

BILL ANALYSIS

Senate Research Center
82R19234 NC-D

C.S.S.B. 1450
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Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The purpose of C.S.S.B. 1450 is to regulate cash-for-gold establishments by including them in the regulatory scheme that applies to hawkers, peddlers, and pawnbrokers. Cash-for-gold establishments are proliferating in the City of Laredo, as they are elsewhere in the state. Such establishments are largely unregulated and unaccounted for, and may be subject to abuse. Many Laredo citizens believe a direct correlation exists between the rise of cash-for-gold establishments and the rise in home and vehicle theft. Since cash-for-gold establishments do not keep a record of cashed items, melt down the jewelry almost immediately, and perform very informal transactions, it is very difficult for the Laredo Police Department to track down stolen items.

Currently, under Section 215.031 (Hawkers; Peddlers; Pawnbrokers), Local Government Code, hawkers, peddlers, and pawnbrokers are regulated. This provision does not cover cash-for-gold establishments. C.S.S.B. 1450 would regulate cash-for-gold establishments found in malls and shopping areas by requiring background checks on employees, and requiring businesses to retain items for 21 days and maintain certain records relating to the items. These measures would allow the Laredo Police Department and other Police Departments across the state the time to track down any stolen items from law-abiding citizens.

C.S.S.B. 1450 amends current law relating to the regulation of crafted precious metal dealers and dealerships and provides a criminal penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Licensing and Regulation in SECTION 2 (Sections 1956.0611 and 1956.0615, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Subchapter B, Chapter 1956, Occupations Code, to read as follows:

SUBCHAPTER B. CRAFTED PRECIOUS METAL DEALERS AND DEALERSHIPS

SECTION 2. Amends Subchapter B, Chapter 1956, Occupations Code, by amending Section 1956.051 and adding Sections 1956.0611-1956.0619, 1956.06191, and 1956.06192, as follows:

Sec. 1956.051. DEFINITIONS. Defines, in this subchapter, "commission" and "dealership," and redefines "crafted precious metal" and "department." Makes nonsubstantive changes.

Sec. 1956.0611. RULEMAKING. Authorizes the Texas Commission of Licensing and Regulation (TCLR) to adopt rules necessary to implement and enforce this subchapter.

Sec. 1956.0612. DEALERSHIP LICENSE REQUIRED. Prohibits a person from engaging in business as a crafted precious metal dealer unless the person holds a dealership license.

Sec. 1956.0613. MULTIPLE PLACES OF BUSINESS. (a) Provides that a separate dealership license is required for each place of business operated under this subchapter.

(b) Authorizes the Texas Department of Licensing and Regulation (TDLR) to issue more than one dealership license to a person if the person complies with this subchapter for each license.

Sec. 1956.0614. APPLICATION REQUIREMENTS. (a) Requires that an application for a dealership license be made to TDLR and:

(1) be under oath;

(2) state:

(A) the full name and address of the applicant;

(B) the type of business entity formed by the applicant, if the applicant is not an individual;

(C) the full name and address of each general partner and the type of partnership, if the applicant is a partnership;

(D) the full name and address of each officer and owner, if the applicant is an unincorporated association;

(E) except as provided by Subsection (b), the full name of each officer and shareholder, if the applicant is a corporation;

(F) the full name and address of each manager and operator of the dealership;

(G) the location where the dealership's business is to be conducted and a copy of the certificate of occupancy for the location;

(H) the intended hours of operation of the dealership; and

(I) other relevant information required by TDLR; and

(3) state that the applicant and, if applicable, any business partner or officer of the corporation has not had a license revoked under this subchapter or Chapter 371 (Pawnshops), Finance Code.

(b) Provides that the full name of each shareholder is not required if the applicant is a corporation with five or more shareholders.

Sec. 1956.0615. FEES. (a) Requires an applicant, except as provided by Subsection (b), to submit with the application:

(1) an application fee of:

(A) \$500, if the applicant does not hold a license under this subchapter; or

(B) \$200, if the application is for an additional dealership license for a separate location; and

(2) an annual license fee in an amount determined by TCLR rule.

