

Title 7, Texas Administrative Code
Part 5. Office of Consumer Credit Commissioner
Chapter 85. Pawnshops and Crafted Precious Metal Dealers
Subchapter A. Rules of Operation for Pawnshops

The Finance Commission of Texas (commission) adopts amendments to §85.202 (relating to Filing of New Application), §85.301 (relating to Filing of New Application), §85.420 (relating to Purchase Transactions), §85.421 (relating to Consumer Information), §85.422 (relating to Unclaimed Funds), and §85.601 (relating to Denial, Suspension, or Revocation Based on Criminal History), in 7 TAC Chapter 85, Subchapter A, concerning Rules of Operation for Pawnshops.

The commission adopts the amendments to §85.202, §85.301, §85.420, §85.421, §85.422, and §85.601 without changes to the proposed text as published in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3859).

The commission received no official comments on the proposed amendments.

The rules in 7 TAC Chapter 85, Subchapter A govern pawnshops. In general, the purpose of the rule changes to 7 TAC Chapter 85, Subchapter A is to implement changes resulting from the commission's review of the subchapter under Texas Government Code, §2001.039. In March 2022, the OCCC issued an advance notice of rule review, seeking informal feedback on the rule review. The OCCC received one informal comment on the advance notice. Notice of the review of 7 TAC Chapter 85, Subchapter A was published in the *Texas Register* on April 1, 2022 (47 TexReg 1701). The commission did not receive any official comments in response to the notice published in the *Texas Register*.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC did not receive any informal precomments on the rule text draft.

Amendments to §85.202 update requirements for filing a new pawnshop license application. Currently, §85.202(a)(1)(A)(ii) requires a pawnshop license application to identify a "responsible person" who is responsible for day-to-day operations at one or more locations, and must be an individual with an ownership interest, a licensed pawnshop employee, or an applicant for a pawnshop employee license. The commission and the OCCC believe that it is unnecessary to require pawnshops to identify an owner or licensed pawnshop employee as a responsible person. Pawnshops are required to separately identify owners and principal parties under §85.202(a)(1)(B), and licensing of pawnshop employees is now optional under Texas Finance Code, §371.101 (as amended by HB 1442 in 2019). The adoption replaces the "responsible person" requirement in §85.202(a)(1)(A)(ii) with a requirement to list a "compliance officer," who must be an individual responsible for overseeing compliance, and must be authorized to receive and respond to communications from the OCCC. The amendment will enable pawnshops to identify an individual who can be contacted on a company-wide basis. The amendment is intended to ensure that each pawnshop lists an individual who can be contacted about

compliance issues. In addition, an amendment to §85.202(a)(2)(A)(v) removes language suggesting that pawnshop license applicants send fingerprints directly to the OCCC. Currently, license applicants submit fingerprints through a party approved by the Texas Department of Public Safety.

An amendment to §85.301 removes language in §85.301(2)(B) suggesting that pawnshop employee license applicants send fingerprints directly to the OCCC. This is similar to the change to §85.202(a)(2)(A)(v) described in the previous paragraph.

An amendment to §85.420 requires pawnshops to maintain copies of certain agreements with local law enforcement. Under Texas Finance Code, §371.182, the OCCC may designate a reasonable hold period during which a pawnshop may not sell goods acquired and offered for sale. Currently, §85.420(b) provides a general hold period of 20 days, but allows a reduced hold period if the pawnshop enters a written agreement with local law enforcement for a reduced period. An amendment to §85.420(b)(2) adds language specifying that if a pawnshop holds purchased items for less than 20 days under an agreement with local law enforcement, then the pawnshop must maintain a copy of the agreement that authorizes the reduced hold period. This amendment is intended to help ensure that OCCC can verify compliance with the requirements for holding purchased items.

Amendments to §85.421 update requirements for providing information to consumers. Under Texas Finance Code, §371.183, the commission may adopt rules requiring pawnshops to display materials provided by the OCCC that are designed to: (1) inform a consumer of the duties, rights, and responsibilities of parties to a pawn

transaction; and (2) inform and assist a robbery, burglary, or theft victim. To implement this requirement, the OCCC has prepared a consumer brochure titled "Pawn Facts," which is available on the OCCC's website and may be ordered by pawnshops. Currently, §85.421(a) states that the OCCC will provide each pawnshop a display and printed materials that must be placed in a location clearly visible to the consumer, and requires the pawnshop to refill the display. An amendment to §85.421(a) removes language suggesting that the OCCC will provide each pawnshop with a display and printed materials at the time of initial licensing. The amended language will still provide that pawnshops may request copies from the OCCC, or may print copies from the OCCC's website. This amendment will maintain flexibility for pawnshops while reducing the cost for the OCCC to send printed materials and displays.

