

Title 7. Banking and Securities

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 §§85.102 (relating to Definitions), 85.104 (relating to License Term, Renewal, and Expiration), 85.202 (relating to Filing of New Application), 85.206 (relating to Processing of Application), 85.210 (relating to License Inactivation or Voluntary Surrender), 85.302 (relating to Notification of Termination), 85.303 (relating to Notification of Hiring), 85.304 (relating to Processing of Application), 85.306 (relating to Fees), 85.308 (relating to Availability of Pawnshop Employee License Information), 85.601 (relating to Denial, Suspension, or Revocation Based on Criminal History), 85.603 (relating to Reinstatement of an Expired Pawnshop License), 85.604 (relating to Enforcement Action Against Pawnshop License or Pawnshop Employee License), 85.701 (relating to Failure to Timely File a Pawnshop Employee Application), and 85.702 (relating to Accepting Prohibited Merchandise), in 7 TAC, Chapter 85, Subchapter A, concerning Rules of Operation for Pawnshops.

The commission adopts the amendments without changes to the proposed text as published in the July 5, 2019, issue of the *Texas Register* (44 TexReg 3406).

The commission received one written comment on the proposal from the Texas Association of Pawnbrokers (TAP). The comment relates to §85.104(a) and §85.202. The OCCC's response to the comment is included following the discussion of the changes to §85.202.

The adopted amendments affect rules contained in Division 1, concerning General Provisions; Division 2, concerning Pawnshop License; Division 3, concerning Pawnshop Employee License; Division 6, concerning License Revocation, Suspension, and Surrender; and Division 7, concerning Enforcement; Penalties.

In general, the purpose of the adopted amendments to 7 TAC, Chapter 85, Subchapter A is to implement the pawnshop-related provisions of HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC's existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill's amendments to Chapter 371 relate mainly to four issues. First, the bill provides that pawnshops may, but are not required to, participate in the pawnshop employee license program. Second, the bill removes provisions stating that pawnshop and pawnshop employee license applicants must be of "good moral character." Third, the bill authorizes the commission to set the term of pawnshop and pawnshop employee licenses for a period up to two years. Fourth, the bill authorizes the commission to set pawnshop employee license fee amounts in accordance with Texas Finance Code, §14.107, replacing current statutory provisions containing a \$25 initial fee and a \$15 annual renewal fee.

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 written precomments on the rule text draft, although several stakeholders provided verbal feedback during the stakeholder meeting. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The adopted amendments are intended to fulfill the following purposes: (1) to implement the optional pawnshop employee license program; (2) to amend pawnshop employee license fees to \$50 for a new license and \$25 for a renewal; (3) to clarify provisions on license term, renewal, and expiration, while maintaining the current June 30 expiration date for pawnshops and pawnshop employees; and (4) to remove references to "good moral character" as a licensing standard, while maintaining the OCCC's review of an applicant's character and fitness. In addition, the adopted amendments modernize or remove obsolete language.

The individual purposes of the adopted amendments to each section are provided in the following paragraphs.

In §85.102, an adopted amendment to the definition of "pawnbroker" removes a statement that a pawnbroker may include a pawnshop employee, and adds a reference to the statutory reference of "pawnbroker" in Texas Finance Code, §371.003(6). Another amendment in §85.102 adds a definition of the term "pawnshop employee license program," explaining that this term refers to the optional licensing program under Texas Finance Code, Chapter 371, Subchapter C.

Adopted amendments to §85.104 specify license terms and expiration dates for pawnshops and pawnshop employees. These amendments implement Texas Finance Code, §14.112, as added by HB 1442. Section 14.112 provides that the commission shall prescribe the licensing period for licenses issued under Chapter 371, not to exceed two years. The amendments to §85.104 maintain the current one-year license period, as well as the current June 30 expiration date, for pawnshops and pawnshop employees. An amendment at §85.104(c), sets the due date for the annual license fee at May 31. This is based on Texas Finance Code, §371.064 and §371.106, as amended by HB 1442, which require licensees to pay a license fee not later than the 30th day before expiration of the license. Adopted §85.104(e) explains that at the time of renewal, a pawnshop may provide written notification to participate in the pawnshop employee license program. This is based on Texas Finance Code, §371.101(a-1), as amended by HB 1442, which explains that a pawnbroker may provide written notification to participate at the time of renewal. In §85.104, other amendments provide additional clarity to the rule text.