(b) Provides that an applicant that is exempt from taxation under Section 501(c)(3), Internal Revenue Code of 1986, is exempt from the fees required under Subsection (a).

Sec. 1956.0616. LICENSE TERM; RENEWAL. Provides that 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. 1956.0617. INVESTIGATION; NOTICE OF APPLICATION. (a) Requires TDLR, 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 dealership is to conduct business.

(b) Requires that the notice under Subsection (a) state the name and address of each person required by Section 1956.0614 to be listed on the license application.

(c) Requires TDLR to give DPS and local law enforcement agencies a reasonable period to respond to the notice with information concerning the listed persons or any other relevant information.

Sec. 1956.0618. NOTICE OF DENIAL; HEARING. (a) Requires TDLR, if TDLR 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 requested. Requires that the notice include TDLR's reason 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 TDLR to set the hearing not later than the 60th day after the date of the request. Provides that a hearing under this section is subject to Section 51.354 (Right to Hearing; Administrative Procedure).

(c) Requires TDLR, if TDLR denies the application, to retain the investigation fee and return to the applicant the annual license fee submitted with the application.

Sec. 1956.0619. CONTENTS AND DISPLAY OF LICENSE. (a) Requires that a license state the name of the dealer, the address at which the dealership conducts business, and that the dealership is authorized to deal in crafted precious metals.

(b) Requires a dealer to display a license in a conspicuous location at the place of business provided on the license.

Sec. 1956.06191. APPLICATION FOR RELOCATION. (a) 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 pay an application fee of \$20.

Sec. 1956.06192. CRIMINAL BACKGROUND CHECK REQUIRED. (a) Requires a dealer to conduct a criminal background check on an applicant for employment with the dealer.

(b) Prohibits a dealer from employing person who has been convicted of an offense under Section 31.03 (Theft), Penal Code.

SECTION 3. Amends the heading to Section 1956.062, Occupations Code, to read as follows:

Sec. 1956.062. REPORT OF PURCHASE OR EXCHANGE REQUIRED.

SECTION 4. Amends Section 1956.062, Occupations Code, by amending Subsections (b)-(d) and adding Subsection (c-1), as follows:

(b) 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 must 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 or transferor's name and address;
- (2) the date and time of the purchase or exchange;
- (3) a complete and accurate description of the crafted precious metal, including:
 - (A) a serial number, if available; and
 - (B) the size, weight, material, length, number of items, capacity, or other identifying characteristics; and
- (4) the proposed seller's or transferor's certification that the information is true and complete.

Makes a nonsubstantive change.

(c) Requires the dealer to record the proposed seller's or transferor's driver's license number or DPS, rather than department, personal identification certificate number on physical presentation of the license or personal identification certificate by the seller or transferor. Requires that the record accompany the list.

(c-1) Requires that all lists and records required by this section be legible.

(d) Requires the dealer to:

- (1) provide to a peace officer or TDLR, 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 (Form of Report; Filing) not later than 48 hours after the list is filed with the dealer.

SECTION 5. Amends Subchapter B, Chapter 1956, Occupations Code, by adding Section 1956.0635, as follows:

Sec. 1956.0635. RECEIPT REQUIRED. (a) Requires a dealer, at the time of the sale or exchange of crafted precious metal, to deliver a receipt to the seller or transferor. Requires that each receipt delivered by the dealer be numbered sequentially, contain the date of the transaction or acquisition, and itemize the crafted precious metal purchased or exchanged.

(b) Requires that an accurate copy or record of the receipt be maintained until the third anniversary of the date of the sale or exchange, and be available on request for inspection during business hours by a peace officer or TDLR.

SECTION 6. 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 22nd day, rather than the 11th day, after the date the report is filed unless the peace officer to whom the report is submitted, for good cause, authorizes disposition of the metal, or the dealer is a pawnbroker and the disposition is the redemption of pledged property by the pledgor. Deletes existing text relating to the dealer obtaining the name, address, and description of the buyer and retaining a record of that information. Makes nonsubstantive changes.

