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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/06/14

SPONSOR Rehm LAST UPDATED \_\_\_\_\_ HB 198

SHORT TITLE Precious Metal Buyers Act SB \_\_\_\_\_

ANALYST Boerner

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Minimal	Minimal			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General’s Office (AGO)

Public Defender Department (PDD)

### SUMMARY

#### Synopsis of Bill

House Bill 198 proposes to regulate persons “engaged in the business of purchasing or trading items of precious metal for the purpose of resale, smelting, melting down or otherwise altering the items.” It would not regulate pawn brokers. It is unclear if it would apply to department or chain stores.

- The bill would require precious metal buyers to apply for and obtain yearly permits from a local government authority. The bill allows but does not require the local government entity to charge a fee to cover the expense of administering the act. In addition to the application and potential fee, precious metal buyers would have to submit a \$10,000 bond conditioned upon the precious metal buyer adhering to the terms of the act.
- The bill also contains certain record-keeping requirements for precious metal buyers and would require detailed accounts of all gold, silver, and platinum purchases in addition to detailed serial number receipts for each sale or statement of appraisal. Reports and records for items bought and sold would have to be available for inspection by law enforcement or the local government authority.

- The bill would put certain waiting periods on a precious metal buyer’s ability to dispose of precious metal items and would prohibit a variety of transactions, including purchasing precious metal items from persons under the age of eighteen or under the influence of intoxicants; purchasing items from which the manufacturer’s name or serial numbers have been altered or destroyed; or purchasing of items from someone who is not lawfully the owner.
- Any violation of a provision of the act would be a misdemeanor and may subject the violator to having their permit suspended or revoked by the local government authority.
- Suspension of revocation proceedings would be initiated by the filing of a written complaint charging the precious metal buyer with a violation of the bill. At the hearing, the precious metal buyer and other “interested person[s]” could appear and give evidence, but the rules of evidence would not apply. HB 198 does not specify the level of proof required to find a violation. If a violation is found, a buyer’s permit could be suspended or revoked.

## **FISCAL IMPLICATIONS**

The PDD notes that it is difficult to predict the number of criminal cases that would be brought pursuant to this proposed Act, as some of the more serious violations could presently be prosecuted as fraud or receiving stolen goods. There may be some increase in the number of cases simply because scrutiny of precious metal buyers would increase.

Also, since HB 198 makes it a crime to knowingly engage in a precious metal transaction with a minor, there may be increased prosecutions since it is not currently a crime. While it is likely that the PDD would be able to absorb some increase in caseload under the proposed law, any increase in the number of prosecutions would bring a concomitant need for an increase in indigent defense funding.

## **SIGNIFICANT LEGAL ISSUES**

HB 198 makes any violation of a provision of the act a misdemeanor. The PDD makes the assumption that this would extend to a failure to renew permits in a timely manner or a record-keeping violation. In addition, because there do not appear to be knowledge requirements for the failure to timely renew a permit or keep adequate records, violations of these administrative requirements would also appear to be strict liability offenses under the act.

In terms of the prohibited practices listed in Section 8, some of them – the purchase of goods with altered serial numbers or from persons known to lack lawful ownership – may be currently prosecuted as receiving stolen goods. See NMSA 1978, § 30-16-11. With respect to these acts, there are potential general-specific attacks that could be used to preclude application of either the act or NMSA 1978, Section 30-16-11 in many cases. See *State v. Cleve*, 1999-NMSC-017, 127 N.M. 240, 980 P.2d 23 (explanation of principles of general/specific statute rule and rule of lenity); *State v. Ibn Omar-Muhammad*, 102 N.M. 274, 277, 694 P.2d 922, 925 (1985) (“It is a fundamental rule that where the general statute, if standing alone, would include the same matter as the special act, and thus conflict with it, the special act will be considered as an exception to the general statute, whether it was passed before or after such general enactment.”)

Additionally, the bill could result in an increase in prosecutions both for engaging in a transaction with a minor and for any person who may have contributed to the transaction as contributing to the delinquency of a minor.

There is also some ambiguity as to the extent to which a business must engage in the buying and selling of precious metals to fall within the domain of this act. Such ambiguity could result in businesses which only secondarily engage in the buying and selling of precious metals - certain antique or consignment dealers - failing to register and being prosecuted.

Finally, the AG notes that the bill does not provide for a right or procedure to appeal the decision of a local government agency revoking or suspending a buyer's permit.

### **PERFORMANCE IMPLICATIONS**

If the provisions of this bill are stringently enforced and any administrative failures actively prosecuted, there could be an increase in the caseload of the PDD.

### **TECHNICAL ISSUES**

Drafters might consider applying criminal sanctions to Section 8 prohibited practices or “transactional” violations only, and fines for violations of regulatory provisions.

Drafters might also consider clarifying the bill's application with respect to certain businesses or persons who sometimes engage in such transactions, but do not primarily or frequently do so. Perhaps by specifying that it applies to businesses or persons whose “primary” business is the buying of precious metals or to businesses or persons who “frequently” engages in such transactions.

CB/svb