In §85.202, an adopted amendment explains that a pawnshop may provide a notification to participate in the pawnshop employee license program at the time of the license application.

The official comment from the Texas Association of Pawnbrokers states: "Referring to §85.104(e) and §85.202: Consider a check box utilizing the ALECS online licensing portal, rather than having a pawnshop provide written notification to participate in the pawnshop employee license program." The OCCC agrees that it is appropriate to allow pawnshops to participate in the program by selecting an option in the

OCCC's online licensing system. The OCCC intends to allow online pawnshop license applicants to select a radio button (similar to a checkbox) indicating that they wish to participate. During annual license renewal and other times that the OCCC specifies, the OCCC also intends to allow licensed pawnshops to indicate their participation through a drop-down menu in the online system. The OCCC intends to implement these changes by the end of calendar year 2019. Until these changes are implemented, the OCCC intends to allow pawnshops to notify the OCCC of their participation through email or mail. The commission believes that the new rule text at §85.104(e) and §85.202(a)(2)(I) appropriately provides that a pawnshop may participate by providing written notification. This language is based on the statutory text of Texas Finance Code, §371.101(a) and (a-1) (as amended by HB 1442), which describes the written notification to participate in the program. For purposes of the statute and rule, a pawnshop can provide this written notification by selecting an option in the online licensing system. For this reason, the commission believes that a change to the proposed rule text on this issue is unnecessary.

Adopted amendments to §85.206 remove references to "good moral character" as a licensing standard for pawnshops, while maintaining references to the OCCC's review of an applicant's character and fitness. These amendments implement HB 1442's amendments to Texas Finance Code, §371.052, which remove provisions stating that pawnshop license applicants must be of "good moral character," while maintaining references to review of character and fitness. The statutory amendment is based on a recommendation of Sunset Advisory Commission staff, which stated that "good moral character" is a subjective standard that

should be removed from the statute. An amendment at §85.206(f)(1)(A)(iv) explains that the OCCC will review an applicant's criminal history as part of its review of character and fitness. Throughout §85.206, amendments replace the use of the word "commissioner" with the agency's acronym, "OCCC." The agency believes that the use of "OCCC" will provide better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically.

In §85.210, an adopted amendment removes a subsection dealing with the date of license expiration, because expiration is addressed in the separate rule at §85.104. In addition, an amendment changes the title of §85.210 from "License Status" to "License Inactivation or Voluntary Surrender," to provide more clarity about the subject matter of the section.

In §85.302, an adopted amendment specifies that the requirement for a pawnshop to notify the OCCC of a pawnshop employee's termination applies if the pawnshop participates in the pawnshop employee license program.

In §85.303, an adopted amendment specifies that the requirement for a pawnshop to notify the OCCC of a pawnshop employee's hiring applies if the pawnshop participates in the pawnshop employee license program.

Adopted amendments to §85.304 remove references to "good moral character" as a licensing standard for pawnshop employees, while maintaining references to the OCCC's review of an applicant's character and fitness. These amendments implement HB 1442's amendments to Texas Finance Code, §371.102, which remove provisions stating

that pawnshop employee license applicants must be of "good moral character," while maintaining references to review of character and fitness. The amendments to §85.304 are similar to the amendments to §85.206 described earlier in this adoption.

Adopted amendments to §85.306 update fee amounts for pawnshop employee licenses. For the initial investigation and annual fee, an amendment contains a \$50 fee. For the annual renewal fee, an amendment contains a \$25 fee. These amendments implement HB 1442's amendments to Texas Finance Code, §371.103 and §371.106, which authorize the commission to set pawnshop employee license fee amounts in accordance with Texas Finance Code, §14.107 in an amount necessary to recover the costs of administration.

