

By: Raymond

H.B. No. 3502

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of crafted precious metal dealers and dealerships; providing a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Subchapter B, Chapter 1956, Occupations Code, is amended to read as follows:

SUBCHAPTER B. ~~[SALE OF]~~ CRAFTED PRECIOUS METAL ~~[TO]~~ DEALERS AND
DEALERSHIPS

SECTION 2. Subchapter B, Chapter 1956, Occupations Code, is amended by amending Section 1956.051 and adding Sections 1956.0611, 1956.0612, 1956.0613, 1956.0614, 1956.0615, 1956.0616, 1956.0617, 1956.0618, 1956.0619, and 1956.06191 to read as follows:

Sec. 1956.051. DEFINITIONS. In this subchapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) "Crafted precious metal" means jewelry, silverware, an art object, a bar, [or another object, other than] a coin, a [or] commemorative medallion, or another object, including scrap or a broken item, made in whole or in part from precious metal.

(3) ~~[(2)]~~ "Dealer" means a person who engages in the business of purchasing and selling crafted precious metal.

(4) "Dealership" means a location at which or premises in which a dealer conducts business.

1 (5) [(3)] "Department" means the Texas Department of
2 Licensing and Regulation [~~Public Safety~~].

3 (6) [(4)] "Precious metal" means gold, silver,
4 platinum, palladium, iridium, rhodium, osmium, ruthenium, or an
5 alloy of those metals.

6 Sec. 1956.0611. RULEMAKING. The commission may adopt rules
7 necessary to implement and enforce this subchapter.

8 Sec. 1956.0612. DEALERSHIP LICENSE REQUIRED. A person may
9 not engage in business as a crafted precious metal dealer unless the
10 person holds a dealership license.

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

14 (b) The department may issue more than one dealership
15 license to a person if the person complies with this subchapter for
16 each license.

17 Sec. 1956.0614. APPLICATION REQUIREMENTS. (a) An
18 application for a dealership license must be made to the department
19 and must:

20 (1) be under oath;

21 (2) state:

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

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

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

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

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

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

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

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

13 (I) other relevant information required by the
14 department; and

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

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

20 Sec. 1956.0615. FEES. (a) Except as provided by
21 Subsection (b), an applicant must submit with the application:

22 (1) an application fee of:

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

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

27 (2) an annual license fee in an amount determined by

1 the commission by rule.

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

5 Sec. 1956.0616. LICENSE TERM; RENEWAL. A license expires
6 on the first anniversary of the date of issuance and may be renewed
7 annually on payment of the required annual license fee.

8 Sec. 1956.0617. INVESTIGATION; NOTICE OF APPLICATION.

9 (a) On receipt of an application and the required fees, the
10 department shall:

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

13 (2) give notice of the application to:

14 (A) the Department of Public Safety; and

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

17 (b) The notice under Subsection (a) must state the name and
18 address of each person required by Section 1956.0614 to be listed on
19 the license application.

20 (c) The department shall give the Department of Public
21 Safety and local law enforcement agencies a reasonable period to
22 respond to the notice with information concerning the listed
23 persons or any other relevant information.

24 Sec. 1956.0618. NOTICE OF DENIAL; HEARING. (a) If the
25 department determines not to issue a license, the department shall
26 deliver to the applicant at the address provided in the application
27 a written notice by personal delivery or certified mail, return

1 receipt requested. The notice must include the department's reason
2 for denying the license.

3 (b) Not later than the 30th day after the date of receipt of
4 a notice under Subsection (a), an applicant may request a hearing on
5 the application denial. The department shall set the hearing not
6 later than the 60th day after the date of the request. A hearing
7 under this section is subject to Section 51.354.

8 (c) If the department denies the application, the
9 department shall retain the investigation fee and shall return to
10 the applicant the annual license fee submitted with the
11 application.

12 Sec. 1956.0619. CONTENTS AND DISPLAY OF LICENSE. (a) A
13 license must state:

14 (1) the name of the dealer;
15 (2) the address at which the dealership conducts
16 business; and

17 (3) that the dealership is authorized to deal in
18 crafted precious metals.

19 (b) A dealer shall display a license in a conspicuous
20 location at the place of business provided on the license.

21 Sec. 1956.06191. APPLICATION FOR RELOCATION. A dealer who
22 wishes to move a dealership from the location authorized by a
23 license must file a relocation application with the department not
24 later than the 30th day before the date the dealer moves and pay an
25 application fee of \$20.

26 SECTION 3. The heading to Section 1956.062, Occupations
27 Code, is amended to read as follows:

Sec. 1956.062. REPORT OF PURCHASE OR EXCHANGE REQUIRED.

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

(b) Before crafted precious metal is offered for sale or exchange, a dealer must 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. The list must 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) [~~(3)~~] the proposed seller's or transferor's certification that the information is true and complete.

(c) The dealer shall record the proposed seller's or transferor's driver's license number or Department of Public Safety ~~[department]~~ personal identification certificate number on physical presentation of the license or personal identification certificate by the seller or transferor. The record must accompany the list.

(c-1) All lists and records required by this section must be

1 legible.

