

BILL ANALYSIS

C.S.H.B. 3502
By: Raymond
Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Concerned parties assert that businesses offering money in exchange for precious metals, such as gold, silver, and platinum, are inadequately regulated in Texas and that this encourages theft and various forms of illegal transactions. The parties further assert that legislation is needed to provide oversight of crafted precious metal dealers and dealerships, including mandatory licensing of any person wishing to engage in business as a crafted precious metal dealer. C.S.H.B. 3502 seeks to address this issue by making certain statutory changes relating to the regulation of crafted precious metal dealers and dealerships and providing a penalty.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTIONS 4 and 16 of this bill.

ANALYSIS

C.S.H.B. 3502 amends the Occupations Code to prohibit a person, effective March 1, 2012, from engaging in business as a crafted precious metal dealer unless the person holds a dealership license. The bill authorizes the Texas Commission of Licensing and Regulation to adopt rules necessary to implement and enforce those provisions. The bill makes provisions of law relating to the sale of crafted precious metal to dealers inapplicable to crafted precious metal acquired by an employee of a person licensed under the Texas Pawnshop Act.

C.S.H.B. 3502 establishes that a separate dealership license is required for each place of business that engages in the business of purchasing and selling crafted precious metal and authorizes the Texas Department of Licensing and Regulation (TDLR) to issue more than one dealership license to a person if the person complies with the licensing regulations for each license. The bill establishes application requirements for the license, application fee amounts, an annual license fee set by commission rule, and license expiration and renewal terms. The bill provides that an applicant that is a charitable organization exempted under the federal Internal Revenue Code of 1986 is exempt from the license fee requirements. The bill prohibits the term of a lease agreement from expiring before the first anniversary of the date the application is filed if an applicant is leasing the property where the business is to be conducted.

C.S.H.B. 3502 requires TDLR, on receipt of an application and the required fees, to conduct an investigation to determine whether to issue a dealership license and to give notice of the application to the Department of Public Safety (DPS) and each local law enforcement agency in the county in which the dealership is to conduct business. The bill sets out requirements relating to the notice. The bill requires TDLR, if it determines not to issue a license, to notify the applicant in writing by a specified method of delivery and to include in the notice the department's reason for denying the license. The bill authorizes an applicant, not later than the 30th day after the date of receipt of the notice, to request a hearing on the application denial and requires TDLR to set the hearing not later than the 60th day after the date of the request. The bill provides that such a hearing is subject to provisions of law relating to the right to a hearing

conducted by the State Office of Administrative Hearings regarding the proposed denial, suspension, or revocation of a license by the executive director of TDLR.

C.S.H.B. 3502 requires TDLR, if it denies an application, to retain the application fee and return to the applicant the annual license fee submitted with the application. The bill sets out provisions relating to the contents of the license and requires a dealer to display the license in a conspicuous location at the place of business provided on the license. The bill requires a dealer who wishes to move a dealership from the location authorized by a license to file a relocation application with TDLR not later than the 30th day before the date the dealer moves and to pay a \$20 application fee.

C.S.H.B. 3502 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. The bill removes a provision of law requiring the dealer to notify each person intending to sell or exchange such metal that, before the dealer may accept any of the person's property, the person must file with the dealer a list describing the metal to be accepted by the dealer. The bill makes the requirement that the list contain certain information about the proposed seller also applicable to the proposed transferor and includes in that required information the proposed seller's or transferor's sex, height, date of birth, and eye color, and the date and time of the purchase or exchange. The bill, in a provision requiring that the list contain a complete and accurate description of the crafted precious metal, includes in that description a serial number and year produced or manufactured, if available, of the metal and the size, weight, material, length, number of items, capacity, or other identifying characteristics.

