

BILL ANALYSIS

Senate Research Center

H.B. 2490
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Business & Commerce
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Engrossed

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. H.B. 2490 establishes licensing requirements and increased reporting requirements for those who buy and sell crafted precious metal items.

H.B. 2490 amends current law relating to the regulation of certain metal dealers and provides criminal penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 5 (Sections 1956.0612 and 1956.0615, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1956.001(8), Occupations Code, to redefine "personal identification document."

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

SECTION 3. Amends Subchapter B, Chapter 1956, Occupations Code, by adding Section 1956.0511, as follows:

Sec. 1956.0511. ADMINISTRATION BY FINANCE 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 4. Amends Section 1956.060, Occupations Code, to provide that this subchapter does not apply to crafted precious metal acquired by a person or an employee of a person licensed under Chapter 371 (Pawnshops), Finance Code.

SECTION 5. Amends Subchapter B, Chapter 1956, Occupations Code, by adding Sections 1956.0611, 1956.0612, 1956.0613, 1956.0614, and 1956.0615, as follows:

Sec. 1956.0611. DEALER'S LICENSE REQUIRED. Prohibits a person from engaging in the business of purchasing and selling crafted precious metal unless the person holds a dealer's license issued under this subchapter.

Sec. 1956.0612. ELIGIBILITY. (a) Requires an applicant, to be eligible for a dealer's 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 dealer's license.

Sec. 1956.0613. LICENSE APPLICATION; FEE. Requires an applicant for a dealer's 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.

Sec. 1956.0614. APPROVAL; ISSUANCE OF LICENSE. Requires the commissioner to approve the application and issue a dealer's license to the applicant if the commissioner determines that the applicant is eligible for the license.

Sec. 1956.0615. RULEMAKING. (a) Authorizes the finance commission to adopt rules to enforce this subchapter.

(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 commission's programs and activities under this subchapter.

SECTION 6. Amends Section 1956.062, Occupations Code, by amending Subsection (c) and adding Subsection (c-1), as follows:

(c) Requires the dealer to:

(1) record the identification number of the seller's personal identification document; and

(2) visually verify the accuracy of the seller's personal identification document and make a copy of the document, rather than record the proposed seller's driver's license number or the Department of Public Safety of the State of Texas 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.

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 finance commission, 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. Requires that the names of the dealer and seller be printed on the check.

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 31st 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 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 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 11. 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 1956.0611, 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 12. Makes application of this Act prospective.

SECTION 13. 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 14. (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.