

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

2-1 amended by adding Sections 1956.0611, 1956.0612, 1956.0613,
2-2 1956.0614, 1956.0615, 1956.0616, 1956.0617, and 1956.0618 to read
2-3 as follows:

2-4 Sec. 1956.0611. RULEMAKING. The commission may adopt rules
2-5 necessary to implement and enforce this subchapter.

2-6 Sec. 1956.0612. LICENSE REQUIRED. A person may not engage
2-7 in the business of purchasing and selling crafted precious metal
2-8 unless the person holds a license issued under this subchapter.

2-9 Sec. 1956.0613. ELIGIBILITY. (a) To be eligible for a
2-10 license, an applicant must:

2-11 (1) be of good moral character; and

2-12 (2) show that:

2-13 (A) the applicant will operate lawfully and
2-14 fairly under this subchapter; and

2-15 (B) the applicant or the applicant's owners and
2-16 managers have the financial responsibility, experience, character,
2-17 and general fitness to command the confidence of the public in the
2-18 applicant's operations.

2-19 (b) Subsection (a)(1) applies to each:

2-20 (1) operator and legal or beneficial owner, if the
2-21 applicant is a business entity; and

2-22 (2) officer, owner of at least five percent of the
2-23 shares outstanding, and director, if the applicant is a
2-24 corporation.

2-25 (c) The commission by rule may establish other
2-26 qualifications for a license.

2-27 Sec. 1956.0614. LICENSE APPLICATION; FEES. (a) An
2-28 applicant for a license shall submit a license application on a form
2-29 prescribed by the commissioner. The commission shall establish a
2-30 nonrefundable application fee in an amount not to exceed \$500.

2-31 (b) The commission shall establish fees under this
2-32 subchapter, including an annual fee to be paid by a license holder,
2-33 in amounts reasonable and necessary to cover the costs of
2-34 administering the commission's programs and activities under this
2-35 subchapter.

2-36 Sec. 1956.0615. LICENSE TERM; RENEWAL. A license expires
2-37 on the first anniversary of the date of issuance and may be renewed
2-38 annually on payment of the required annual license fee.

2-39 Sec. 1956.0616. INVESTIGATION; NOTICE OF APPLICATION. (a)
2-40 On receipt of an application and the required fees, the
2-41 commissioner shall:

2-42 (1) conduct an investigation to determine whether to
2-43 issue the license; and

2-44 (2) give notice of the application to:

2-45 (A) the department; and

2-46 (B) each local law enforcement agency in the
2-47 county in which the dealer is to conduct business.

2-48 (b) The notice under Subsection (a) must state the name and
2-49 address of each person described by Section 1956.0613(b).

2-50 (c) The commissioner shall give the department and local law
2-51 enforcement agencies a reasonable period to respond to the notice
2-52 with information concerning each listed person or any other
2-53 relevant information.

2-54 Sec. 1956.0617. NOTICE OF DENIAL; HEARING. (a) If the
2-55 commissioner determines not to issue a license, the commissioner
2-56 shall deliver to the applicant at the address provided in the
2-57 application a written notice by personal delivery or certified
2-58 mail, return receipt requested. The notice must include the
2-59 reasons for denying the license.

2-60 (b) Not later than the 30th day after the date of receipt of
2-61 a notice under Subsection (a), an applicant may request a hearing on
2-62 the application denial. The commissioner shall set the hearing not
2-63 later than the 60th day after the date of the request. A hearing
2-64 under this section is a contested case under Chapter 2001,
2-65 Government Code.

2-66 Sec. 1956.0618. CONTENTS AND DISPLAY OF LICENSE. (a) A
2-67 license must state:

2-68 (1) the name of the dealer;

2-69 (2) the address of the dealer's principal place of

3-1 business; and

3-2 (3) that the dealer is authorized to deal in crafted
3-3 precious metals.

3-4 (b) A dealer shall display the license in a conspicuous
3-5 location at the dealer's principal place of business.

3-6 SECTION 5. The heading to Section 1956.062, Occupations
3-7 Code, is amended to read as follows:

3-8 Sec. 1956.062. REPORT OF PURCHASE OR EXCHANGE REQUIRED.