C.S.H.B. 3502 makes the requirement that the list describing all of the crafted precious metal to be accepted by the dealer contain the proposed seller's certification that the information in the list is true and complete also applicable to the transferor's certification of that fact, and specifies that such certification by the seller or transferor is signed by the applicable party. The bill requires a dealer to require the proposed seller or transferor to physically present the proposed seller's or transferor's personal identification document and record the type of document presented and the identification number of the document and makes conforming changes. The bill requires all lists and records required under these provisions of law to be legible and includes TDLR among the parties to which a dealer, on demand, is required to provide the list.

C.S.H.B. 3502 requires a dealer, at the time of the sale or exchange of crafted precious metal, to deliver a receipt to the seller or transferor and requires each receipt delivered by the dealer to meet certain requirements. The bill requires an accurate copy or record of the receipt to be maintained until the third anniversary of the date of the sale or exchange and to be available on request for inspection during business hours by a peace officer or TDLR and makes conforming changes.

C.S.H.B. 3502 establishes, in the provision setting a hold period during which a dealer is prohibited from melting, defacing, altering, or disposing of a crafted precious metal that is the subject of a required report, that the hold is required until the 21st day, rather than the 11th day, after the date the report is filed, with certain exceptions. The bill removes as an exception to the hold period requirement that the dealer obtains the name, address, and description of the buyer and retains a record of that information. The bill requires the crafted precious metal, during the hold period, to be stored or displayed in the exact form it was received, in a manner as to be identifiable from the provided description, in a manner as to not impede or prevent the crafted precious metal's examination by a peace officer or TDLR, and at the dealership where the crafted precious metal was purchased or exchanged.

C.S.H.B. 3502 requires a dealer or an agent or employee of a dealership to monitor the purchase of crafted precious metal to identify or prevent transactions involving stolen crafted precious metal and to make reasonable efforts to avoid accepting or purchasing stolen crafted precious metal. The bill requires such a person to immediately report to a local law enforcement agency

the following: an offer to sell to the dealership crafted precious metal actually known or reasonably suspected to be stolen; the identity, if known, and the description of the person offering to sell the metal; and the purchase of crafted precious metal subsequently determined or reasonably suspected to be stolen. The bill requires a dealer to cooperate with a local law enforcement agency regarding any matter relating to stolen crafted precious metal and to assist in the prompt resolution of an official investigation. The bill includes TDLR among the parties to which a dealer is required to make crafted precious metal purchased or exchanged by the dealer available for inspection during regular business hours while in the dealer's possession.

C.S.H.B. 3502 removes the provision of law providing an exception to the prohibition against a dealer from purchasing crafted precious metal from a person younger than 18 years of age if the seller delivers to the dealer before the purchase a written statement from the seller's parent or legal guardian consenting to the transaction. The bill removes provisions of law requiring the dealer to retain the statement and authorizing the dealer to destroy the statement after a specified period of time.

C.S.H.B. 3502 authorizes TDLR to deny, revoke, or suspend a dealership license if the dealer violates statutory provisions or provisions of the bill governing the crafted precious metal dealers and dealerships or a rule adopted or an order issued under those provisions, falsifies information on a license application, or is convicted of the offense of theft, tampering with or fabricating physical evidence, or tampering with a governmental record. The bill requires TDLR to send written notice to the dealer of a dealership license revocation or suspension hearing that includes the cause or allegations of the hearing and makes such a hearing subject to statutory provisions relating to penalties and enforcement administered by TDLR.

C.S.H.B. 3502 establishes that a person commits a criminal offense if the person violates the provisions of law governing the sale of crafted precious metal to dealers and removes provisions of law specifying the dealer conduct that constitutes a criminal offense under statutory provisions relating to the sale of crafted precious metal to dealers.

C.S.H.B. 3502 defines "commission," "dealership," and "personal identification document." The bill redefines "crafted precious metal" to add to the objects excluded from the term a bar made wholly or partly from precious metal and a scrap or a broken item selling at not more than five percent more than the scrap value of the item. The bill redefines "dealer" to include a person who engages in the business of purchasing and selling crafted precious metal through the mail. The bill redefines "department" to mean the Texas Department of Licensing and Regulation, rather than the Texas Department of Public Safety.

