

By: Zaffirini

S.B. No. 1450

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. Subchapter B, Chapter 1956, Occupations Code, is amended by adding Section 1956.0605 to read as follows:

Sec. 1956.0605. EXCEPTION: CRAFTED PRECIOUS METAL ACQUIRED BY CERTAIN CRAFTED PRECIOUS METAL DEALERS. This subchapter does not apply to:

(1) a person that is required to hold a dealership license under Subchapter B-1; or

(2) crafted precious metal acquired by a person described by Subdivision (1).

SECTION 2. Chapter 1956, Occupations Code, is amended by adding Subchapter B-1 to read as follows:

SUBCHAPTER B-1. SALE OF CRAFTED PRECIOUS METAL TO DEALERS AND DEALERSHIPS IN CERTAIN MUNICIPALITIES

Sec. 1956.071. 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, a coin, a commemorative medallion, or another object, including scrap or a broken item, made in whole or in part from precious metal.

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

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

5 (5) "Department" means the Texas Department of
6 Licensing and Regulation.

7 (6) "Precious metal" means gold, silver, platinum,
8 palladium, iridium, rhodium, osmium, ruthenium, or an alloy of
9 those metals.

10 Sec. 1956.072. APPLICABILITY OF SUBCHAPTER. This
11 subchapter applies only to:

12 (1) a person that engages in business in a
13 municipality:

14 (A) with a population of 200,000 or more; and

15 (B) located in a county:

16 (i) with a population of 300,000 or less;

17 and

18 (ii) that is located adjacent to an
19 international border; and

20 (2) crafted precious metal that is:

21 (A) sold or used primarily for personal, family,
22 or household purposes; and

23 (B) acquired by a person described by Subdivision
24 (1) for sale.

25 Sec. 1956.073. EXCEPTION: PRECIOUS METAL EXTRACTED,
26 RECOVERED, OR SALVAGED FROM INDUSTRIAL BY-PRODUCTS OR INDUSTRIAL
27 WASTE PRODUCTS. This subchapter does not apply to a person whose

1 purchase or sale of precious metal or a product made of precious
2 metal is merely incidental to the person's business of extracting,
3 recovering, or salvaging precious metal from industrial
4 by-products or industrial waste products.

5 Sec. 1956.074. EXCEPTION: DENTAL, PHARMACEUTICAL, OR
6 MEDICAL APPLICATION OF CRAFTED PRECIOUS METAL. This subchapter
7 does not apply to a dental, pharmaceutical, or medical application
8 of crafted precious metal.

9 Sec. 1956.075. EXCEPTION: CRAFTED PRECIOUS METAL ACQUIRED
10 FROM ANOTHER DEALER WHO PREVIOUSLY MADE REQUIRED REPORTS. This
11 subchapter does not apply to crafted precious metal acquired in
12 good faith in a transaction involving the stock-in-trade of another
13 dealer who previously made the reports concerning that metal as
14 required by this subchapter if:

15 (1) the selling dealer delivers to the acquiring
16 dealer a written document stating that the reports have been made;

17 (2) the acquiring dealer submits a copy of the
18 statement to the chief of police of the municipality or the sheriff
19 of the county in which the selling dealer is located; and

20 (3) each dealer involved in the transaction retains a
21 copy of the statement until the third anniversary of the date of the
22 transaction.

23 Sec. 1956.076. EXCEPTION: CRAFTED PRECIOUS METAL ACQUIRED
24 IN DISSOLUTION OR LIQUIDATION SALE. This subchapter does not apply
25 to crafted precious metal acquired in a nonjudicial sale, transfer,
26 assignment, assignment for the benefit of creditors, or consignment
27 of the assets or stock-in-trade, in bulk, or a substantial part of

1 those assets, of an industrial or commercial enterprise, other than
2 a dealer, for the voluntary dissolution or liquidation of the
3 seller's business, or for disposing of an excessive quantity of
4 personal property, or property that has been acquired in a
5 nonjudicial sale or transfer from an owner other than a dealer, the
6 seller's entire household of personal property, or a substantial
7 part of that property, if the dealer:

8 (1) gives written notice to the chief of police of the
9 municipality or the sheriff of the county in which the dealer's
10 business is located that a reporting exemption is being claimed
11 under this section;

12 (2) retains in the dealer's place of business, until
13 the third anniversary of the date of the transaction, a copy of the
14 bill of sale, receipt, inventory list, or other transfer document;
15 and

16 (3) makes the record retained available for inspection
17 by a peace officer.

