

## **BILL ANALYSIS**

Senate Research Center  
82R29924 MAW-D

C.S.H.B. 2490  
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Business & Commerce  
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Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Cash-for-gold establishments are largely unregulated, and these establishments perform informal transactions with sellers, do not keep a record of items purchased, and melt down purchased precious metals almost immediately, making it very difficult for law enforcement agencies to track, investigate, and monitor whether stolen property is involved in such transactions. C.S.H.B. 2490 establishes licensing requirements and increased reporting requirements for those who buy and sell crafted precious metal items.

C.S.H.B. 2490 amends current law relating to the regulation of crafted precious metal dealers and provides criminal penalties.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 4 (Sections 1956.0611 and 1956.0613, Occupations Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 1956.051, Occupations Code, by amending Subdivisions (1) and (2) and adding Subdivisions (1-a) and (3-a) to define "commission," "commissioner," and "personal identification document" and redefine "crafted precious metal" and "dealer." Makes nonsubstantive changes.

SECTION 2. Amends Subchapter B, Chapter 1956, Occupations Code, by adding Section 1956.0511, as follows:

Sec. 1956.0511. ADMINISTRATION BY COMMISSION. (a) Requires the Finance Commission of Texas (finance commission), notwithstanding any other provision of this chapter, to administer and enforce this subchapter, unless the context clearly requires another state agency to perform a specific duty.

(b) Provides that, to the extent of any conflict between this subchapter and other provisions of this chapter, this subchapter prevails.

SECTION 3. Amends Section 1956.060, Occupations Code, to provide that this subchapter does not apply to crafted precious metal acquired by a person licensed under Chapter 371 (Pawnshops), Finance Code, or an entity affiliated with a person licensed under Chapter 371, Finance Code, if the entity's recordkeeping practices satisfy the requirements of that chapter.

SECTION 4. Amends Subchapter B, Chapter 1956, Occupations Code, by adding Sections 1956.0611, 1956.0612, 1956.0613, 1956.0614, 1956.0615, 1956.0616, 1956.0617, and 1956.0618, as follows:

Sec. 1956.0611. RULEMAKING. Authorizes the finance commission to adopt rules necessary to implement this subchapter.

Sec. 1956.0612. LICENSE REQUIRED. Prohibits a person from engaging 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) Requires an applicant, to be eligible for a license, to:

(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) Provides that 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) Authorizes the finance commission by rule to establish other qualifications for a license.

Sec. 1956.0614. LICENSE APPLICATION; FEE. (a) Requires an applicant for a license to submit a license application on a form prescribed by the consumer credit commissioner (commissioner). Requires the finance commission to establish an application fee in an amount not to exceed \$500.

(b) Requires the finance commission to 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 finance commission's programs and activities under this subchapter.

Sec. 1956.0615. LICENSE TERM; RENEWAL. Provides that a license expires on the first anniversary of the date of issuance and is authorized to be renewed annually on payment of the required annual license fee.

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

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

(2) give notice of the application to:

(A) the Department of Public Safety of the State of Texas (DPS); and

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

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

(c) Requires the commissioner to give DPS 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) Requires the commissioner, if the commissioner determines not to issue a license, to deliver to the applicant at the address provided in the application a written notice by personal delivery or certified mail, return receipt required. Requires that the notice include the reasons for denying the license.

(b) Authorizes an applicant, not later than the 30th day after the date of receipt of a notice under Subsection (a), to request a hearing on the application denial. Requires the commissioner to set the hearing not later than the 60th day after the date of the request. Provides that a hearing under this section is a contested case under Chapter 2001 (Administrative Procedure), Government Code.

Sec. 1956.0618. CONTENTS AND DISPLAY OF LICENSE. (a) Requires that a license 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) Requires a dealer to display the license in a conspicuous location at the dealer's principal place of business.

SECTION 5. Amends the heading to Section 1956.062, Occupations Code, to read as follows:

Sec. 1956.062. REPORT OF PURCHASE OR EXCHANGE REQUIRED.

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

(b) Requires a dealer, before the dealer may purchase or exchange crafted precious metal, to compile a list describing all of the crafted precious metal to be accepted by the dealer, rather than requires a dealer, before crafted precious metal is offered for sale or exchange, to notify each person intending to sell or exchange the metal that, before the dealer may accept any of the person's property, the person is required to file with the dealer a list describing all of the person's crafted precious metal to be accepted by the dealer. Requires that the list 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) the proposed seller's signed certification that the information is true and complete.

(c) Requires the dealer to:

- (1) record the identification number 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, rather than record the proposed seller's driver's license number or the DPS personal identification certificate number on physical presentation of the license or personal identification certificate by the seller.

(c-1) Creates this subsection from existing text. Requires that the copy of the document described by Subsection (c), rather than the record, accompany the list.

(c-2) Requires that all lists and records required by this section be legible.

(d) Requires the dealer to perform certain actions, including provide to a peace officer or commissioner, on demand, the list required by Subsection (b).

(e) Defines, in this section, "seller."