Amendments to §85.422 make technical changes relating to the escheat of unclaimed funds. Amended text in §85.422(3) reflects that unclaimed funds are submitted to the Unclaimed Property Division of the Texas Comptroller of Public Accounts. Another amendment adds a reference to Texas Property Code, §74.301, in order to provide a more complete statutory reference for the requirement to pay unclaimed funds to the state after three years.

Amendments to §85.601 relate to the OCCC's review of the criminal history of a pawnshop applicant or licensee. The OCCC is authorized to review criminal history of pawnshop applicants and licensees (as well as pawnshop employee applicants and licensees) under Texas Occupations Code, Chapter 53; Texas Finance Code, §14.151; and Texas Government Code, §411.095. The amendments to §85.601 ensure consistency

with HB 1342, which the Texas Legislature enacted in 2019. HB 1342 included the following changes in Texas Occupations Code, Chapter 53: (1) the bill repealed a provision that generally allowed denial, suspension, or revocation for any offense occurring in the five years preceding the application, (2) the bill added provisions requiring an agency to consider correlation between elements of a crime and the duties and responsibilities of the licensed occupation, as well as compliance with conditions of community supervision, parole, or mandatory supervision, and (3) the bill removed previous language specifying who could provide a letter of recommendation on behalf of an applicant. Amendments throughout subsections (c) and (f) of §85.601 implement these statutory changes from HB 1342. Other amendments to §85.601 include technical corrections, clarifying changes, and updates to citations.

Regarding the effective date of these amendments, Texas Finance Code, §371.006 contains a provision requiring notice to licensees concerning rulemaking for the pawnshop industry. In order to comply with this statutory notice requirement, the delayed effective date for the changes included in this adoption will be October 1, 2022.

The rule amendments are adopted under Texas Finance Code, §371.006, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 371 (the Texas Pawnshop Act). The amendments to §85.421 are adopted under Texas Finance Code, §371.183, which authorizes the commission to adopt rules requiring a pawnshop to display consumer materials. In addition, Texas Finance Code, §11.304 authorizes the Finance Commission to adopt rules necessary to supervise the OCCC and

ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 371.

Division 2. Pawnshop License

§85.202. Filing of New Application

(a) An application for issuance of a new pawnshop license must be submitted in a format prescribed by the OCCC at the date of filing and in accordance with the OCCC's instructions. The OCCC may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the application, and the application must include the following:

(1) Required application information. All questions must be answered.

(A) Application for license.

(i) Location. A physical street address must be listed for the proposed location for which the applicant can show proof of ownership or an executed lease agreement. A post office box or a mail box location at a private mail-receiving service may not be used except for a physical location that does not receive general mail delivery. An application for a new license is not permitted if the address or the full legal property description has not yet been determined or the application is for an inactive license.

(ii) Compliance officer. The application must list a compliance officer. The compliance officer must be an individual responsible for overseeing compliance, and

must be authorized to receive and respond to communications from the OCCC.
~~[Responsible person. The person responsible for the day-to-day operations of one or more of the applicant's proposed locations must be named. The responsible person is also known as the location contact. This person must be:]~~

~~[(I) an individual who has an ownership interest in the pawnshop license and is named on the application;]~~

~~[(II) a licensed pawnshop employee identified by license number; or]~~

~~[(III) an applicant for a pawnshop employee license with the date of application.]~~

(iii) Signature. Electronic signatures will be accepted in a manner approved by the commissioner. Each applicant must have the application signed by an authorized individual.

(B) - (J) (No change.)

(2) Other required filings.

(A) Fingerprints.

(i) For all persons meeting the definition of "principal party" as defined in §85.102 of this title, a complete set of legible fingerprints must be provided. All fingerprints should be submitted in a format prescribed by the OCCC and approved by the Texas Department of Public Safety and the Federal Bureau of Investigation.

(ii) For limited partnerships, if the owners and principal parties under paragraph (1)(B)(iii)(I) of this subsection does not produce a natural person, the applicant must provide a complete set of

legible fingerprints for individuals who are associated with the general partner as principal parties.