C.S.H.B. 3502 amends the Local Government Code to authorize the governing body of a municipality to license, tax, suppress, prevent, or otherwise regulate crafted precious metal dealers.

C.S.H.B. 3502 requires the Texas Commission of Licensing and Regulation, as soon as practicable after the bill's effective date, to adopt the rules and procedures necessary to implement the bill's provisions relating to the regulation of crafted precious metal dealers and dealerships. The bill makes conforming changes.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3502 differs from the original by redefining "crafted precious metal" to mean jewelry, silverware, an art object, or another object, made wholly or partly from precious metal, other than a coin, a bar, a commemorative medallion, or scrap or a broken item selling at not more

than five percent more than the scrap value of the item, whereas the original redefines the term to mean jewelry, silverware, an art object, a bar, a coin, a commemorative medallion, or another object, including scrap or a broken item, made in whole or in part from precious metal.

C.S.H.B. 3502 contains a provision not included in the original defining "personal identification document." The substitute, in its redefinition of "dealer," differs from the original by including a person who engages in the business of purchasing and selling crafted precious metal through the mail.

C.S.H.B. 3502 contains a provision not included in the original establishing that provisions of law regulating the sale of crafted precious metal to dealers do not apply to crafted precious metal acquired by an employee of a person licensed under the Texas Pawnshop Act.

C.S.H.B. 3502 differs from the original, in the provision requiring an application for a dealership license to state the location where the dealership's business is to be conducted, by requiring that statement to include proof of the applicant's ownership of the property or a copy of a lease agreement for the lease of the property. The substitute contains a provision not included in the original prohibiting the term of a lease agreement from expiring before the first anniversary of the date the application is filed if an applicant is leasing the property where the business is to be conducted. The substitute, in a provision requiring the Texas Department of Licensing and Regulation (TDLR), if it denies an application, to retain a certain fee, refers to the application fee, whereas the original refers to the investigation fee.

C.S.H.B. 3502 differs from the original by requiring 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, whereas the original requires the dealer to notify each person intending to sell or exchange crafted precious metal that, before the dealer may accept any of the person's property, the person must file with the dealer a list describing the metal to be accepted by the dealer.

C.S.H.B. 3502 differs from the original by including among the information the list is required to contain the proposed seller's or transferor's sex, height, date of birth, and eye color, and the year the crafted precious metal was produced or manufactured, if available, which are omitted in the original. The substitute differs from the original by containing the specification, omitted in the original, that the seller's or transferor's certification that the provided information is true and complete be signed.

C.S.H.B. 3502 differs from the original by requiring a dealer to require the proposed seller or transferor to physically present the proposed seller's or transferor's personal identification document and record the type of document presented and the identification number of the document, whereas the original requires a dealer to record the proposed seller's or transferor's driver's license number or DPS personal identification certificate number on physical presentation of the license or certificate by the transferor.

C.S.H.B. 3502 contains the requirement, omitted in the original, that the receipt the dealer is required to deliver to a seller or transferor contain the time of the transaction or acquisition, the price paid for the item, and the value of each item, if melted.

C.S.H.B. 3502 contains the requirement, omitted in the original, that crafted precious metal, during the designated hold period, be stored or displayed at the dealership where the crafted precious metal was purchased or exchanged.

C.S.H.B. 3502 contains the specification, omitted in the original, that the requirement that crafted precious metal be made available for inspection during regular business hours while in the dealer's possession is applicable to crafted precious metal exchanged by the dealer, as well as to such metal purchased by the dealer.

C.S.H.B. 3502 differs from the original by removing a statutory language providing for an exception to the prohibition against a dealer purchasing crafted precious metal from a person younger than 18 years of age, whereas the original does not address the prohibition provision.