

House Bill 3469

Sponsored by Representative NATHANSON

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires precious metal buyer to create and maintain certain records of purchase or receipt of precious metal. Requires payment for precious metal by check mailed to seller's street address.

Requires precious metal buyer to produce records in response to lawful demand and to hold precious metal for retrieval if seller fails to supply information necessary to complete record.

Provides that failure to make, retain or produce record is unlawful practice subject to enforcement under Unlawful Trade Practices Act.

Becomes operative 91 days after effective date of Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to precious metal buyers; creating new provisions; amending ORS 646.607; and declaring
3 an emergency.

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

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

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

9 (2) **"Commercial seller" means a business entity, as defined in ORS 60.470, or a govern-
10 mental entity that regularly or periodically sells or delivers precious metal to a precious
11 metal buyer as part of the entity's business or governmental function.**

12 (3) **"Precious metal" means an item that consists of or incorporates platinum, gold or
13 silver.**

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

18 (5) **"Precious metal buying record" means the record described in section 2 (1)(a) of this
19 2011 Act.**

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

25 (b) **"Transaction" does not include:**

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

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

- 1 (i) A commercial seller or an authorized employee or agent of a commercial seller; and
- 2 (ii) A precious metal buyer.

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

5 (a) Create a precious metal buying record for the transaction. The record must:

6 (A) Be accurate and written clearly and legibly in the English language;

7 (B) Contain information in an electronic form that is:

8 (i) Stored securely in a database and that is capable, at no charge, of readily being
9 searched and retrieved by keyword; and

10 (ii) Capable of being viewed and printed by means of a secure Internet connection ac-
11 cessible through a user name and password only by the precious metal buyer and a law
12 enforcement official; and

13 (C) Contain all of the following information:

14 (i) The full name, street address and telephone number of the individual with whom the
15 precious metal buyer conducts the transaction.

16 (ii) The signature of the individual with whom the precious metal buyer conducts the
17 transaction.

18 (iii) The time and date on which the precious metal buyer receives or agrees to receive
19 delivery of the precious metal.

20 (iv) The monetary or other value of the transaction.

21 (v) The name of the employee, if any, who conducts the transaction on behalf of the
22 precious metal buyer.

23 (vi) A photocopy of a current, valid driver license or other government-issued photo
24 identification that belongs to the individual with whom the precious metal buyer conducts
25 the transaction.

26 (vii) A general description of the precious metal that is the subject of the transaction.
27 The description must include identifiable marks on the precious metal, if readily discernible,
28 and must specify the weight, quantity or volume of the precious metal.

29 (viii) A photograph of the precious metal that is the subject of the transaction. The
30 photograph must be digital or capable of being scanned into digital form for storage as part
31 of the precious metal buying record.

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

39 _____
40
41 I, _____, AFFIRM UNDER PENALTY OF LAW THAT I AM 18 YEARS
42 OF AGE OR OLDER, THAT I AM THE LAWFUL OWNER OF THE PROPERTY I AM
43 SELLING AND HAVE THE ABSOLUTE RIGHT AND AUTHORITY TO SELL THE PROP-
44 erty AND THAT THE PROPERTY I AM SELLING IN THIS TRANSACTION IS NOT, TO
45 THE BEST OF MY KNOWLEDGE, STOLEN PROPERTY.

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3 (c) Require the employee of the precious metal buyer who conducts the transaction with
4 the individual or the precious metal buyer to sign and date the declaration in a space pro-
5 vided for the signature and date.

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

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

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

14 (A) Is accurate and written clearly and legibly in the English language;

15 (B) Is in an electronic form that is:

16 (i) Stored securely in a database and that is capable, at no charge, of readily being
17 searched and retrieved by keyword; and

18 (ii) Capable of being viewed and printed by means of a secure Internet connection ac-
19 cessible through a user name and password only by the precious metal buyer and a law
20 enforcement official; and

21 (C) Includes all of the following:

22 (i) The full name of the commercial seller.

23 (ii) The business address and telephone number of the commercial seller.

24 (iii) The full name of each employee or agent that the commercial seller authorizes to
25 deliver precious metal to the precious metal buyer.

26 (b) Record as part of the commercial account at the time the precious metal buyer re-
27 ceives delivery of the precious metal from the commercial seller all of the following infor-
28 mation:

29 (A) The time and date on which the precious metal buyer receives delivery of the pre-
30 cious metal.

31 (B) The monetary or other value of the precious metal.

32 (C) A general description of the precious metal.

33 (D) The signature of the authorized individual who delivered the precious metal to the
34 precious metal buyer.

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

41 (4) A precious metal buyer may not:

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

44 (A) Consent to the precious metal buyer's creating a precious metal buying record in
45 accordance with this section;

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

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

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

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

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

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

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

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

25 (c) Notify the individual that the individual must supply the necessary information or the
26 precious metal buyer must hold the precious metal as provided in subsection (2) of this sec-
27 tion.

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

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

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

41 (5) If a law enforcement official or agency has probable cause to believe that precious
42 metal in the possession of a precious metal buyer or the Attorney General is stolen property,
43 the law enforcement official or agency, subject to limits on the jurisdiction of the law
44 enforcement official or agency under applicable law, may order the precious metal buyer to
45 hold or request that the Attorney General hold the precious metal for a period that does not

1 exceed 90 days. The law enforcement official or agency may extend the 90-day period by ap-
 2 plying to a circuit court in this state for a finding that probable cause exists to believe that
 3 the precious metal is stolen and that extending the hold is necessary to safeguard the pre-
 4 cious metal for trial or as evidence in another proceeding.

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

8 (a) Assumes all responsibility and liability for safekeeping of the precious metal, includ-
 9 ing responsibility for the actions of an employee of the precious metal buyer; and

10 (b) Must release the precious metal to the law enforcement official or agency upon de-
 11 mand and production of a subpoena for the precious metal.

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

15 **SECTION 5.** ORS 646.607 is amended to read:

16 646.607. A person engages in an unlawful practice *[when]* **if** in the course of the person's busi-
 17 ness, vocation or occupation the person:

18 (1) Employs *[any]* **an** unconscionable tactic in connection with *[the sale, rental or other disposi-*
 19 *tion]* **selling, renting or otherwise disposing** of real estate, goods or services, or *[collection or*
 20 *enforcement of]* **collecting or enforcing** an obligation;

21 (2) Fails to deliver all or *[any]* **a** portion of real estate, goods or services as promised, and upon
 22 request of the customer, fails to refund *[any]* money that **the person** *[has been]* received from the
 23 customer that was for the purchase of the undelivered real estate, goods or services and that *[is not*
 24 *retained by the seller]* **the person does not retain** pursuant to *[any]* **a** right, claim or defense as-
 25 serted in good faith. This subsection does not create a warranty obligation and does not apply to a
 26 dispute over the quality of real estate, goods or services delivered to a customer;

27 (3) Violates ORS 401.965 (2);

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

29 (5) Violates ORS 646A.530; *[or]*

30 (6) Employs a collection practice that is unlawful under ORS 646.639[.]; **or**

31 (7) **Violates a provision of section 2 or 3 of this 2011 Act.**

32 **SECTION 6. (1) Sections 1 to 4 of this 2011 Act and the amendments to ORS 646.607 by**
 33 **section 5 of this 2011 Act become operative on the 91st day following the effective date of this**
 34 **2011 Act.**

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

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