

1-1 By: Solomons (Senate Sponsor - Carona) H.B. No. 2490
1-2 (In the Senate - Received from the House May 4, 2011;
1-3 May 5, 2011, read first time and referred to Committee on Business
1-4 and Commerce; May 19, 2011, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 6, Nays 3;
1-6 May 19, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2490 By: Carona

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation of crafted precious metal dealers;
1-11 providing criminal penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 1956.051, Occupations Code, is amended
1-14 to read as follows:

1-15 Sec. 1956.051. DEFINITIONS. In this subchapter:

1-16 (1) "Commission" means the Finance Commission of
1-17 Texas.

1-18 (2) "Commissioner" means the consumer credit
1-19 commissioner.

1-20 (3) "Crafted precious metal" means jewelry,
1-21 silverware, an art object, or another object, made wholly or partly
1-22 from precious metal, other than a coin, a bar, a ~~or~~ commemorative
1-23 medallion, or scrap or a broken item selling at five percent or more
1-24 than the scrap value of the item ~~made in whole or in part from~~
1-25 precious metal.

1-26 (4) ~~[(2)]~~ "Dealer" means a person licensed to engage
1-27 ~~[who engages]~~ in the business of purchasing and selling crafted
1-28 precious metal, including purchases or sales made through the mail.

1-29 (5) ~~[(3)]~~ "Department" means the Texas Department of
1-30 Public Safety.

1-31 (6) "Personal identification document" means a
1-32 document that contains a photograph of the seller or transferor and
1-33 is:

1-34 (A) a state driver's license;

1-35 (B) a state identification card;

1-36 (C) a passport;

1-37 (D) a military identification;

1-38 (E) a certificate of identification from the
1-39 Mexican Consulate, certificado de matricula consular; or

1-40 (F) identification issued by the agency of the
1-41 United States responsible for citizenship and immigration.

1-42 (7) ~~[(4)]~~ "Precious metal" means gold, silver,
1-43 platinum, palladium, iridium, rhodium, osmium, ruthenium, or an
1-44 alloy of those metals.

1-45 SECTION 2. Subchapter B, Chapter 1956, Occupations Code, is
1-46 amended by adding Section 1956.0511 to read as follows:

1-47 Sec. 1956.0511. ADMINISTRATION BY COMMISSION. (a)
1-48 Notwithstanding any other provision of this chapter, the commission
1-49 shall administer and enforce this subchapter, unless the context
1-50 clearly requires another state agency to perform a specific duty.

1-51 (b) To the extent of any conflict between this subchapter
1-52 and other provisions of this chapter, this subchapter prevails.

1-53 SECTION 3. Section 1956.060, Occupations Code, is amended
1-54 to read as follows:

1-55 Sec. 1956.060. EXCEPTION: CRAFTED PRECIOUS METAL ACQUIRED
1-56 BY PERSON LICENSED UNDER TEXAS PAWNSHOP ACT. This subchapter does
1-57 not apply to crafted precious metal acquired by:

1-58 (1) a person licensed under Chapter 371, Finance Code;
1-59 or

1-60 (2) an entity affiliated with a person licensed under
1-61 Chapter 371, Finance Code, if the entity's recordkeeping practices
1-62 satisfy the requirements of that chapter.

1-63 SECTION 4. Subchapter B, Chapter 1956, Occupations Code, is

amended by adding Sections 1956.0611, 1956.0612, 1956.0613, 1956.0614, 1956.0615, 1956.0616, 1956.0617, and 1956.0618 to read as follows:

Sec. 1956.0611. RULEMAKING. The commission may adopt rules necessary to implement and enforce this subchapter.

Sec. 1956.0612. LICENSE REQUIRED. A person may not engage in the business of purchasing and selling crafted precious metal unless the person holds a license issued under this subchapter.

Sec. 1956.0613. ELIGIBILITY. (a) To be eligible for a license, an applicant must:

(1) be of good moral character; and

(2) show that:

(A) the applicant will operate lawfully and fairly under this subchapter; and

(B) the applicant or the applicant's owners and managers have the financial responsibility, experience, character, and general fitness to command the confidence of the public in the applicant's operations.

(b) Subsection (a)(1) applies to each:

(1) operator and legal or beneficial owner, if the applicant is a business entity; and

(2) officer, owner of at least five percent of the shares outstanding, and director, if the applicant is a corporation.

(c) The commission by rule may establish other qualifications for a license.

Sec. 1956.0614. LICENSE APPLICATION; FEES. (a) An applicant for a license shall submit a license application on a form prescribed by the commissioner. The commission shall establish a nonrefundable application fee in an amount not to exceed \$500.

(b) The commission shall establish fees under this subchapter, including an annual fee to be paid by a license holder, in amounts reasonable and necessary to cover the costs of administering the commission's programs and activities under this subchapter.

Sec. 1956.0615. LICENSE TERM; RENEWAL. A license expires on the first anniversary of the date of issuance and may be renewed annually on payment of the required annual license fee.