The OCCC has determined that the adopted fee changes in §85.306 are necessary in order to ensure that pawnshop employee license fees appropriately fund the pawnshop employee license program. The commission is authorized to establish reasonable and necessary fees for the OCCC to carry out its functions under Chapter 371, and to set licensing fees under Chapter 371 at amounts necessary to recover the costs of administering the chapter. Tex. Fin. Code §14.107(a)-(b). As a self-directed, semi-independent agency, the OCCC is responsible for all direct and indirect costs of its operation, and is authorized to set fee amounts as necessary to carry out its functions. Tex. Fin. Code §16.003(b)-(c).

The OCCC performed an analysis of its current costs, determining how much cost should be allocated to each regulated license and registration type. This analysis showed that \$285,000 of yearly costs are currently associated with licensing and regulation of

pawnshop employees. The OCCC also estimates that 30% of pawnshops will opt to participate in the optional pawnshop employee license program, and therefore, as a result of HB 1442, the total number of pawnshop employees is estimated to decrease by approximately 70%. Some costs of the pawnshop employee license program will stay the same, while others will decrease. The OCCC's initial analysis suggests that annual costs for pawnshop employees will decrease to approximately \$120,000. Based on this estimate, the OCCC has determined that a \$50 investigation and annual fee, with a \$25 annual renewal fee, would help ensure that revenues cover the cost of the pawnshop employee license program over time.

An adopted amendment at §85.306(d) specifies that a pawnshop employee must provide relocation notice to the OCCC in accordance with the OCCC's instructions.

In §85.308, adopted amendments specify that the requirement to maintain pawnshop employee records applies if the pawnshop participates in the pawnshop employee license program.

In §85.601, which describes denial, suspension, or revocation based on criminal history, adopted amendments remove references to "good moral character." As with the amendments to §85.206 and §85.304, the amendments to §85.601 maintain references to the OCCC's review of character and fitness.

In §85.603, an adopted amendment updates a reference to §85.104 as amended by this adoption.

In §85.604, which describes enforcement actions that the OCCC may take against a pawnbroker or pawnshop employee, adopted

amendments explain that the requirements imposed on pawnbrokers apply to all pawnbrokers, and the requirements imposed on pawnshop employees apply to employees of pawnbrokers that participate in the pawnshop employee license program.

In §85.701, which describes enforcement actions that the OCCC may take for failure to file a timely pawnshop employee license application, adopted amendments explain that the requirements imposed on pawnbrokers apply to all pawnbrokers, and the requirements imposed on pawnshop employees apply to employees of pawnbrokers that participate in the pawnshop employee license program.

In §85.702, which describes enforcement actions that the OCCC may take for accepting prohibited merchandise, adopted amendments explain that the requirements imposed on pawnbrokers apply to all pawnbrokers, and the requirements imposed on pawnshop employees apply to employees of pawnbrokers that participate in the pawnshop employee license program.

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, 2019.

These amendments are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 of the Texas Finance Code. Texas Finance Code, §371.006 also authorizes the commission to adopt rules for enforcement of Chapter 371 (the Texas Pawnshop Act). The adopted

changes in §85.104 are authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license terms. The adopted fee changes in §85.306 are authorized under Texas Finance Code, §§14.107, 371.103, and 371.106 (as amended by HB 1442), which authorize the commission to set license fees for pawnshop employee licenses.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14 and 371.

Title 7, Texas Administrative Code

Chapter 85. Pawnshops and Crafted Precious Metal Dealers

Subchapter A. Rules of Operation for Pawnshops

Division 1. General Provisions

§85.102. Definitions.

Words and terms used in this subchapter that are defined in Texas Finance Code, Chapter 371, have the same meanings as defined in that chapter unless the context clearly indicates otherwise. The following words and terms, when used in this subchapter, will have the following meanings unless the context clearly indicates otherwise.

(1) - (9) (No change.)

