

## LOCAL LAW NO. "E" FOR 2011

### A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK REQUIRING THE ELECTRONIC REPORTING OF TRANSACTIONS OF PRECIOUS METAL EXCHANGE DEALERS AND SECONDHAND DEALERS 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. Dawson, Ethier, Gordon, Horstmyer, Houghtaling, Infante, Ms. Maffia-Tobler, Messrs. Mayo, Nichols, Rahm, Reilly, Scavo, Steck, Timmins and Ward:

BE IT ENACTED by the Albany County Legislature as follows:

#### **Section 1. Title**

This Local Law shall be known as "Precious Metals Exchanges and Secondhand Dealers Reporting Law."

#### **Section 2. Legislative Intent**

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

The Legislature further finds and determines that advances in technology make the establishment of such an electronic reporting system to monitor and track the transactions set forth in this local law both necessary for the protection of the citizens of Albany County and feasible for such precious metal exchange establishments, pawnshops, and secondhand merchants.

Therefore the purpose of this local law is to establish a uniform electronic reporting system for precious metal exchanges, pawnshops, and dealers in secondhand articles to assist the law enforcement community in tracing and recovering stolen property.

#### **Section 3. Definitions**

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

“Antique Firearm” – Any muzzle-loading pistol, revolver, or other firearm with a matchlock, flintlock, percussion cap or similar type of ignition system or a firearm that uses fixed cartridges 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 a County, State, or Federal holiday.

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

“Electronic Record” – An electronic file kept on the Licensee’s computer in the English language which shall contain entries which shall be made at the time of each transaction and shall contain the computer identification number from the Electronic Reporting System and such other information as required by this Local Law.

“Electronic Reporting System” – The reporting system maintained by the City of Albany for reporting purchases, sales, and exchanges by Precious Metal Exchange Dealers, Precious Metal Exchange Establishments, Secondhand Dealers, and/or Secondhand Establishments.

“Identification” – A valid New York State driver’s license, passport, or equivalent photo identification that contains the person’s name, physical description, and current address.

“Local Law Enforcement Agency” – A local law enforcement agency with jurisdiction over the Precious Metal Exchange Dealer, Precious Metal Exchange Establishment, Secondhand Dealer, and/or Secondhand Establishment.

“Licensee” – Any Person who has been licensed by the Office of Consumer Affairs for Albany County as a Precious Metal Exchange Dealer, Precious Metal Exchange Establishment, Secondhand Dealer, and/or Secondhand Establishment.

“Licensing Agency” – Office of Consumer Affairs for Albany County

“Person” – Includes one or more natural persons of either sex, corporations, associations, limited liability companies or other legal entity recognized by the State of New York.

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

“Precious Metal Exchange Dealer” – Persons engaged in the business of sale, purchase, or exchange of precious metals for other objects of precious metal, United States currency, bank drafts, other negotiable instruments as defined in the Uniform Commercial Code or any other object or thing of value.

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

“Secondhand Article” – An article or object which has previously been bought or sold at retail and/or which has been previously used and/or is not in a new condition.

“Secondhand Dealer” – Any person who deals in the purchase, sale, exchange or pledge as security for a sum of money of any secondhand article. A pawnbroker shall be considered a Secondhand Dealer for purposes of this Local Law.

“Secondhand Establishment” - Any shop, store, residence, place, or premises at which a business buying, selling, exchanging or pledging as security in return for a sum of money of Secondhand Articles is conducted. A pawnshop shall be considered a Secondhand Establishment for purposes of this Local Law.

#### **Section 4. Precious Metal Exchange**

(A) It shall be unlawful for any Person to engage in business as a Precious Metal Exchange Dealer or operate a Precious Metal Exchange Establishment without first obtaining a license in accordance with the provisions of this local law.

##### **(B) Methods of Purchase**

(i) A Precious Metal Exchange Dealer or Precious Metal Establishment may purchase Precious Metal by weight or without use of weight to establish value depending on the individual object. A Licensee must display a sign which will notify customers of which method of purchase is utilized.

(ii) Purchase by weight. In order to advertise that Precious Metal shall be purchased by weight, the Precious Metal Dealer or Precious Metal Establishment must have scales of weight approved, tested, and sealed by the Licensing Agency. All purchases and sales by weight must be by pennyweight and if the Precious Metal Dealer or Precious Metal Establishment purchases an object of Precious Metal by weight, the buyer or seller, as the case may be, must be told the weight in pennyweights and the price per pennyweight paid.

(iii) Notice of Prior Day's Closing Price. A Precious Metal Dealer or Precious Metal Establishment must post in a prominent location the prior day's closing price per pennyweight based on purity and such signs shall be clear, conspicuous, and within three feet of the scales used to conduct the transaction and be readily visible from the scales used for such transactions.