Sec. 1956.0616. INVESTIGATION; NOTICE OF APPLICATION. (a) On receipt of an application and the required fees, the commissioner shall:

(1) conduct an investigation to determine whether to issue the license; and

(2) give notice of the application to:

(A) the department; and

(B) each local law enforcement agency in the county in which the dealer is to conduct business.

(b) The notice under Subsection (a) must state the name and address of each person described by Section 1956.0613(b).

(c) The commissioner shall give the department and local law enforcement agencies a reasonable period to respond to the notice with information concerning each listed person or any other relevant information.

Sec. 1956.0617. NOTICE OF DENIAL; HEARING. (a) If the commissioner determines not to issue a license, the commissioner shall deliver to the applicant at the address provided in the application a written notice by personal delivery or certified mail, return receipt requested. The notice must include the reasons for denying the license.

(b) Not later than the 30th day after the date of receipt of a notice under Subsection (a), an applicant may request a hearing on the application denial. The commissioner shall set the hearing not later than the 60th day after the date of the request. A hearing under this section is a contested case under Chapter 2001, Government Code.

Sec. 1956.0618. CONTENTS AND DISPLAY OF LICENSE. (a) A license must state:

(1) the name of the dealer;

(2) the address of the dealer's principal place of

business; and

(3) that the dealer is authorized to deal in crafted precious metals.

(b) A dealer shall display the license in a conspicuous location at the dealer's principal place of business.

SECTION 5. The heading to Section 1956.062, Occupations Code, is amended to read as follows:

Sec. 1956.062. REPORT OF PURCHASE OR EXCHANGE REQUIRED.

SECTION 6. Section 1956.062, Occupations Code, is amended by amending Subsections (b), (c), and (d) and adding Subsections (c-1), (c-2), and (e) to read as follows:

(b) Before ~~[crafted precious metal is offered for sale or exchange,]~~ a dealer ~~[must notify each person intending to sell or exchange the metal that, before the dealer]~~ may purchase or exchange crafted precious metal ~~[accept any of the person's property]~~, the dealer ~~[person]~~ must compile ~~[file with the dealer]~~ a list describing all of the ~~[person's]~~ crafted precious metal to be accepted by the dealer. The list must contain:

(1) the proposed seller's name, sex, height, date of birth, eye color, and address;

(2) the date and time of the purchase or exchange;

(3) a complete and accurate description of the crafted precious metal that includes:

(A) the serial number of each item and the year each item was produced or manufactured, if available;

(B) the approximate value of each item; and

(C) the size, weight, material, length, number of items, capacity, or other identifying characteristics; and

(4) ~~[(3)]~~ the proposed seller's signed certification that the information is true and complete.

(c) The dealer shall:

(1) record the identification ~~[proposed seller's driver's license]~~ number ~~[or department personal identification certificate number on physical presentation]~~ of the seller's personal identification document;

(2) visually verify the accuracy of the seller's personal identification document and make a copy of the document; and

(3) obtain a digital or video photograph that accurately depicts each item of crafted precious metal purchased ~~[license or personal identification certificate by the seller]~~.

(c-1) The copy of the document and photograph described by Subsection (c) ~~[record]~~ must accompany the list.

(c-2) All lists and records required by this section must be legible.

(d) The dealer shall:

(1) provide to a peace officer or the commissioner, on demand, the list required by Subsection (b); and

(2) mail or deliver a complete copy of the list to the chief of police or the sheriff as provided by Section 1956.063 not later than 48 hours after the list is filed with the dealer.

(e) In this section, "seller" includes a transferor who exchanges, or offers to exchange, crafted precious metal with a dealer.

SECTION 7. Section 1956.063(c), Occupations Code, is amended to read as follows:

(c) For each transaction regulated by this subchapter, the ~~[The]~~ dealer shall submit a ~~[the]~~ report on a preprinted and prenumbered form prescribed by the commissioner ~~[district attorney or person performing the duties of district attorney of the county in which the transaction occurs]~~. The form must include the following:

(1) the date of the transaction;

(2) a description of the crafted precious metal purchased by the dealer;

(3) the name and physical address of the dealer;

(4) the name, physical description, and physical address of the seller or transferor; and

(5) a copy of the document described by Section

4-1 1956.062(c).

4-2 SECTION 8. Subchapter B, Chapter 1956, Occupations Code, is
4-3 amended by adding Section 1956.0631 to read as follows:

4-4 Sec. 1956.0631. PAYMENT FOR CRAFTED PRECIOUS METAL
4-5 PURCHASED. A dealer may pay for a purchase of crafted precious
4-6 metal only by check or prepaid debit card. If payment is by check,
4-7 the names of the dealer and seller or transferor must be printed on
4-8 the check. If payment is by prepaid debit card, the seller or
4-9 transferor may not be liable for any fees charged by the issuer of
4-10 the card.