(10) Pawnbroker--Has the meaning provided by Texas Finance Code, §371.003(6), and includes a [A] person who has an ownership interest in a pawnshop as shown in an application for a pawnshop license filed with the OCCC. [~~When general duties and prohibitions are described,~~

~~pawnbroker also includes a pawnshop employee unless the context indicates otherwise.]~~

(11) Pawnshop employee license program--The optional program for licensing pawnshop employees described by Texas Finance Code, Chapter 371, Subchapter C.

(12) [(11)] Pledged goods--Tangible personal property held by a pawnbroker as collateral for a pawn loan and that has not become the property of the pawnbroker by a taking into inventory due to non-payment of the loan.

(13) [(12)] Principal party--An adult individual with a substantial relationship to the proposed business of the applicant. The following individuals are principal parties:

(A) a proprietor;

(B) general partners;

(C) officers of privately held corporations, including the chief executive officer or president, the chief operating officer or vice president of operations, the chief financial officer or treasurer, and those with substantial responsibility for lending operations or compliance with the Texas Pawnshop Act;

(D) directors of privately held corporations;

(E) individuals associated with publicly held corporations designated by the applicant as follows:

(i) officers as provided by subparagraph (C) of this paragraph (as if the corporation was privately held); or

(ii) three officers or similar employees with significant involvement in the corporation's activities governed by the Texas Pawnshop Act. One of the persons designated must be responsible for assembling and providing the information required on behalf of the applicant and must sign the application for the applicant;

(F) voting members of a limited liability corporation;

(G) shareholders owning 5% or more of the outstanding voting stock;

(H) trustees and executors; and

(I) individuals designated as a principal party where necessary to fairly assess the applicant's financial responsibility, experience, character, general fitness, and sufficiency to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly as required by the commissioner.

§85.104. License Term, Renewal, and Expiration [Renewal Dates of Licenses].

(a) License term and renewal [Licensing period and renewal due date]. A new pawnshop license or pawnshop employee license is effective from the date of its issuance until June 30. A pawnshop license and a pawnshop employee license must be renewed annually in order to remain effective. After renewal, a pawnshop license or pawnshop employee license is effective for a term of one year, from July 1 of one calendar year to June 30 of the next calendar year [are effective from July 1 through June 30 of each year].

(b) Due date for annual fees. The annual fees for pawnshop licenses and pawnshop

employee licenses are due by May 31 [~~on June 1~~] of each year for the following July 1 through June 30 term.

(c) [~~(b)~~] Notice of delinquency. If a licensed pawnshop or pawnshop employee does not pay the annual fees [~~by June 1~~], the OCCC will send a written notice of delinquency [~~will be sent~~] by June 15.

(1) If a pawnshop has provided a master file e-mail address to the OCCC, then the OCCC will:

(A) send any notice of delinquency for the pawnshop to the master file e-mail address on file for the pawnshop; and

(B) send any notice of delinquency for an employee of the pawnshop to the employee through the master file e-mail address on file for the pawnshop.

(2) If a pawnshop has not provided a master file e-mail address to the OCCC, then the OCCC will:

(A) send any notice of delinquency for the pawnshop by mail to the master file address on file for the pawnshop; and

(B) send any notice of delinquency for an employee of the pawnshop to the employee by mail through the master file address on file for the pawnshop.

(d) [~~(e)~~] Expiration of license. A pawnshop license and a pawnshop employee license will expire on the later of June 30 of each year or the 16th day after the written notice of delinquency is given unless the

annual fees for the following term have been paid. To be accepted [~~considered timely paid~~], the fees must be postmarked or submitted by June 30. June 30 is the end of the license term for each year. For purposes of this subsection [~~and §85.210(d) of this title (relating to License Status)~~], notice of delinquency is given when the OCCC sends the [~~delinquency~~] notice by the method described in subsection (c) [~~(b)~~] of this section.

(e) Pawnshop employee license program.
At the time of the annual renewal, a pawnshop may provide a written notification to participate in the pawnshop employee license program.