18 Sec. 1956.077. EXCEPTION: CRAFTED PRECIOUS METAL ACQUIRED
19 IN JUDICIAL SALE. This subchapter does not apply to crafted
20 precious metal acquired in a sale made:

21 (1) by any public officer in the officer's official
22 capacity as a trustee in bankruptcy, executor, administrator,
23 receiver, or public official acting under judicial process or
24 authority; or

25 (2) on the execution of, or by virtue of, any process
26 issued by a court.

27 Sec. 1956.078. EXCEPTION: CRAFTED PRECIOUS METAL ACQUIRED

1 AS PAYMENT FOR OTHER CRAFTED PRECIOUS METAL BY PERSON IN BUSINESS OF
2 SELLING TO CONSUMERS. This subchapter does not apply to crafted
3 precious metal acquired in good faith as partial or complete
4 payment for other crafted precious metal by a person whose
5 principal business is primarily that of selling directly to the
6 consumer crafted precious metal that has not been subject to a prior
7 sale.

8 Sec. 1956.079. EXCEPTION: CRAFTED PRECIOUS METAL ACQUIRED
9 FROM OR REPORTED TO GOVERNMENTAL AGENCY. This subchapter does not
10 apply to crafted precious metal:

11 (1) acquired as surplus property from the United
12 States, a state, a subdivision of a state, or a municipal
13 corporation; or

14 (2) reported by a dealer as an acquisition or a
15 purchase, or reported as destroyed or otherwise disposed of, to:

16 (A) a state agency under another law of this
17 state; or

18 (B) a municipal or county office or agency under
19 another law of this state or a municipal ordinance.

20 Sec. 1956.080. EXCEPTION: CRAFTED PRECIOUS METAL ACQUIRED
21 BY PERSON LICENSED UNDER TEXAS PAWNSHOP ACT. This subchapter does
22 not apply to crafted precious metal acquired by a person licensed
23 under Chapter 371, Finance Code.

24 Sec. 1956.081. EFFECT ON OTHER LAWS AND ORDINANCES. This
25 subchapter does not:

26 (1) excuse noncompliance with another state law or
27 municipal ordinance covering the reporting, holding, or releasing

1 of crafted precious metal;

2 (2) prohibit a municipality from enacting, amending,
3 or enforcing an ordinance relating to a dealer; or

4 (3) supersede a municipal ordinance except to the
5 extent the ordinance does not require reporting for transactions
6 involving crafted precious metal.

7 Sec. 1956.082. RULEMAKING. The commission may adopt rules
8 necessary to implement and enforce this subchapter.

9 Sec. 1956.083. DEALERSHIP LICENSE REQUIRED. A person may
10 not engage in business as a crafted precious metal dealer unless the
11 person holds a dealership license.

12 Sec. 1956.084. MULTIPLE PLACES OF BUSINESS. (a) A
13 separate dealership license is required for each place of business
14 operated under this subchapter.

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

18 Sec. 1956.085. APPLICATION REQUIREMENTS. (a) An
19 application for a dealership license must be made to the department
20 and must:

21 (1) be under oath;

22 (2) state:

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

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

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

1 partnership;

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

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

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

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

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

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

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

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

21 Sec. 1956.086. FEES. (a) Except as provided by Subsection
22 (b), an applicant must submit with the application:

23 (1) an application fee of:

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

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

1 (2) an annual license fee in an amount determined by
2 the commission by rule.

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

6 Sec. 1956.087. LICENSE TERM; RENEWAL. A license expires on
7 the first anniversary of the date of issuance and may be renewed
8 annually on payment of the required annual license fee.

9 Sec. 1956.088. INVESTIGATION; NOTICE OF APPLICATION.

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

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

14 (2) give notice of the application to:

15 (A) the Department of Public Safety; and

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

18 (b) The notice under Subsection (a) must state the name and
19 address of each person required by Section 1956.085 to be listed on
20 the license application.

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

25 Sec. 1956.089. NOTICE OF DENIAL; HEARING. (a) If the
26 department determines not to issue a license, the department shall
27 deliver to the applicant at the address provided in the application

1 a written notice by personal delivery or certified mail, return
2 receipt requested. The notice must include the department's reason
3 for denying the license.

