

LOCAL LAW NO. "E" FOR 2011

**A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK
ESTABLISHING AN ELECTRONIC REPORTING SYSTEM AND FILING
REQUIREMENTS FOR PRECIOUS METAL EXCHANGES AND DEALERS
IN SECONDHAND ARTICLES IN ALBANY COUNTY**

Introduced: 7/11/11

By Mr. Domalewicz, Mss. Willingham, Lockart, Messrs. Aylward, Beston, Bullock, Ms. Chapman, Messrs. Clay, Clenahan, Commisso, Ms. Connolly, Messrs. Cotrofeld, Dawson, Ethier, Gordon, Higgins, Horstmyer, Houghtaling, Infante, Joyce, Ms. Maffia-Tobler, Messrs. Mayo, McCoy, Ms. McKnight, Messrs. Morse, Nichols, Rahm, Reilly, Scavo, Steck, Timmins and Ward:

BE IT ENACTED by the Albany County Legislature as follows:

Legislative Intent.

This Legislature hereby finds and determines that the creation of a uniform County wide electronic reporting program for tangible personal property acquired by precious metal exchange establishments, pawnshops, and second-hand merchants will curtail the distribution and help facilitate the recovery of stolen property in Albany County.

This Legislature further finds and determines that advances in technology and changes in the precious metal exchange establishments, pawnshops, and second-hand marketplace require electronic reporting to monitor and track daily business transactions.

Therefore, the purpose of this law is to establish a uniform electronic reporting system for precious metal exchanges and dealers in secondhand articles to help the law enforcement community trace and recover stolen property.

Definitions.

As used in this article, the following terms shall have the meanings indicated:

“Agency”: The Office of Consumer Affairs in Albany County.

“Antique Firearms”: Any unloaded muzzle-loading pistol or revolver with a matchlock, flintlock, percussion cap or similar type of ignition system, or a pistol or

revolver which uses fixed cartridges which are no longer available in the ordinary channels of commercial trade.

“Bond”: An insurance agreement pledging security for payment of any bank draft or other negotiable instrument.

“Business Day”: Any calendar day except Sunday or any County holiday.

“Current Market Value”: The value at the close of business previous on the business day.

“Coin”: Metal money exchanged for purchase or sale for more than its melt down value, unless deemed to be an investment in numismatics.

“Department”: The Office of Consumer Affairs.

“Establishment”: Precious Metal Exchange or Secondhand Establishment

“Identification”: A valid New York State Driver’s License or equivalent picture identification that contains the person’s name to include a physical description and current address. Social security cards, draft registration cards, voter registration cards and comparable documents shall not be considered sufficient identification for the purpose of this article.

“Precious Metal”: Gold, silver or platinum or coins, utensils or objects containing one or more of these metals.

“Precious Metal Exchanger”: Persons engaged in the business of sale, purchase or exchange of precious metals for other objects of precious metal, for United States currency, bank drafts or other negotiable instruments as defined in the Uniform Commercial Code.

“Precious Metal Exchange and Secondhand Establishment”: Any shop, store, residence, place or premises from which a precious metal exchange business is conducted.

“Secondhand Article”: An article or object which:

- A.) Has been previously sold at retail; or
- B.) Has been previously used or is not in a new condition.

“Secondhand Dealer”: Any person who deals in the purchase or sale of any article that has already been bought or sold in the retail market.

License Required.

A. It is unlawful for any person to engage in any business as a precious metal exchanger and/or as a secondhand dealer establishment without first applying for and obtaining a license from the Office of Consumer Affairs of Albany County in accordance with and subject to the provisions of this Local Law.

B. When an application is filed, the Office of Consumer Affairs of Albany County shall cause an investigation to be made by the Local Law Enforcement Agency to ascertain whether the applicant or applicants is or are of good character and repute. Local Law Enforcement Agencies shall furnish to the Office of Consumer Affairs of Albany County the information derived from their investigation, accompanied by a recommendation as to whether a license should be granted or refused.