4-11 SECTION 9. Section 1956.064, Occupations Code, is amended
4-12 to read as follows:

4-13 Sec. 1956.064. REQUIRED RETENTION OF CRAFTED PRECIOUS
4-14 METAL. (a) A dealer may not melt, deface, alter, or dispose of
4-15 crafted precious metal that is the subject of a report required by
4-16 this subchapter before the 21st [11th] day after the date the report
4-17 is filed unless:

4-18 (1) the peace officer to whom the report is submitted,
4-19 for good cause, authorizes disposition of the metal; or

4-20 (2) [the dealer obtains the name, address, and
4-21 description of the buyer and retains a record of that information,
4-22 or

4-23 [(3)] the dealer is a pawnbroker or an employee of a
4-24 pawnbroker and the disposition is the redemption of pledged
4-25 property by the pledgor.

4-26 (b) A peace officer who has reasonable suspicion to believe
4-27 that an item of crafted precious metal in the possession of a dealer
4-28 is stolen may place the item on hold for a period not to exceed 60
4-29 days by issuing to the dealer a written notice that:

4-30 (1) specifically identifies the item alleged to be
4-31 stolen and subject to the hold; and

4-32 (2) informs the dealer of the requirements of
4-33 Subsection (c).

4-34 (c) On receiving the notice, the dealer may not melt,
4-35 deface, alter, or dispose of the identified crafted precious metal
4-36 until the hold is released in writing by a peace officer of this
4-37 state or a court order. [A dealer who retains information under
4-38 Subsection (a)(2) shall make that information available for
4-39 inspection by any peace officer.]

4-40 SECTION 10. The heading to Section 1956.065, Occupations
4-41 Code, is amended to read as follows:

4-42 Sec. 1956.065. INSPECTION OF CRAFTED PRECIOUS METAL [BY
4-43 PEACE OFFICER].

4-44 SECTION 11. Section 1956.065(a), Occupations Code, is
4-45 amended to read as follows:

4-46 (a) A dealer shall make crafted precious metal purchased or
4-47 exchanged by the dealer available for inspection by a peace officer
4-48 or the commissioner during regular business hours while in the
4-49 dealer's possession.

4-50 SECTION 12. Section 1956.066, Occupations Code, is amended
4-51 to read as follows:

4-52 Sec. 1956.066. PURCHASE FROM MINOR PROHIBITED. [(a)] A
4-53 dealer may not purchase crafted precious metal from a person
4-54 younger than 18 years of age [unless the seller delivers to the
4-55 dealer before the purchase a written statement from the seller's
4-56 parent or legal guardian consenting to the transaction].

4-57 [(b)] The dealer shall retain the statement with the records
4-58 required to be kept under this subchapter. The dealer may destroy
4-59 the statement after the later of:

4-60 [(1) the date the item is sold, or

4-61 [(2) the first anniversary of the date the dealer
4-62 purchased the item.]

4-63 SECTION 13. Section 1956.067(a), Occupations Code, is
4-64 amended to read as follows:

4-65 (a) A dealer who conducts business at a temporary location
4-66 for a period of less than one year [90 days] may not engage in the
4-67 business of buying precious metal or used items made of precious
4-68 metal unless, within a 12-month period at least 30 days before the
4-69 date on which each purchase is made, the dealer [person] has filed:

(1) a registration statement with the department;
[and]

(2) a copy of the registration statement and a copy of the dealer's license issued under this subchapter with the local law enforcement agency of:

(A) the municipality in which the temporary location is located; or

(B) if the temporary location is not located in a municipality, the county in which the temporary location is located; and

(3) a copy of the dealer's license issued under this subchapter with the county and, if applicable, the municipality in which the temporary location is located.

SECTION 14. Subchapter B, Chapter 1956, Occupations Code, is amended by adding Sections 1956.0685 and 1956.0686 to read as follows:

Sec. 1956.0685. GROUNDS FOR DENIAL, REVOCATION, OR SUSPENSION OF LICENSE. The commissioner may deny, revoke, or suspend a license issued under this subchapter if the person:

(1) violates this subchapter or a rule adopted or an order issued under this subchapter;

(2) provides false information on a license application; or

(3) is convicted of an offense under Section 31.03, 37.09, or 37.10, Penal Code.

Sec. 1956.0686. NOTICE OF HEARING. (a) The commissioner shall send written notice to the dealer of a license revocation or suspension hearing that includes the cause or allegations of the revocation or suspension hearing.

(b) A hearing under this section is a contested case under Chapter 2001, Government Code.

SECTION 15. Section 1956.069(a), Occupations Code, is amended to read as follows:

(a) A person ~~dealer~~ commits an offense if the person ~~dealer~~:

(1) fails to make or permit inspection of a report as required by Section 1956.062 or 1956.063;

(2) ~~violates [disposes of crafted precious metal or fails to make a record available for inspection by a peace officer as required by]~~ Section 1956.0612, 1956.0631, or 1956.064;

(3) fails to obtain or retain a statement as required by Section 1956.066;

(4) fails to file a registration statement as required by Section 1956.067; or

(5) purchases an object in violation of Section 1956.068.

SECTION 16. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 17. Not later than December 1, 2011, the Finance Commission of Texas shall adopt rules to implement Subchapter B, Chapter 1956, Occupations Code, as amended by this Act.

SECTION 18. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2011.

(b) Section 1956.0612, Occupations Code, as added by this Act, and Sections 1956.067(a) and 1956.069(a), Occupations Code, as amended by this Act, take effect January 1, 2012.

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