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) - (J) (No change.)

(2) Other required filings.

(A) - (H) (No change.)

(I) Pawnshop employee license program. At the time of the application, the applicant may provide a written notification

to participate in the pawnshop employee license program.

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

§85.206. Processing of Application.

(a) - (e) (No change.)

(f) Decision on application. The OCCC may approve or deny an application.

(1) Approval. The OCCC will approve the application upon payment of the appropriate fees and a finding of the eligibility and statutory location requirements.

(A) Eligibility requirements.

~~[(i) Good moral character. In evaluating an applicant's moral character the commissioner will consider criminal history information and the applicant's conduct and activities as described in §85.601 of this title (relating to Denial, Suspension, or Revocation Based on Criminal History).]~~

(i) ~~[(ii)]~~ A belief that the pawnshop will be operated lawfully and fairly. In evaluating this standard, the OCCC ~~[commissioner]~~ will consider an applicant's background and history. If the OCCC ~~[commissioner]~~ questions the applicant's ability to meet this standard, the OCCC ~~[commissioner]~~ may require further conditions, such as probation, to favorably consider an applicant for a license.

(ii) ~~[(iii)]~~ Financial responsibility. In evaluating the financial responsibility of an applicant, the OCCC ~~[commissioner]~~ may investigate the history of an applicant and the principal parties of the applicant as to the payment of debts, taxes,

and judgments, if any, and handling of financial affairs generally.

(iii) ~~[(iv)]~~ Experience. In evaluating experience, the OCCC ~~[commissioner]~~ will consider the applicant's background and history as well as the personnel that the applicant plans to use in the operation and management of the pawnshop.

(iv) ~~[(v)]~~ Character and ~~[General]~~ fitness ~~[to command the confidence of the public]~~. In evaluating an applicant's character and fitness to command the confidence of the public, the OCCC will consider the ~~[The]~~ applicant's overall background and history, including the applicant's criminal history as described in §85.601 of this title (relating to Denial, Suspension, or Revocation Based on Criminal History) ~~[will be considered]~~. Providing misleading information on the application or failing to disclose information to the OCCC may be grounds for denial.

(v) ~~[(vi)]~~ Net assets. Net assets are calculated by taking the sum of current assets and subtracting all liabilities either secured by those current assets or unsecured. Liabilities not included in the calculation are those liabilities that are secured by assets other than current assets including subordinated debt. Debt that is either unsecured or secured by current assets may be subordinated to the net asset requirement pursuant to an agreement of the parties providing that assets other than current assets are sufficient to secure the debt.

(B) (No change.)

(2) (No change.)

(g) - (h) (No change.)

§85.210. License Inactivation or Voluntary Surrender [Status].

(a) Inactivation of active license. A licensee may cease operating a pawnshop and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations not less than 30 calendar days prior to the anticipated inactivation date. Written notification must be submitted by filing a license amendment or an approved electronic submission as prescribed by the OCCC [commissioner]. The notice must include the new mailing address for the license, the effective date of the inactivation, the fee for amending the license, a certification that no loans will be made or collected under the license until it is activated, a notice to pledgors that pawn loans are being relocated, and a plan ensuring pledged goods are made available for redemption. If an active license is not being used for the active operation of a pawnshop, the OCCC [commissioner] may unilaterally place the license in inactive status. A licensee must continue to pay the annual assessment fees for an inactive license as outlined in §85.211 of this title (relating to Fees), or the license will expire as described by §85.104 of this title (relating to License Term, Renewal, and Expiration).

(b) Activation of inactive license. To activate an inactive license the holder of the inactive license must comply with the relocation requirements set forth in §85.203 of this title (relating to Relocation).

(c) (No change.)

~~[(d) Expiration. A license will expire on the later of June 30 of each year or the 16th day after the written notice of delinquency is given unless the annual assessment fees are paid as per §85.104 of this title (relating to~~

~~Renewal Dates of Licenses). A licensee that pays the annual assessment fees will automatically be renewed even though a new license may not be issued.]~~

Division 3. Pawnshop Employee License

§85.302. Notification of Termination.