3-9 SECTION 6. Section 1956.062, Occupations Code, is amended
3-10 by amending Subsections (b), (c), and (d) and adding Subsections
3-11 (c-1), (c-2), and (e) to read as follows:

3-12 (b) Before [crafted precious metal is offered for sale or
3-13 exchange,] a dealer [must notify each person intending to sell or
3-14 exchange the metal that, before the dealer] may purchase or
3-15 exchange crafted precious metal [accept any of the person's
3-16 property], the dealer [person] must compile [file with the dealer]
3-17 a list describing all of the [person's] crafted precious metal to be
3-18 accepted by the dealer. The list must contain:

3-19 (1) the proposed seller's name, sex, height, date of
3-20 birth, eye color, and address;

3-21 (2) the date and time of the purchase or exchange;

3-22 (3) a complete and accurate description of the crafted
3-23 precious metal that includes:

3-24 (A) the serial number of each item and the year
3-25 each item was produced or manufactured, if available;
3-26 (B) the approximate value of each item; and
3-27 (C) the size, weight, material, length, number of
3-28 items, capacity, or other identifying characteristics; and
3-29 (4) [43] the proposed seller's signed certification
3-30 that the information is true and complete.

3-31 (c) The dealer shall:

3-32 (1) record the identification [proposed seller's
3-33 driver's license] number [or department personal identification
3-34 certificate number on physical presentation] of the seller's
3-35 personal identification document;

3-36 (2) visually verify the accuracy of the seller's
3-37 personal identification document and make a copy of the document;
3-38 and

3-39 (3) obtain a digital or video photograph that
3-40 accurately depicts each item of crafted precious metal purchased
3-41 [license or personal identification certificate by the seller].

3-42 (c-1) The copy of the document and photograph described by
3-43 Subsection (c) [record] must accompany the list.

3-44 (c-2) All lists and records required by this section must be
3-45 legible.

3-46 (d) The dealer shall:

3-47 (1) provide to a peace officer or the commissioner, on
3-48 demand, the list required by Subsection (b); and

3-49 (2) mail or deliver a complete copy of the list to the
3-50 chief of police or the sheriff as provided by Section 1956.063 not
3-51 later than 48 hours after the list is filed with the dealer.

3-52 (e) In this section, "seller" includes a transferor who
3-53 exchanges, or offers to exchange, crafted precious metal with a
3-54 dealer.

3-55 SECTION 7. Section 1956.063(c), Occupations Code, is
3-56 amended to read as follows:

3-57 (c) For each transaction regulated by this subchapter, the
3-58 [The] dealer shall submit a [the] report on a preprinted and
3-59 prenumbered form prescribed by the commissioner [district attorney
3-60 or person performing the duties of district attorney of the county
3-61 in which the transaction occurs]. The form must include the
3-62 following:

3-63 (1) the date of the transaction;
3-64 (2) a description of the crafted precious metal
3-65 purchased by the dealer;

3-66 (3) the name and physical address of the dealer;
3-67 (4) the name, physical description, and physical
3-68 address of the seller or transferor; and

3-69 (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~~
~~description of the buyer and retains a record of that information,~~
 4-21 ~~or~~

4-22 (3) the dealer is a pawnbroker or an employee of a
 4-23 pawnbroker and the disposition is the redemption of pledged
 4-24 property by the pledgor.

4-25 (b) A peace officer who has reasonable suspicion to believe
 4-26 that an item of crafted precious metal in the possession of a dealer
 4-27 is stolen may place the item on hold for a period not to exceed 60
 4-28 days by issuing to the dealer a written notice that:

4-29 (1) specifically identifies the item alleged to be
 4-30 stolen and subject to the hold; and
 4-31 (2) informs the dealer of the requirements of
 4-32 Subsection (c).

4-33 (c) On receiving the notice, the dealer may not melt,
 4-34 deface, alter, or dispose of the identified crafted precious metal
 4-35 until the hold is released in writing by a peace officer of this
 4-36 state or a court order. ~~[A dealer who retains information under~~
 4-37 ~~Subsection (a)(2) shall make that information available for~~
 4-38 ~~inspection by any peace officer.]~~

4-39 SECTION 10. The heading to Section 1956.065, Occupations
 4-40 Code, is amended to read as follows:

4-41 Sec. 1956.065. INSPECTION OF CRAFTED PRECIOUS METAL [BY
 4-42 PEACE OFFICER].

4-43 SECTION 11. Section 1956.065(a), Occupations Code, is
 4-44 amended to read as follows:

4-45 (a) A dealer shall make crafted precious metal purchased or
 4-46 exchanged by the dealer available for inspection by a peace officer
 4-47 or the commissioner during regular business hours while in the
 4-48 dealer's possession.