2 (d) The dealer shall:

3 (1) provide to a peace officer or the department, on
4 demand, the list required by Subsection (b); and

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

8 SECTION 5. Subchapter B, Chapter 1956, Occupations Code, is
9 amended by adding Section 1956.0635 to read as follows:

10 Sec. 1956.0635. RECEIPT REQUIRED. (a) A dealer, at the
11 time of the sale or exchange of crafted precious metal, shall
12 deliver a receipt to the seller or transferor. Each receipt
13 delivered by the dealer must:

14 (1) be numbered sequentially;

15 (2) contain the date of the transaction or
16 acquisition; and

17 (3) itemize the crafted precious metal purchased or
18 exchanged.

19 (b) An accurate copy or record of the receipt shall be:

20 (1) maintained until the third anniversary of the date
21 of the sale or exchange; and

22 (2) available on request for inspection during
23 business hours by a peace officer or the department.

24 SECTION 6. Section 1956.064, Occupations Code, is amended
25 to read as follows:

26 Sec. 1956.064. REQUIRED RETENTION OF CRAFTED PRECIOUS
27 METAL. (a) A dealer may not melt, deface, alter, or dispose of

crafted precious metal that is the subject of a report required by this subchapter before the 21st ~~[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 obtains the name, address, and description of the buyer and retains a record of that information, or~~

~~(3)]~~ the dealer is a pawnbroker and the disposition is the redemption of pledged property by the pledgor.

(b) During the hold period required by Subsection (a), the crafted precious metal shall 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 the department.

~~[A dealer who retains information under Subsection (a)(2) shall make that information available for inspection by any peace officer.]~~

SECTION 7. Subchapter B, Chapter 1956, Occupations Code, is amended by adding Section 1956.0645 to read as follows:

Sec. 1956.0645. STOLEN CRAFTED PRECIOUS METAL. (a) A dealer or an agent or employee of a dealership shall:

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

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

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

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

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

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

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

16 SECTION 8. The heading to Section 1956.065, Occupations
17 Code, is amended to read as follows:

18 Sec. 1956.065. INSPECTION OF CRAFTED PRECIOUS METAL [~~BY~~
19 ~~PEACE OFFICER~~].

20 SECTION 9. Section 1956.065(a), Occupations Code, is
21 amended to read as follows:

22 (a) A dealer shall make crafted precious metal purchased by
23 the dealer available for inspection by a peace officer or the
24 department during regular business hours while in the dealer's
25 possession.

26 SECTION 10. Subchapter B, Chapter 1956, Occupations Code,
27 is amended by adding Sections 1956.0685 and 1956.0686 to read as

1 follows:

2 Sec. 1956.0685. GROUNDS FOR DENIAL, REVOCATION, OR
3 SUSPENSION OF LICENSE. The department may deny, revoke, or suspend
4 a dealership license if the dealer:

5 (1) violates this subchapter or a rule adopted or an
6 order issued under this subchapter;

7 (2) falsifies information on a license application; or

8 (3) is convicted of an offense under Section 31.03,
9 37.09, or 37.10, Penal Code.

10 Sec. 1956.0686. NOTICE OF HEARING. (a) The department
11 shall send written notice to the dealer of a dealership license
12 revocation or suspension hearing that includes the cause or
13 allegations of the revocation or suspension hearing.

14 (b) A hearing under this section is subject to Subchapter G,
15 Chapter 51.

16 SECTION 11. Section 1956.069(a), Occupations Code, is
17 amended to read as follows:

18 (a) A person commits an offense if the person violates this
19 subchapter ~~[dealer commits an offense if the dealer:~~

20 ~~[(1) fails to make or permit inspection of a report as~~
21 ~~required by Section 1956.062 or 1956.063,~~

22 ~~[(2) disposes of crafted precious metal or fails to~~
23 ~~make a record available for inspection by a peace officer as~~
24 ~~required by Section 1956.064,~~

25 ~~[(3) fails to obtain or retain a statement as required~~
26 ~~by Section 1956.066,~~

27 ~~[(4) fails to file a registration statement as~~

1 ~~required by Section 1956.067, or~~

2 ~~[(5) purchases an object in violation of Section~~
3 ~~1956.068].~~

4 SECTION 12. Section 215.031, Local Government Code, is
5 amended to read as follows:

6 Sec. 215.031. HAWKERS; PEDDLERS; PAWNBROKERS; CRAFTED
7 PRECIOUS METAL DEALERS. The governing body of the municipality may
8 license, tax, suppress, prevent, or otherwise regulate:

9 (1) hawkers;

10 (2) peddlers; ~~and~~

11 (3) pawnbrokers; and

12 (4) crafted precious metal dealers.

13 SECTION 13. (a) As soon as practicable after the effective
14 date of this Act, the Texas Commission of Licensing and Regulation
15 shall adopt the rules and procedures necessary to implement
16 Subchapter B, Chapter 1956, Occupations Code, as amended by this
17 Act.

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

21 (c) Section 1956.069, Occupations Code, as amended by this
22 Act, applies only to an offense committed on or after the effective
23 date of this Act. An offense committed before the effective date of
24 this Act is governed by the law in effect on the date the offense was
25 committed, and the former law is continued in effect for that
26 purpose. For purposes of this subsection, an offense was committed
27 before the effective date of this Act if any element of the offense

1 occurred before that date.

2 SECTION 14. This Act takes effect September 1, 2011.