C.) Any person, corporation, partnership or other entity and its employees that, as a business, transacts more than five (5) purchases, sales or exchanges of the following articles within a twelve (12) month period shall be required to apply and obtain said license described in this local law:

- (1) Antique firearms.
- (2) Rifles.
- (3) Shotguns.
- (4) Cameras and other photography equipment.
- (5) Business machines, including but not limited to typewriters, copying machines, sorting machines, calculators, word processing equipment and data processing equipment.
- (6) Electronic equipment or component parts thereof, including but not limited to televisions, stereos, video cassette recorders, cd's and dvd's, video games systems and video games, computers, citizen band radios and cable television converters and descramblers.
- (7) Electrical appliances other than refrigerators, washers, dryers, stoves, ovens and home freezers.
- (8) Marine equipment, including but not limited to in-board and outboard motors, anchors, fenders and radio and navigation equipment. This equipment shall not include boats.
- (9) Telescopes.
- (10) Binoculars.
- (11) Musical instruments and band equipment.
- (12) Cellular telephones and pagers.
- (13) Electric and gas-powered yard and or garden equipment and tools.
- (14) Electric, pneumatic, or hydraulic-powered construction or mechanic's equipment or tools.
- (15) Sporting equipment and sporting memorabilia.
- (16) Coin, money, jewel or precious metal

D.) A license must be posted conspicuously and a copy provided upon request by any law enforcement agency.

Methods of Purchase for Precious Metal.

A.) An establishment licensed hereunder, may either purchase precious metals by weight or may purchase precious metals without weight, depending upon the individual object. A licensee must prominently display a sign which will notify customers of which method of purchase is utilized.

B.) Purchase by weight. In order to advertise that an establishment purchases precious metals by weight, the establishment must have scales which are approved, tested and sealed by the Office of Consumer Affairs of Albany County. All sales must be by pennyweight, and if the establishment purchases a precious metal by weight, the seller must be told the weight (in pennyweights) and the price per pennyweight. In addition, if an establishment is buying precious metals by weight, the establishment must post the current price paid daily, (precious metals are traded daily and based on market fluctuations price may change daily) per pennyweight, based on purity; and such signs shall be clear, conspicuous and located within three feet of scales used to conduct transaction, and where they are readily visible from, the scale used for such sales.

C.) Purchase not by weight. If an establishment does not utilize a scale, it must display a sign stating that precious metals are not purchased by weight.

D.) Nothing in this section, however, shall prohibit an establishment which purchases by weight from purchasing an object for more than its value based upon its weight.

Required Bond.

Notwithstanding the provisions of said Local Law herein, every applicant for a precious metal exchange and or applicant for a dealer in secondhand-articles license shall submit a Twenty-Five Thousand Dollar (\$25,000.00) bond for each license applied for and obtained, or for renewal of a license, evidence of a bond issued in favor of the licensee. This bond shall be for the purpose of guaranteeing payments up to the face amount of the bond for bank drafts or other negotiable instruments issued by the licensee in exchange for the purchase of precious metals and secondhand articles. All bonds must be conditioned so that the licensee will observe all laws in relation to precious metal and secondhand dealers and will conduct business in conformity thereto. Such bond shall remain in force during the entire period for which the license is valid. The Office of Consumer Affairs of Albany

County may establish rules and regulations concerning the amount of a bond to be posted upon proper notice to the licensee.

Required Records.

A.) Each licensee shall keep records, legibly written in English, in a bound book and or electronic file on establishments computer. All entries shall be made in ink at the time of each transaction and shall include the computer transaction number issued from the electronic reporting system. Each transaction shall also include:

(1) A complete description of each article along with a digital photo, including brand name, make, serial and model numbers, color and size of said article. In the case of any article of jewelry or item containing jewels, the description shall also include size, setting, shape, color, number of karats, type of metal(s), number and type of stone(s) and a complete and accurate description of any initials, dates or inscriptions found on said article.

(2) The amount paid for the article.