(b) Requires that the crafted precious metal, during the hold period required by Subsection (a), be stored or displayed:

(1) in the exact form received;

(2) in a manner as to be identifiable from the description provided under Section 1956.062; and

(3) in a manner as to not impede or prevent the crafted precious metal's examination by a peace officer or TDLR.

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 6. Amends Subchapter B, Chapter 1956, Occupations Code, by adding Section 1956.0645, as follows:

Sec. 1956.0645. **STOLEN CRAFTED PRECIOUS METAL.** (a) Requires a dealer or an agent or employee of a dealership to:

(1) monitor the purchase of crafted precious metal to identify or prevent transactions involving stolen crafted precious metal;

(2) make reasonable efforts to avoid accepting or purchasing stolen crafted precious metal; and

(3) immediately report to a local law enforcement agency:

(A) an offer to sell to the dealership crafted precious metal actually known or reasonably suspected to be stole;

(B) the identity, if known, and the description of the person offering to sell the metal described by Paragraph (A); and

(C) the purchase of crafted precious metal subsequently determined or reasonably suspected to be stolen.

(b) Requires a dealer to cooperate with a local law enforcement agency regarding any matter relating to stolen crafted precious metal and assist in the prompt resolution of an official investigation.

SECTION 8. Amends the heading to Section 1956.065, Occupations Code, to read as follows:

Sec. 1956.065. **INSPECTION OF CRAFTED PRECIOUS METAL.**

SECTION 9. Amends Section 1956.065(a), Occupations Code, to require a dealer to make crafted metal purchased by the dealer available for inspection by a peace officer or TDLR during regular business hours while in the dealer's possession.

SECTION 10. Amends Subchapter B, Chapter 1956, Occupations Code, by adding Sections 1956.0685 and 1956.0686, as follows:

Sec. 1956.0685. **GROUND FOR DENIAL, REVOCATION, OR SUSPENSION OF LICENSE.** Authorizes TDLR to deny, revoke, or suspend a dealership license if the dealer:

- (1) violates this subchapter or a rule adopted or an order issued under this subchapter;
- (2) falsifies information on a license application; or
- (3) is convicted of an offense under Section 31.03, 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 TDLR to send written notice to the dealer of a dealership license revocation or suspension hearing that includes the cause or allegations of the revocation or suspension hearing.

- (b) Provides that a hearing under this section is subject to Subchapter G (Other Penalties and Enforcement Provisions), Chapter 51 (Texas Department of Licensing and Regulation).

SECTION 11. Amends Section 1956.069(a), Occupations Code, as follows:

- (a) Provides that a person commits an offense if the person violates this subchapter. Deletes existing Subsection (a) providing that a dealer commits an offense if the dealer commits certain actions as set forth.

SECTION 12. Amends Section 215.031, Local Government Code, as follows:

Sec. 215.031. New heading: **HAWKERS; PEDDLERS; PAWNBROKERS; CRAFTED PRECIOUS METAL DEALERS.** Authorizes the governing body of the municipality to license, tax, suppress, prevent, or otherwise regulate hawkers, peddlers, pawnbrokers, and crafted precious metal dealers. Makes a nonsubstantive change.

SECTION 13. (a) Requires TCLR, as soon as practicable after the effective date of this Act, to adopt the rules and procedures necessary to implement Subchapter B, Chapter 1956, Occupations Code, as amended by this Act.

- (b) Provides that a crafted precious metal dealer is not required to hold a license under Subchapter B, Chapter 1956, Occupations Code, as amended by this Act, before March 1, 2012.

- (c) Makes application of Section 1956.064(a), Occupations Code, as amended by this Act, prospective.

- (d) Makes application of Section 1956.069, Occupations Code, as amended by this Act, prospective.

SECTION 14. Effective date: September 1, 2011.