(iv) Purchase Not By Weight. If a Precious Metal Dealer or Precious Metal Establishment does not utilize a scale, it must prominently display a sign stating that precious metals are not posted by weight, tell the customer that precious metals are not purchased by weight, and note on the sales receipt given to the customer that the purchase was not by weight.

(v) Nothing in this section shall prohibit a Precious Metal Dealer or Precious Metal Establishment from purchasing precious metal for more than its value based on its weight.

(vi) Purchases and/or sales may be made by a Precious Metal Exchange Dealer or Precious Metal Establishment at location(s) other than the premises of such Precious Metal Exchange Dealer or Precious Metal Establishment. When such purchases and/or sales are made at such locations, the licensee must note, adjacent to the other entries required for the transaction, the location where the transaction took place.

## **Section 5. Dealers in Secondhand Articles**

(A) It shall be unlawful for any Person to engage in business as a Secondhand Dealer or operate a Secondhand Establishment without first obtaining a license in accordance with the provisions of this local law.

(B) Any Secondhand Dealer or Secondhand Establishment that transacts more than five (5) purchases, sales, exchanges or pledge as security for a sum of money or any other object or thing of value, including but not limited to the following articles within a twelve (12) month period shall be required to apply and obtain the license required by this local law:

- (i) Antique Firearms;
- (ii) Rifles and/or shotguns;
- (iii) Cameras, video recorders and other photographic and/or digital recording equipment;
- (iv) Business machines including, but not limited to, computers, monitors, printers, typewriters, copying machines, sorting machines, calculators, other word/data processing equipment and other equipment capable of data creation and reproduction;

- (v) Electronic equipment and/or component parts thereof including, but not limited to, televisions, audio equipment, video recording and playback devices, video game systems, citizen band radios, and cable television converters and descrambling devices;
- (vi) Cellular phones, pagers, and other electronic communication devices;
- (vii) Electrical appliances other than refrigerators, washers, dryers, stoves, ovens, and freezers;
- (viii) Marine equipment, including but not limited to, inboard and outboard motors, anchors, fenders, and radio/navigation equipment excluding boats;
- (ix) Telescopes and binoculars;
- (x) Musical instruments and band equipment;
- (xi) Yard and garden equipment and tools whether powered by electric current, gas, or battery;
- (xii) Electric, pneumatic, hydraulic, or battery powered construction or mechanic's equipment or tools;
- (xiii) Sporting goods, equipment, and memorabilia; and
- (xiv) Jewelry

## **Section 6. Licensing**

(A) Any Person that meets the definition of Precious Metal Exchange Dealer, Precious Metal Exchange Establishment, Secondhand Dealer, and/or Secondhand Establishment shall not transact any business in the County of Albany without first applying for and being granted the appropriate license from the Licensing Agency in accordance with and subject to the provisions of this local law.

(B) The Licensing Agency shall promulgate an application form and a license form consistent with the provisions of this local law.

(C) Each application shall state the particular category of license sought. A Person may acquire a license that will include multiple categories. The categories of license are (1) Precious Metal Exchange Dealer, (2) Precious Metal Exchange Establishment, (3) Secondhand Dealer, and (4) Secondhand Establishment.

(D) Such application shall contain the names and residence(s) of the applicant(s) if an individual or partnership. If the applicant is a corporation, association, or other legal entity recognized by the State of New York, the application shall contain the names and residences of the principal officers, directors, and/or members as the case may be. Additionally, the Licensing Agency may require such information about any other person with an ownership or managerial interest in the applicant.

(E) If the applicant is an individual or partnership, or if the applicant is a corporation, association, or other legal entity recognized by the State of New York, the principal officers, directors, managers and/or members, or other person with an

ownership or managerial interest in the applicant upon request of the Licensing Agency, as the case may be, shall state whether they have ever been convicted of a felony or misdemeanor. If so convicted, the exact offense, the date of the offense, and the court of conviction shall be provided.

(F) The location and street address where the Licensee will conduct business.

(G) Whether the applicant either alone or together with others is currently or has previously been licensed.

(H) The application shall be signed and acknowledged before a notary public or other official authorized to administer oaths and shall include a clause stating that the information is true under penalty of perjury. There shall be no fee for the application or license.

(I) When an application is filed, the Licensing Agency shall cause an investigation to be made by the appropriate Local Law Enforcement Agency to ascertain whether the applicant or applicants is/are of good character and repute. The Local Law Enforcement Agency shall furnish to the Licensing Agency the information derived from the investigation together with a recommendation as to whether the license should be granted or refused.