(3) The date of the transaction and confirmation number from electronic reporting system.

(4) The name, home residence, date of birth, sex, color and description, as near as possible, of the clothing and person selling the items.

(5) The type of identification produced by the person selling the article along with a copy of identification used to verify name and address.

(6) Records of written consent or contract required under of this local law shall be retained with the record book.

(7) The signature of the person identified in the transaction.

(8) A digital photo

B.) No alterations or erasures are to be made to records, and erroneous entries are to have a simple line drawn through them and the corrected entry made on the next line.

C.) The records shall be retained in the possession of the licensee, in good condition and in an orderly fashion, for a period of five years from the time the transaction is made.

D.) Written receipt issued from the seller with the serial number of the transaction and the information required in Subsections A, B and C shall be retained for a period of five years.

Inspection of Records.

All records required to be kept pursuant to this article shall, at all reasonable times, during regular business hours, be open for inspection by the Office of Consumer Affairs, any County or Local Law Enforcement Agency, or any officer or employee duly authorized by them by the County of Albany, unless otherwise mandated by a Judge or Court of Law.

Required Electronic Reports.

A.) Every person so licensed as a precious metal exchange and or secondhand dealer establishment shall report to the City of Albany's Police Department, for each transaction required by this Local Law on the electronic pawn and scrap reporting system maintained by the City of Albany for use by all County and local law enforcement agencies.

B.) Such report shall also describe the individual by name and verified street address of the person selling said article, including the seller's age, height, weight, and gender. The seller's address must be verified by proper identification, showing the person described, and the type of identification so used must be noted along with any identifying marks or features of said individual.

C.) Every secondhand dealer as defined by this chapter shall utilize the City of Albany's electronic pawn and scrap metal reporting system to make an electronic report and the report shall be a full, true and complete report of all goods, wares, merchandise or items received on deposit, pledged or purchased. The report shall show the hour of day when the purchase was made, amount purchased, a description and a digital photo(s) of material purchased and the name and address of the person from whom the article was acquired. If any article left on deposit, pledged, or purchased has engraved thereon a number, word or initial, or contains settings of any kind, the description of the article in the report shall contain the number, word or initial and shall show the kind of settings and number of each kind. No item shall be received unless the person from whom the article is acquired exhibits a driver's license or state issued ID card and the identifying number is recorded on the report.

D.) All transactions including a digital photo of item(s) will be sent to the City of Albany's electronic pawn and scrap reporting system before the item in question is acquired. The pawn/scrap ticket number will be automatically generated by the City of Albany's electronic reporting system.

E.) Should there be a loss of power or a failure of the City of Albany's electronic pawn and scrap reporting system, every dealer must transmit the information as described in this section to the City of Albany's Police Department, in writing, every business day, that such a loss of power or failure of the electronic system remains, before five o'clock (5:00pm) in the afternoon and if that day be Sunday, such reporting shall take place on the following business day.

F.) Any suspicious seller or article that possesses an altered or obliterated serial number or any item that has had its serial number removed shall be reported to the City of Albany's Police Department, on or before the end of each business day as described in of this Local Law.

Prohibited Acts.

A.) No object defined in said Local Law shall be bought or sold by a precious metal exchange or secondhand establishment to and or from a:

(1) Person who appears to be intoxicated or of unsound mind.

(2) Person under the age of 18.

(3) Person who is unable to produce proper identification.

(4) Person presenting merchandise that possesses an altered or obliterated serial number or any item that has had its serial number removed.

B.) For the purposes of this section, proper identification shall be a valid New York State Driver's License or equivalent picture identification that contains the person's name to include a physical description and current address. Social security cards, draft registration cards, voter registration cards and comparable documents shall not be considered sufficient identification for the purpose of this Local Law.

C.) A precious metal exchange establishment failing to comply with the requirements set forth in this article shall be subject to penalties including fines, suspensions and revocation of licenses as may determine by the Office of Consumer Affairs of Albany County set forth.