(iii) For entities with complex ownership structures that result in the identification of individuals to be fingerprinted who do not have a substantial relationship to the proposed applicant, the applicant may submit a request to fingerprint three officers or similar employees with significant involvement in the proposed business. The request should describe the relationship and significant involvement of the individuals in the proposed business. The agency may approve the request, seek alternative appropriate individuals, or deny the request.

(iv) For individuals who have previously been licensed by the OCCC and principal parties of entities currently licensed, fingerprints are generally not required if the fingerprints are on record with the OCCC, are less than 10 years old, and have been processed by both the Texas Department of Public Safety and the Federal Bureau of Investigation. Upon request, individuals and principal parties previously licensed by the OCCC may be required to submit a new set of fingerprints.

(v) For individuals who have previously submitted fingerprints to another state agency (e.g., Texas Department of Savings and Mortgage Lending), fingerprints are still required to be submitted under ~~[to the OCCC, as per]~~ Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others, except as authorized by Texas Government Code, §560.002.

(B) - (I) (No change.)

(b) - (c) (No change.)

Division 3. Pawnshop Employee License

§85.301. Filing of New Application

An application for issuance of a new pawnshop employee license must be submitted in a format prescribed by the OCCC at the date of filing and in accordance with the OCCC's instructions. All questions must be answered. Appropriate fees must be filed with the application, and the application must include the following:

- (1) (No change.)
- (2) Fingerprints.

(A) A complete set of legible fingerprints must be provided for each applicant. An individual who has previously been licensed by the OCCC is generally not required to provide fingerprints. The commissioner may require fingerprints of an employee if the commissioner believes that the individual has not been fingerprinted for a significant amount of time and believes a new set of fingerprints might provide additional information about the individual's criminal background. All fingerprints should be submitted in a format prescribed by the OCCC and approved by the Texas Department of Public Safety and the Federal Bureau of Investigation.

(B) For individuals who have previously submitted fingerprints to another state agency (e.g., Texas Department of Licensing and Regulation), fingerprints are still required to be submitted under ~~[to the OCCC, as per]~~ Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others, except as authorized by Texas Government Code, §560.002.

Division 4. Operation of Pawnshops

§85.420. Purchase Transactions

- (a) (No change.)
- (b) Hold period.

(1) Each item of personal property purchased from the general public must be held at the licensed pawnshop location from the purchase date before being modified, changed, sold, or disposed of in any manner for a period of:

(A) at least 20 days; or

(B) a period of less than 20 days if a local jurisdiction has enacted an ordinance that specifies the hold period.

(2) A reduced hold period of less than 20 days may be agreed upon by the pawnbroker and the law enforcement agency if the pawn and purchase ticket information is exchanged electronically. The agreement for a reduced hold period must not conflict with any local ordinance and must be submitted to the commissioner in writing by and through the chief local law enforcement officer for the jurisdiction. If a pawnshop holds personal property for less than 20 days under an agreement with local law enforcement, then the pawnshop must maintain a copy of the agreement, and must provide a copy of the agreement to the OCCC upon request.

§85.421. Consumer Information

(a) Consumer education. Each pawnshop must provide financial education information as prescribed by the OCCC. The pawnshop must place the information in a location

~~clearly visible to the consumer. To comply with this requirement, the pawnshop may request copies of brochures from the OCCC, or print copies of brochures available on the OCCC's website. [The OCCC will provide each pawnshop, at the time of initial licensing, a display and printed materials that must be placed in a location clearly visible to the consumer from the register. The pawnshop must refill the display as necessary by requesting additional copies from the OCCC, or by printing additional copies of the consumer brochures available on the OCCC's website.]~~

(b) (No change.)

§85.422. Unclaimed Funds

An amount due a pledgor unclaimed for one year must be transferred to an escheat suspense account. Reference to the transfer must be made on the printed copy in the numerical pawn ticket file.

(1) Proof of attempt to pay refund. Evidence of a bona fide attempt to pay a refund to a pledgor must be maintained in a file readily available for examination. The minimum acceptable evidence is a registered or certified letter addressed to the last known address of the pledgor. The file must include any information that indicates the pledgor's whereabouts are unknown, the pledgor has left the community, or has died leaving no wills or heirs.

(2) Use of unclaimed funds. Use of unclaimed funds within the business until such time as paid to the pledgor, the estate of the pledgor, or to the State of Texas is not prohibited; however, funds transferred to the escheat account must not be commingled with the funds of the business.