(J) Upon approval of the application by the Licensing Agency and the filing of a bond as set forth in Section 7, the Licensing Agency shall issue a license. All licenses shall be numbered sequentially in the order in which they are issued. Each license shall contain the name of the Licensee and, if a corporation, association, limited liability company or other legal entity recognized by the State of New York the principal officers, directors, managers, members or other person with an ownership interest as may be required by the Licensing Agency.

(K) Each Licensee shall also provide the required information for any employee who conducts business on behalf of the Licensee and an Employee Permit shall be issued to the Licensee for such employees which shall be prominently displayed when the employee conducts business on behalf of the Precious Metal Exchange Establishment or the Second Hand Dealer Establishment at a location other than those premises.

(L) The Licensee shall prominently display the license at his Precious Metals Exchange Establishment or Secondhand Dealer Establishment as the case may be and, if conducting business at a location other than those premises in accordance with the provisions of this local law, shall display the license to those with whom he conducts business.

(M) If any Licensee shall move his place of business from the place designated in the license, he shall notify the Licensing Agency within two (2) business days of such move.

(N) The Licensing Agency, in addition to any other penalties set forth in this Local Law, may revoke the Licensee's license for any violation of this Local Law.

### **Section 7. Bond**

Every applicant whose license application is approved shall post a bond in the amount of Five Thousand Dollars (\$5,000.00) prior to the issuance of the license and shall renew such bond so long as the license remains in effect. 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 Precious Metals and/or Secondhand Articles. All bonds must be conditioned that the Licensees will observe this local law and conduct business in accordance with this local law.

### **Section 8. Prohibited Acts**

(A) No precious metal or article shall be bought, sold, exchanged, or pledged for a sum of money or any other object or thing of value from a person who:

- (i) appears intoxicated or of unsound mind;
- (ii) is under the age of 18;
- (iii) unable to produce proper identification as required by this Local Law;

or

(iv) presents merchandise which has had its serial number altered or obliterated or merchandise which has had its serial number removed.

(B) ANY SUSPICIOUS SELLER OR ARTICLE, INCLUDING ANY ARTICLE THAT POSSESSES AN ALTERED OR OBLITERATED SERIAL NUMBER OR ANY ARTICLE WHICH HAS HAD ITS SERIAL NUMBER REMOVED SHALL BE IMMEDIATELY REPORTED TO THE APPROPRIATE LOCAL LAW ENFORCEMENT AGENCY.

### **Section 9. Required Records**

(A) Each Licensee shall keep an Electronic Record in the English language on an electronic file on the Licensee's computer available for printout. All entries required by this local law shall be made at the time of each transaction and shall include the computer transaction number as issued from the Electronic Reporting System. The record of each transaction shall also include:

(i) An accurate description of every article or precious metal purchased, sold, exchanged, or pledge and the number(s), monograms, inscriptions and/or any other marks of identification that may appear on the article.

(ii) A general physical description of the person who purchased, sold, exchanged or pledged the article or precious metal together with their name, residence and date of birth. The report shall also include the type of identification produced and the signature of the person so identified.

(iii) The time, date and hour of such transaction.

(iv) The amount paid or the object exchanged as payment.

(B) In the case of the purchase or sale of a pawnbroker ticket or other evidence of a pledged article or the redemption or sale of a pledged article, there shall be recorded in the Electronic File the following additional information:

(i) The name of the Licensee or employee who issued such ticket;

(ii) The pledge number on such ticket or other evidence of such pledge;

(iii) The name and address of the pledger as appears on such ticket or other evidence; and

(iv) The amount loaned or advanced as it appears on such pawn ticket or other evidence.

(C) The records of transactions shall be maintained for a period of at least three (3) years.

(D) A written receipt containing the serial number of the transaction shall be issued for each transaction.

(E) Every Electronic Record shall be available for inspection at all reasonable times by any Local Law Enforcement officer, the Licensing Agency, or any other person authorized by the Licensing Agency for such purpose.

## **Section 10. Required Electronic Reports**

(A) Every Licensee shall make a daily report through the Electronic Reporting System listing each transaction on a form approved by the Chief of Police for the City of Albany. Such daily report shall be made within two business days.

(B) Every licensee shall keep an electronic file containing an electronic copy of the reports transmitted through the Electronic Reporting System.

(C) The daily report shall include every transaction from that business day and shall, for each transaction, include the name of the Licensee and, if applicable, the name of the employee conducting the transaction, the name and address of the person selling, exchanging, or pledging the precious metal or article, the form of identification provided, and a digital photo of the item sold, exchanged, or pledged.



(D) The Electronic Reporting System will assign a transaction number which shall be transmitted to the Licensee and recorded next to the transaction information in the Electronic Record.