D.) Purchases or sales may be made by a precious metal exchange establishment at locations other than the premises of such establishment; but when purchases or sales are made at locations other than the premises of such an establishment, the licensee must note, adjacent to other entries applicable to the transaction in the record book, the location where the transaction took place in addition to the records required by of this chapter.

E.) Exempted Operations and Organizations from the license requirement of this local law for precious metal exchangers and secondhand dealers.

(1) Shall include any organizations formed for charitable purposes, which accept donations of precious metals and or secondhand articles to resell them to raise funds for purposes consistent with the formation of the organization, nor any persons, corporations, partnerships or other entities and their employees that, as a business, are principally engaged in the service and/or repair of electronic equipment or component parts thereof and who, from time to time, sell electronic equipment or component parts thereof, which have been left for repair and later abandoned.

(2) The sale secondhand goods and the exchange of precious metals at events commonly known as “garage sales”, “yard sales”, or “estate sales” provided:

- a.) the sale is held on non-commercial property; none of the items offered for sale have been purchased for resale;
- b.) the owner of the property receives all proceeds; and
- c.) the sale period is no longer than seventy-two hours.

At no time shall the property owner be permitted to conduct more than two (2) events within a twelve-month period.

(3) Secondhand books, comic books, sports memorabilia, magazines, post cards, and postage stamps.

Required Holding Period.

A.) It shall be a violation of this article for any precious metal exchange and or secondhand establishment to sell, dispose of or alter any precious metal or secondhand article purchased until the expiration of ten (10) days after the acquisition of such articles by the precious metal exchange and or secondhand establishment. This section shall not apply to articles to a precious metal exchange and or secondhand establishment if purchased from another precious metal exchange and or secondhand establishment if such articles have been held the required ten (10) days by the latter.

B.) It shall be the responsibility of the City of Albany Police Department to confirm receipt of the reported transaction. Confirmation of receipt shall occur within twenty-four hours of initial receipt.

C.) All articles subject to this holding period shall be available for inspection by the County or any Local Law Enforcement Agency.

D.) Purchases or sales between licensed precious metal exchange and or secondhand establishment shall be exempt from the provisions of this section only if evidence of full compliance with all provisions and conditions set forth in this article is obtained by the purchasing precious metal exchange and or secondhand establishment from the selling precious metal exchange and or secondhand establishment in the form of a receipt. This receipt shall be retained by the purchasing precious metal exchange and or secondhand establishment for the period required by this local law.

Police Order to Hold Property.

A.) Investigative Hold. Whenever a law enforcement or consumer affairs official notifies a licensee not to sell an item, the item shall not be sold or removed from the premises. The investigative hold shall be confirmed in writing by the originating agency within seventy-two (72) hours and shall remain in effect for fifteen (15) days from the date of initial notification or until the investigative order is cancelled, or until an order to hold is issued, whichever comes first.

B.) Order to Hold. Whenever the County or any Local Law Enforcement Agency, notifies a licensee not to sell an item, the item shall not be sold or removed from the licensed premises until authorized to be released by the aforementioned individuals or their designees. The order to hold shall expire ninety (90) days from the date it is placed.

C.) When an item is placed on hold, the person doing so shall provide identification and provide the licensee with the name and phone number of the holding agency and the case number related to the hold order.

D.) When an order to hold is no longer necessary, the licensee will be notified in writing by the requesting agency.

Applicability.

This Local Law shall apply to actions or transactions occurring on or after the effective date of this law.

Penalties.

Any failure to comply with the requirements of this Local Law shall constitute a violation and the violators will be subject to a fine in the amount of five hundred dollars. Any additional violation shall have a fine of one thousand dollars. Upon any fifth violation the fine shall be tripled and the violator will be subject to the immediate loss of license. Upon loss of license,

the individual or individuals may not apply or reapply for a license set forth in this Local Law.

Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(20), (21), and (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection.

Effective Date.

This law shall take effect ninety (90) days immediately subsequent to filing in the Office of the Secretary of State.

Referred to Public Safety Committee. 7/11/11