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FISCAL IMPACT REPORT

SPONSOR HBIC ORIGINAL DATE 02/27/17
LAST UPDATED _____ HB 234/HBICS
SHORT TITLE Precious Metal Transactions Act SB _____
ANALYST Amacher

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Department of Agriculture (NMDA)
Office of the Attorney General (OAG)
Public Regulation Commission (PRC)
Regulation & Licensing Department (RLD)

SUMMARY

Synopsis of HBIC Substitute

The House Business and Industry Committee Substitute for House Bill 234 enacts the Precious Metal Transactions Act; expands the requirements that apply to commercial transactions involving precious metal items; and provides penalties. If enacted, the effective date of this bill is June 16, 2017.

FISCAL IMPLICATIONS

There are no known fiscal impacts.

SIGNIFICANT ISSUES

The House Business and Industry Committee Substitute for House Bill 234 enacts the Precious Metal Transactions Act; expands the requirements that apply to commercial transactions involving precious metal items; and provides penalties. This bill also amends the Used Merchandise Act to make clear that a shop that purchases or deals in paper products or used beverage containers other than those made of gold, silver or platinum is no longer included in the

definition of “store” or those regulated by the proposed Precious Metal Transactions Act.

Section 1 creates the short title Precious Metal Transactions Act.

Section 2 provides three definitions for “dealer”, “precious metal”, and “transaction”. A dealer is an owner or employee of a commercial establishment that makes transactions involving precious metal items. As outlined in this bill, precious metals are identified as gold, silver or platinum.

Section 3 outlines the method by which precious metal is to be weighed. As proposed, in a transaction involving a precious metal item, a dealer weighing the item shall use only one scale that a weights and measures officer of New Mexico has inspected and approved. Furthermore, this scale must have been inspected within twelve (12) months prior to the transaction.

Section 4 outlines the receipt form and information that may be retained with the receipt of the precious metal transaction. A dealer must require from a patron to present a valid, government-issued photo identification card at the time of the transaction. For each transaction the receipt must include the legal name and address of the commercial establishment; name and address of the seller; date; net weight in specified terms appropriate to the precious metal item; and the fineness of the precious metal in terms of karat for gold and sterling or coin for silver. A dealer must retain a copy of each receipt and statement of appraisal for at least one year.

Section 5 provides the required items for records and reporting by a dealer. A dealer must deliver or mail the required record to the local law enforcement agency within three days after the transaction. In addition to the name and address of each patron involved in a precious metal transaction, this record must identify the sex, complexion, hair color, approximate height, approximate weight and date of birth of the patron. Furthermore, the record must also indicate all identifying marks of the precious metal item such as serial numbers.

There is an exception allowed for in Section 5 regarding a direct purchase from a permit holder as regulated by the Pawnbrokers Act. In this instance a separate record must reflect each transaction involving a precious metal item on a form approved by the local law enforcement agency; and the record must be updated no later than noon on the day after the transaction.

Section 6 requires a dealer to attach a tag to each precious metal item with all identifying marks of the items consistent with record requirements of Section 5. In the event the item was secured by the dealer from another dealer or a second-hand store, the dealer must retain the item in its existing form for at least 15 days.

Notably, a dealer must make the records required by Section 5 and the applicable items identified by Section 6 available to for inspections. Such inspections may be performed by the attorney general, local law enforcement or a local government agency, or a sworn member of the local law enforcement agency.

Section 7 provides penalties for those who violate the Precious Metal Transactions Act. As outlined, the first violation of the act is treated as a misdemeanor and any subsequent violations as fourth degree felonies.

Sections 8 and 9 amend sections of the Used Merchandise Act. This bill also amends the Used

Merchandise Act to make clear that a shop that purchases or deals in paper products or used beverage containers other than those made of gold, silver or platinum is no longer included in the definition of “store”; or those regulated by the proposed Precious Metal Transactions Act. The definition of “identification” has been expanded to include driving authorization card or identification card.

PERFORMANCE IMPLICATIONS

The New Mexico Department of Agriculture (NMDA) indicates such businesses involved with selling precious metals are currently being inspected by the department. Passage of this bill could assist the department by ensuring businesses are in compliance by utilizing legal for trade scales.

ADMINISTRATIVE IMPLICATIONS

The Office of the Attorney General (OAG) notes the provision under the proposed Act gives the OAG the right to inspect the records of a dealer, which may result in staff time dedicated by the Criminal Investigations Division. However, this bill provides no appropriation for additional staff or resources, which may impact the agency’s other performance based budget targets if such inspections were made regularly.

OTHER SUBSTANTIVE ISSUES

The NMDA notes that current law, Weights and Measures (Chapter 57-17-7(G) NMSA 1978) the director must inspect and test for accuracy, at least once annually, commercial apparatus, weights and measures used in:

- determining the weights, measurement, or count of goods and commodities sold or offered for sale on the basis of weight or measure;
- computing the basic charge or payment for services rendered on the basis of weight or measure; and,
- determining weight or measure when a charge is made for such determination.

The Regulation and Licensing Department (RLD) suggests there might be a need to expand the definition of “precious metals” to include any rare metal or one having a high economic value. RLD also notes that in Section 4 there is not a requirement of “fineness” for platinum. Also in Section 4, it may worthwhile to include loans in the requirement as pawn shops often deal in precious metals through loans.

RLD notes in Section 5 notes that the form provided by law enforcement is not required in an electronic format. It may be advantageous for a database to be created so that such items are more accessible and reduce travel time from inspections of records held in the store.

RLD expresses concerns that dealers subject to the Model State Commodity Code (Chapter 58-19-13A-2(E) NMSA 1978) may also be subject the Precious Metal Transactions Act. The Model State Commodity Code addresses any metals or minerals, which include precious metals such as gold, silver, and platinum and those other materials identified by the director, which are offered either by disposal, solicitation, or purchase by a dealer. RLD indicates that this could arguably make “dealers” subject to the Precious Metal Transactions Act. The challenge may exist in the

instance a violation occurs. The Model State Commodity Code outlines any violation as a third degree felony. As proposed in this bill the first violation as a misdemeanor and any subsequent violation as a fourth degree felony.

RLD also suggests further consideration on the record requirements as proposed. RLD provides the example in the Pawnbrokers Act (Chapter 56-12-9NMSA 1978) that includes specific reporting and records requirements but exempts purchases from another pawnbroker, or “permit holder”.

JMA/sb/jle