(E) If there is any power failure or other interruption in the Electronic Reporting System which prevents filing the daily report within two business days, the daily report shall be made as soon as practicable but no later than 12:00 PM on the next business day after the Electronic Reporting System is operational.

(F) ANY SUSPICIOUS SELLER OR ARTICLE, INCLUDING ANY ARTICLE THAT POSSESSES AN ALTERED OR OBLITERATED SERIAL NUMBER OR ANY ARTICLE WHICH HAS HAD ITS SERIAL NUMBER REMOVED SHALL BE IMMEDIATELY REPORTED TO THE APPROPRIATE LOCAL LAW ENFORCEMENT AGENCY.

### **Section 11. Required Holding Period**

It shall be a violation of this Local Law for any Licensee to sell, dispose, or alter any precious metal or article covered by this Local Law until the expiration of ten (10) days after the acquisition of such precious metal or article by the Licensee. This section shall not apply to precious metal or articles purchased from another Precious Metal Exchange Dealer, Precious Metal Exchange Establishment, Secondhand Dealer, and/or Secondhand Establishment if such precious metal or article has been held ten (10) days if required by this Local Law. Such exemption shall only apply if the purchasing Licensee receives a receipt from the selling Licensee stating that all of the provisions of this Local Law have been complied with. This receipt shall be retained by the purchasing Licensee for the period required to maintain records set forth in this Local Law.

All precious metal and other articles subject to this holding period shall be available for inspection by the appropriate Local Law Enforcement Agency or the Licensing Agency or their designee.

### **Section 12. Local Law Enforcement Order to Hold Property**

Whenever a Local Law Enforcement Agency notifies a Licensee not to sell an item due to an investigation, the item shall not be removed from the Licensee's premises. This investigative hold shall be confirmed in writing within forty-eight hours and shall remain in effect for fifteen days from the initial hold or until the investigative hold order is cancelled, whichever shall occur first.

Whenever the top official of any Local Law Enforcement Agency notifies a Licensee not to sell an item, the item shall not be removed from the Licensee's premises for ninety (90) days from the date of the original hold or until the hold order is cancelled, whichever comes first.

Whenever an item is placed on hold, the person doing so shall provide proper identification and provide the Licensee with the name and phone number of the Local Law Enforcement Agency requesting the hold, the identification of a contact person regarding the investigation, and the case number related to the hold.

The hold order may only be cancelled in writing.

### **13. Exempted Organizations and Events**

The following events and organizations shall be exempt from the provisions of this Local Law:

(A) Organizations formed for charitable purposes which accept precious metal and secondhand articles for resale to raise funds for the charitable organization:

(B) Persons engaged in the business of service and/or repair of business machines and electronic equipment or the component parts thereof and who may sell such articles that have been left for repair and are abandoned by their owners;

(C) Trade shows, coin shows, sporting memorabilia shows, gun shows and the like which are for a limited duration and whose primary purpose is the exhibition of collectible items which may involve the sale or trading of such items but not the purchase of precious metal for its meltdown value;

(D) Garage sales, yard sales, and estate sales held on non-commercial property provided the owner of the property receives all of the proceeds; the sale does not exceed seventy-two (72) hours; and the owner does not conduct more than two (2) such events in any twelve month period; and

(E) Transactions involving secondhand DVDs and other recorded video and audio, comic books, sports memorabilia, sporting goods, magazines, post cards, and/or postage stamps having a value individually or in the aggregate of no more than One Hundred and Fifty (\$150.00) Dollars.

### **Section 14. Penalties**

Any failure to comply with this Local Law shall subject the Licensee(s) to a fine not to exceed Five Hundred (\$500.00) Dollars. Any subsequent violation may result in a fine not to exceed One Thousand (\$1,000.00) Dollars and/or loss of license. Any violation subsequent to the fifth violation shall result in a fine of Three Thousand (\$3,000.00) Dollars and loss of license. Any loss of license under this section shall prevent the offender from reapplying for a license for a period of one (1) year.

### **Section 15. Severability**

If any clause, sentence, paragraph, section, subdivision, or other part of this Local Law or its application shall be adjudged by a court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder of the Local Law which shall remain in full force and effect except as limited by such order or judgment.

**Section 16. Effective Date and Applicability**

This Local Law shall be effective ninety (90) days subsequent to filing in the Office of the Secretary of State and shall apply to all transactions occurring on or after the effective date of this Local Law.

*Referred to Public Safety Committee. 7/11/11*

*Favorable Recommendation – Public Safety Committee. 8/24/11*

*Referred to Audit and Finance and Public Safety Committees. 9/12/11*