(3) Payment of unclaimed funds. At the end of three years, the unclaimed funds must be paid to the State of Texas Comptroller of Public Accounts, Unclaimed Property [Treasury] Division, as required by Texas Property Code, §72.101 and §74.301.

Division 6. License Revocation, Suspension, and Surrender

§85.601. Denial, Suspension, or Revocation Based on Criminal History

(a) Criminal history record information. After an applicant for a pawnshop license or pawnshop employee license submits a complete license application, including all required fingerprints, and pays the fees required by §85.211 of this title (relating to Fees) or §85.306 of this title (relating to Fees), the OCCC will investigate the applicant and any principal parties. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to provide any information required as part of the application or requested by the OCCC reflects negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions of the applicant and any principal parties;

(2) reliable documents or testimony necessary to make a determination under subsection (c) of this section, including letters of recommendation from prosecution, law enforcement, and correctional authorities;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid or are current.

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a pawnshop license or pawnshop employee license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensee under Texas Finance Code, Chapter 371, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Being a pawnbroker or pawnshop employee involves or may involve representations to borrowers and sellers, receiving money from borrowers, collecting due amounts in a legal manner, maintenance of accounts to make loans and replace lost or damaged goods, and compliance with reporting requirements to governmental agencies relating to certain transactions including firearms. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and

may be grounds for denial, suspension, or revocation:

(A) theft (including receiving or concealing stolen property);

(B) assault;

(C) any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);

(D) any offense that involves breach of trust or other fiduciary duty;

(E) any criminal violation of a statute governing credit transactions or debt collection;

(F) failure to file a government report, filing a false government report, or tampering with a government record;

(G) any greater offense that includes an offense described in subparagraphs (A) - (F) of this paragraph as a lesser included offense;

(H) any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; ~~and~~

(D) the relationship of the crime to the ability or ~~;~~ capacity ~~[-or fitness]~~ required to perform the duties and discharge the responsibilities of a licensee; and ~~[-]~~

(E) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

(3) In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a licensee, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.023:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; ~~and~~

(F) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

~~(G) [(F)]~~ evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation, ~~[from one or more of the following:]~~

~~[(i) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;]~~

~~[(ii) the sheriff or chief of police in the community where the person resides; and]~~

~~[(iii) other persons in contact with the convicted person.]~~

(d) Crimes related to character and fitness.

(1) The OCCC may deny a pawnshop license application if the applicant does not show that the business will be operated lawfully and fairly, or if the applicant does not show that the applicant or the applicant's owners have the financial responsibility, experience, character, and general fitness to command the confidence of the public, as provided by Texas Finance Code, §371.052(a).

(2) The OCCC may deny a pawnshop employee license if the applicant is not of good business repute, or if the applicant does not possess the character and general fitness necessary to warrant the belief that the individual will operate the business lawfully and fairly, as provided by Texas Finance Code, §371.102(a).

(3) In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and any principal parties. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(1) [(f)(2)] of this section, this reflects negatively on an applicant's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2) - (3) of this section in its review of character and fitness.

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including the following:

~~[(1) a conviction for an offense that does not directly relate to the duties and responsibilities of the occupation and that was committed less than five years before the date of application, as provided by Texas Occupations Code, §53.021(a)(2);]~~

~~(1) [(2)] a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42A.054 or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(2)-(3) [§53.021(a)(3)-(4)];~~

~~(2) [(3)] a conviction of a pawnshop licensee or a principal party for an offense directly related to the licensed occupation, as provided by Texas Finance Code, §371.251(a)(6);~~

~~(3) [(4)] errors or incomplete information in the license application;~~

~~(4) [(5)] a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §371.251(a)(3) and §371.255(2);~~

~~(5) [(6)] a finding by the OCCC that the financial responsibility, experience, character, or general fitness of a pawnshop licensee or a principal party do not command the confidence of the public or warrant the belief that the business will be operated lawfully, fairly, and within the purposes of this chapter, as provided by Texas Finance Code, §371.251(a)(7); and~~

~~(6) [(7)] a finding by the OCCC that the character, business repute, and general fitness of a pawnshop employee license holder do not warrant belief that the license holder will operate the business lawfully and fairly, as provided by Texas Finance Code, §371.255(3).~~

Certification

The agency certifies that legal counsel has reviewed the adoption and found it to be

a valid exercise of the agency's legal authority.

Issued in Austin, Texas on August 19, 2022.

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