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

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

12 Sec. 1956.090. 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. 1956.091. 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 Sec. 1956.092. CRIMINAL BACKGROUND CHECK REQUIRED. (a) A
27 dealer shall conduct a criminal background check on an applicant

1 for employment with the dealer.

2 (b) A dealer may not employ a person who has been convicted
3 of an offense under Section 31.03, Penal Code.

4 Sec. 1956.093. REPORT OF PURCHASE OR EXCHANGE REQUIRED.

5 (a) A dealer shall, as required by Section 1956.094, report all
6 identifiable crafted precious metal that the dealer purchases,
7 takes in trade, accepts for sale on consignment, or accepts for
8 auction.

9 (b) Before crafted precious metal is offered for sale or
10 exchange, a dealer must notify each person intending to sell or
11 exchange the metal that, before the dealer may accept any of the
12 person's property, the person must file with the dealer a list
13 describing all of the person's crafted precious metal to be
14 accepted by the dealer. The list must contain:

15 (1) the proposed seller's or transferor's name and
16 address;

17 (2) the date and time of the purchase or exchange;

18 (3) a complete and accurate description of the crafted
19 precious metal, including:

20 (A) a serial number, if available; and

21 (B) the size, weight, material, length, number of
22 items, capacity, or other identifying characteristics; and

23 (4) the proposed seller's or transferor's
24 certification that the information is true and complete.

25 (c) The dealer shall record the proposed seller's or
26 transferor's driver's license number or Department of Public Safety
27 personal identification certificate number on physical

1 presentation of the license or personal identification certificate
2 by the seller or transferor. The record must accompany the list.

3 (d) All lists and records required by this section must be
4 legible.

5 (e) The dealer shall:

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

8 (2) mail or deliver a complete copy of the list to the
9 chief of police or the sheriff as provided by Section 1956.094 not
10 later than 48 hours after the list is filed with the dealer.

11 Sec. 1956.094. FORM OF REPORT; FILING. (a) A report
12 required by this subchapter must comply with this section unless a
13 similar report is required by another state law or a municipal
14 ordinance, in which event the required report must comply with the
15 applicable law or ordinance.

16 (b) If a transaction regulated by this subchapter occurs in
17 a municipality that maintains a police department, the original and
18 a copy of the report required by this subchapter shall be submitted
19 to the municipality's chief of police. If the transaction does not
20 occur in such a municipality, the original and a copy of the report
21 shall be submitted to the sheriff of the county in which the
22 transaction occurs.

23 (c) The dealer shall submit the report on a form prescribed
24 by the district attorney or person performing the duties of
25 district attorney of the county in which the transaction occurs.

26 (d) The dealer shall retain a copy of the report until the
27 third anniversary of the date the report is filed.

1 Sec. 1956.095. RECEIPT REQUIRED. (a) A dealer, at the
2 time of the sale or exchange of crafted precious metal, shall
3 deliver a receipt to the seller or transferor. Each receipt
4 delivered by the dealer must:

- 5 (1) be numbered sequentially;
- 6 (2) contain the date of the transaction or
7 acquisition; and
- 8 (3) itemize the crafted precious metal purchased or
9 exchanged.

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

- 11 (1) maintained until the third anniversary of the date
12 of the sale or exchange; and
- 13 (2) available on request for inspection during
14 business hours by a peace officer or the department.

15 Sec. 1956.096. REQUIRED RETENTION OF CRAFTED PRECIOUS
16 METAL. (a) A dealer may not melt, deface, alter, or dispose of
17 crafted precious metal that is the subject of a report required by
18 this subchapter before the 22nd day after the date the report is
19 filed unless:

- 20 (1) the peace officer to whom the report is submitted,
21 for good cause, authorizes disposition of the metal; or
- 22 (2) the dealer is a pawnbroker and the disposition is
23 the redemption of pledged property by the pledgor.

24 (b) During the hold period required by Subsection (a), the
25 crafted precious metal shall be stored or displayed:

- 26 (1) in the exact form received;
- 27 (2) in a manner as to be identifiable from the

1 description provided under Section 1956.093; and

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

4 Sec. 1956.0965. STOLEN CRAFTED PRECIOUS METAL. (a) A
5 dealer or an agent or employee of a dealership shall:

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

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

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

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

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

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

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

24 Sec. 1956.0966. INSPECTION OF CRAFTED PRECIOUS METAL.

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

1 possession.