4-49 SECTION 12. Section 1956.066, Occupations Code, is amended
 4-50 to read as follows:

4-51 Sec. 1956.066. PURCHASE FROM MINOR PROHIBITED. ~~[a]~~ A
 4-52 dealer may not purchase crafted precious metal from a person
 4-53 younger than 18 years of age ~~[unless the seller delivers to the~~
 4-54 ~~dealer before the purchase a written statement from the seller's~~
 4-55 ~~parent or legal guardian consenting to the transaction].~~

4-56 (b) The dealer shall retain the statement with the records
 4-57 required to be kept under this subchapter. The dealer may destroy
 4-58 the statement after the later of:

4-59 (1) ~~the date the item is sold; or~~
 4-60 (2) ~~the first anniversary of the date the dealer~~
~~purchased the item.]~~

4-61 SECTION 13. Section 1956.067(a), Occupations Code, is
 4-62 amended to read as follows:

4-63 (a) A dealer who conducts business at a temporary location
 4-64 for a period of less than one year [~~90 days~~] may not engage in the
 4-65 business of buying precious metal or used items made of precious
 4-66 metal unless, within a 12-month period at least 30 days before the
 4-67 date on which each purchase is made, the dealer ~~[person]~~ has filed:

5-1 (1) a registration statement with the department;
5-2 [and]
5-3 (2) a copy of the registration statement and a copy of
5-4 the dealer's license issued under this subchapter with the local
5-5 law enforcement agency of:
5-6 (A) the municipality in which the temporary
5-7 location is located; or
5-8 (B) if the temporary location is not located in a
5-9 municipality, the county in which the temporary location is
5-10 located; and
5-11 (3) a copy of the dealer's license issued under this
5-12 subchapter with the county and, if applicable, the municipality in
5-13 which the temporary location is located.

5-14 SECTION 14. Subchapter B, Chapter 1956, Occupations Code,
5-15 is amended by adding Sections 1956.0685 and 1956.0686 to read as
5-16 follows:

5-17 Sec. 1956.0685. GROUNDS FOR DENIAL, REVOCATION, OR
5-18 SUSPENSION OF LICENSE. The commissioner may deny, revoke, or
5-19 suspend a license issued under this subchapter if the person:
5-20 (1) violates this subchapter or a rule adopted or an
5-21 order issued under this subchapter;
5-22 (2) provides false information on a license
5-23 application; or
5-24 (3) is convicted of an offense under Section 31.03,
5-25 37.09, or 37.10, Penal Code.

5-26 Sec. 1956.0686. NOTICE OF HEARING. (a) The commissioner
5-27 shall send written notice to the dealer of a license revocation or
5-28 suspension hearing that includes the cause or allegations of the
5-29 revocation or suspension hearing.

5-30 (b) A hearing under this section is a contested case under
5-31 Chapter 2001, Government Code.

5-32 SECTION 15. Section 1956.069(a), Occupations Code, is
5-33 amended to read as follows:

5-34 (a) A person [dealer] commits an offense if the person
5-35 [dealer]:
5-36 (1) fails to make or permit inspection of a report as
5-37 required by Section 1956.062 or 1956.063;
5-38 (2) violates [disposes of crafted precious metal or
5-39 fails to make a record available for inspection by a peace officer
5-40 as required by] Section 1956.0612, 1956.0631, or 1956.064;
5-41 (3) fails to obtain or retain a statement as required
5-42 by Section 1956.066;
5-43 (4) fails to file a registration statement as required
5-44 by Section 1956.067; or
5-45 (5) purchases an object in violation of Section
5-46 1956.068.

5-47 SECTION 16. The change in law made by this Act applies only
5-48 to an offense committed on or after the effective date of this Act.
5-49 An offense committed before the effective date of this Act is
5-50 governed by the law in effect on the date the offense was committed,
5-51 and the former law is continued in effect for that purpose. For
5-52 purposes of this section, an offense was committed before the
5-53 effective date of this Act if any element of the offense occurred
5-54 before that date.

5-55 SECTION 17. Not later than December 1, 2011, the Finance
5-56 Commission of Texas shall adopt rules to implement Subchapter B,
5-57 Chapter 1956, Occupations Code, as amended by this Act.

5-58 SECTION 18. (a) Except as provided by Subsection (b) of
5-59 this section, this Act takes effect September 1, 2011.

5-60 (b) Section 1956.0612, Occupations Code, as added by this
5-61 Act, and Sections 1956.067(a) and 1956.069(a), Occupations Code, as
5-62 amended by this Act, take effect January 1, 2012.