SECTION 7. Amends Section 1956.063(c), Occupations Code, as follows:

(c) Requires the dealer, for each transaction regulated by this subchapter, to submit a report on a preprinted and prenumbered form prescribed by the commissioner, rather than requiring the dealer to submit the report on a form prescribed by the district attorney or person performing the duties of district attorney of the county in which the transaction occurs. Requires that the form 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; and
- (5) a copy of the document described by Section 1956.062(c).

SECTION 8. Amends Subchapter B, Chapter 1956, Occupations Code, by adding Section 1956.0631, as follows:

Sec. 1956.0631. PAYMENT FOR CRAFTED PRECIOUS METAL PURCHASED. Authorizes a dealer to pay for a purchase of crafted precious metal only by check or prepaid debit card. Requires that the names of the dealer and seller, if payment is by check, be printed on the check. Prohibits the seller or transferor, if payment is by prepaid debit card, from being liable for any fees charged by the issuer of the card.

SECTION 9. Amends Section 1956.064, Occupations Code, as follows:

Sec. 1956.064. REQUIRED RETENTION OF CRAFTED PRECIOUS METAL. (a) Prohibits a dealer from melting, defacing, altering, or disposing of crafted precious metal that is the subject of a report required by this subchapter before the 21st day, rather than the 11th day, after the date the report is filed unless:

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

(2) the dealer is a pawnbroker or an employee of a pawnbroker and the disposition is the redemption of pledged property by the pledgor.

Deletes existing text prohibiting a dealer from melting, defacing, altering, or disposing of crafted precious metal that is the subject of a report required by this subchapter before the 11th day after the date the report is filed unless the dealer obtains the name, address, and description of the buyer and retains a record of that information.

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

(1) specifically identifies the item alleged to be stolen and subject to the hold; and

(2) informs the dealer of the requirements of Subsection (c).

(c) Prohibits the dealer, on receiving the notice, from melting, defacing, altering, or disposing of the identified crafted precious metal until the hold is released in writing by a peace officer of this state or a court order. Deletes existing text requiring a dealer who retains information under Subsection (a)(2) to make that information available for inspection by any peace officer.

SECTION 10. Amends the heading to Section 1956.065, Occupations Code, to read as follows:

Sec. 1965.065 INSPECTION OF CRAFTED PRECIOUS METAL.

SECTION 11. Amends Section 1956.065(a), Occupations Code, to require a dealer to make crafted precious metal purchased or exchanged by the dealer available for inspection by a peace officer of the commissioner during regular business hours while in the dealer's possession.

SECTION 12. Amends Section 1956.066, Occupations Code, as follows:

Sec. 1956.066. New heading: PURCHASE FROM MINOR PROHIBITED. (a) Deletes existing Subsection (a) designation. Prohibits a dealer from purchasing crafted precious metal from a person younger than 18 years of age, rather than prohibits a dealer from purchasing crafted precious metal from a person younger than 18 years of age unless the seller delivers to the dealer before the purchase a written statement from the seller's parent or legal guardian consenting to the transaction.

Deletes existing Subsection (b) requiring the dealer to retain the statement with the records required to be kept under this subchapter. Deletes existing text authorizing the dealer to destroy the statement after the later of certain dates.

SECTION 13. Amends Section 1956.067(a), Occupations Code, to prohibit a dealer who conducts business at a temporary location for a period of less than one year, rather than 90 days, from engaging in the business of buying precious metal or used items made of precious metal unless, within a 12-month period at least 30 days before the date on which each purchase is made, the dealer, rather than the person, has filed certain documents, including 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 certain entities, and 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. Amends Subchapter B, Chapter 1956, Occupations Code, by adding Sections 1956.0685 and 1965.0686, as follows:

Sec. 1956.0685. GROUND FOR DENIAL, REVOCATION, OR SUSPENSION OF LICENSE. Authorizes the commissioner to 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 licensee application; or
- (3) is convicted of an offense under Section 31.03 (Theft), 37.09 (Tampering with or Fabricating Physical Evidence), or 37.10 (Tampering with Governmental Record), Penal Code.

Sec. 1956.0686. NOTICE OF HEARING. (a) Requires the commissioner to 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) Provides that the hearing under this section is a contested case under Chapter 2001, Government Code.

SECTION 15. Amends Section 1956.069(a), Occupations Code, to provide that a person, rather than a dealer, commits an offense if the person performs certain actions, including violates Section 1956.0612, 1956.0631, or 1956.064, rather than disposes of crafted precious metal or fails to make a record available for inspection by a peace officer as required by Section 1956.064.

SECTION 16. Makes application of this Act prospective.

SECTION 17. Requires the finance commission, not later than December 1, 2011, to adopt rules to implement Subchapter B, Chapter 1956, Occupations Code, as amended by this Act.

SECTION 18. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2011.

(b) Effective date, Section 1956.0611, Occupations Code, as added by this Act, and Sections 1956.067(a) and 1956.069(a), Occupations Code, as amended by this Act: January 1, 2012.