, the dealer may consent to release, upon written receipt, the alleged stolen or embezzled property to the custody of the local law enforcement agency to which the peace officer placing the hold order is attached. The consent to release the property to the custody of law enforcement is not a waiver or release of the dealer's property rights or interest in the property. Otherwise, the dealer shall not release or dispose of the property except pursuant to a court order or the expiration of the holding period including all extensions. The district attorney's office shall notify the dealer in writing in cases in which criminal charges have been filed that the property may be needed as evidence. The notice shall contain the case number, the style of the case, and a description of the property. The dealer shall hold such property

until receiving notice of the disposition of the case from the district attorney's office. The district attorney's office shall notify the dealer in writing within fifteen (15) days of the disposition of the case. Willful noncompliance of a dealer to a written hold order shall be cause for the dealer's license to either be suspended or revoked pursuant to Section 1528 of this title. A hold order may be released prior to the expiration of any thirty-day holding period by written release from the agency placing the initial hold order.

E. For the purpose of discovering violations of the Precious Metal and Gem Dealer Licensing Act or of securing information required pursuant to this section, the Administrator or the duly authorized representative of the Administrator may investigate the books, accounts, papers, correspondence and records of any dealer or other person who the Administrator has reasonable cause to believe is violating any provision of the Precious Metal and Gem Dealer Licensing Act, whether or not such person shall claim to be within the authority or scope of the Precious Metal and Gem Dealer Licensing Act.

F. Each dealer shall keep or make available in this state such books and records relating to transactions made under the Precious Metal and Gem Dealer Licensing Act as are necessary to enable the Administrator to determine whether the dealer is complying with the

Precious Metal and Gem Dealer Licensing Act. Such books and records shall be consistent with accepted accounting practices.

G. Each dealer shall preserve or make available such books and records in this state relating to each of its transactions for four (4) years from the date of the transaction, or two (2) years from the date of the final entry made thereon, whichever is later. Each dealer's system of records shall be accepted if it discloses such information as may be reasonably required under the Precious Metal and Gem Dealer Licensing Act. All agreements signed by customers shall be kept at an office in this state designated by the dealer, except when transferred under an agreement which gives the Administrator access thereto. All credit sales made by a dealer shall be made in accordance with and subject to the provisions of Title 14A of the Oklahoma Statutes.

H. Each dealer shall, annually on or before the first day of May or other date thereafter fixed by the Administrator, file a report with the Administrator setting forth such relevant information as the Administrator may reasonably require concerning the business and operations during the preceding calendar year for each licensed place of business conducted by such dealer within the state. The report shall be made under oath and shall be in the form prescribed by the Administrator, who may make and publish annually a consolidated analysis and recapitulation of such reports, but the individual reports shall be held confidential.

I. The Administrator may promulgate rules necessary for the enforcement of the Precious Metal and Gem Dealer Licensing Act and consistent with all its provisions. Except as otherwise expressly provided in the Precious Metal and Gem Dealer Licensing Act, the Administrative Procedures Act, Sections 250.1 et seq. and 250.3 et seq. of Title 75 of the Oklahoma Statutes, applies to and governs all administrative actions and civil proceedings taken by the Administrator pursuant to the Precious Metal and Gem Dealer Licensing Act.

SECTION 4. This act shall become effective November 1, 2007.

Passed the House of Representatives the 15th day of March, 2007.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2007.

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Presiding Officer of the Senate