2 (b) Information obtained under this section is confidential
3 except for use in a criminal investigation or prosecution or a civil
4 court proceeding.

5 Sec. 1956.0967. PURCHASE FROM MINOR. (a) A dealer may not
6 purchase crafted precious metal from a person younger than 18 years
7 of age unless the seller delivers to the dealer before the purchase
8 a written statement from the seller's parent or legal guardian
9 consenting to the transaction.

10 (b) The dealer shall retain the statement with the records
11 required to be kept under this subchapter. The dealer may destroy
12 the statement after the later of:

13 (1) the date the item is sold; or

14 (2) the first anniversary of the date the dealer
15 purchased the item.

16 Sec. 1956.097. PURCHASE AT TEMPORARY LOCATION OF DEALER.

17 (a) A dealer who conducts business at a temporary location for a
18 period of less than 90 days may not engage in the business of buying
19 precious metal or used items made of precious metal unless, within a
20 12-month period at least 30 days before the date on which each
21 purchase is made, the person has filed:

22 (1) a registration statement with the department; and

23 (2) a copy of the registration statement with the
24 local law enforcement agency of:

25 (A) the municipality in which the temporary
26 location is located; or

27 (B) if the temporary location is not located in a

1 municipality, the county in which the temporary location is
2 located.

3 (b) The registration statement must contain:

4 (1) the name and address of the dealer;

5 (2) the location where business is to be conducted;

6 (3) if the dealer is an association, the name and
7 address of each member of the association;

8 (4) if the dealer is a corporation, the name and
9 address of each officer and director of the corporation; and

10 (5) other relevant information required by the
11 department.

12 Sec. 1956.098. PURCHASE OF MELTED ITEMS. A dealer, in the
13 course of business, may not purchase from a person other than a
14 manufacturer of or a regular dealer in crafted precious metal an
15 object formed as the result of the melting of crafted precious
16 metal.

17 Sec. 1956.0985. GROUNDS FOR DENIAL, REVOCATION, OR
18 SUSPENSION OF LICENSE. The department may deny, revoke, or suspend
19 a dealership license if the dealer:

20 (1) violates this subchapter or a rule adopted or an
21 order issued under this subchapter;

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

23 (3) is convicted of an offense under Section 31.03,
24 37.09, or 37.10, Penal Code.

25 Sec. 1956.0986. NOTICE OF HEARING. (a) The department
26 shall send written notice to the dealer of a dealership license
27 revocation or suspension hearing that includes the cause or

1 allegations of the revocation or suspension hearing.

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

4 Sec. 1956.099. CRIMINAL PENALTY. (a) A person commits an
5 offense if the person violates this subchapter.

6 (b) An offense under this section is a Class B misdemeanor.

7 SECTION 3. Section 215.031, Local Government Code, is
8 amended to read as follows:

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

12 (1) hawkers;

13 (2) peddlers; ~~and~~

14 (3) pawnbrokers; and

15 (4) crafted precious metal dealers licensed under
16 Subchapter B-1, Chapter 1956, Occupations Code.

17 SECTION 4. (a) As soon as practicable after the effective
18 date of this Act, the Texas Commission of Licensing and Regulation
19 shall adopt the rules and procedures necessary to implement
20 Subchapter B-1, Chapter 1956, Occupations Code, as added by this
21 Act.

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

25 (c) Subsection (a), Section 1956.096, Occupations Code, as
26 added by this Act, applies only to crafted precious metal that is
27 the subject of a report filed on or after the effective date of this

1 Act. Crafted precious metal that is the subject of a report filed
2 before the effective date of this Act is governed by the law in
3 effect when the report was filed, and the former law is continued in
4 effect for that purpose.

5 (d) Section 1956.099, Occupations Code, as added by this
6 Act, applies only to an offense committed on or after the effective
7 date of this Act. An offense committed before the effective date of
8 this Act is governed by the law in effect on the date the offense was
9 committed, and the former law is continued in effect for that
10 purpose. For purposes of this subsection, an offense was committed
11 before the effective date of this Act if any element of the offense
12 occurred before that date.

13 SECTION 5. This Act takes effect September 1, 2011.