If a pawnshop employee ceases working at a pawnshop that participates in the pawnshop employee license program, then the pawnbroker must [It is the responsibility of a pawnshop to] notify the OCCC of the termination [within a reasonable period of time when an employee ceases working at a pawnshop. A reasonable period of time is] within one week from the issuance of the final wage payment or in accordance with a standard preapproved reporting schedule.

§85.303. Notification of Hiring.

If a licensed pawnshop employee begins working at a pawnshop participating in the pawnshop employee license program, and the pawnshop is different from the pawnshop on file for the employee's license, then the hiring pawnbroker must [It is the responsibility of a pawnshop to] notify the OCCC of the hiring [within a reasonable period of time when a licensed employee begins working at a different pawnshop entity from that printed on the employee's license. A reasonable period of time is] within one week from the issuance of the initial wage payment or in accordance with a standard preapproved reporting schedule.

§85.304. Processing of Application.

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

(c) Decision on application. The OCCC may approve or deny an application.

(1) Approval. The OCCC will approve the application upon payment of the appropriate fees and finding of the eligibility requirements. A license is the personal property of the employee and may not be retained by a pawnshop when an employee terminates employment with the pawnshop.

~~[(A) Good moral character. In evaluating an applicant's moral character the commissioner will consider criminal history information and the applicant's conduct and activities as described in §85.601 of this title (relating to Denial, Suspension, or Revocation Based on Criminal History).]~~

(A) [(B)] Good business repute. In evaluating an applicant's business repute, the OCCC [commissioner] will consider the applicant's background and history.

(B) [(C)] Character and fitness [to warrant belief that pawnshop will be operated lawfully and fairly]. In evaluating the applicant's character and fitness to warrant the belief that the pawnshop will be operated lawfully and fairly, the OCCC will consider the [The] applicant's overall background and history, including the applicant's criminal history as described in §85.601 of this title (relating to Denial, Suspension, or Revocation Based on Criminal History) [will be considered]. Providing misleading information on the application or failing to disclose information to the OCCC may be grounds for denial.

(2) (No change.)

(d) - (f) (No change.)

§85.306. Fees.

(a) New licenses. A \$50 [~~\$25~~] nonrefundable investigation and annual fee is

assessed each time an application for a new license is filed.

(b) (No change.)

(c) Annual renewal fees. The annual renewal fee for a pawnshop employee license is \$25 [~~\$15~~]. The fee must be paid by May 31 [~~June 30~~] each year. A pawnshop employee license will expire on the later of June 30 or the 16th day after the written notice of delinquency is given unless the annual renewal fee has been paid.

(d) License amendments. An employee seeking to amend a license by changing the name of the licensee or relocating to another pawnshop is not required to pay an additional fee. Any relocation requires notice to the OCCC in accordance with the OCCC's instructions [~~the format prescribed by the commissioner~~].

(e) - (f) (No change.)

§85.308. Availability of Pawnshop Employee License Information.

(a) Maintaining records. If a pawnbroker participates in the pawnshop employee license program, then the pawnbroker [~~A pawnbroker~~] must maintain adequate written documents demonstrating that all pawnshop employees are either properly licensed pursuant to Texas Finance Code, §371.101 or have applied for a pawnshop employee license.

(b) Availability of records. If a pawnbroker participates in the pawnshop employee license program, then during [~~During~~] an examination by the OCCC [commissioner or the commissioner's representative,] or an inspection by a peace officer, copies of the pawnshop employee

licenses or copies of records relating to any pending applications for pawnshop employee licenses must be readily available.

Division 6. License Revocation, Suspension, and Surrender

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

(a) - (c) (No change.)

(d) Crimes related to ~~[moral]~~ character and fitness.

(1) The OCCC may deny a pawnshop license application ~~[if the applicant is not of good moral character,]~~ 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 moral character and]~~ 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 ~~[moral]~~ character and fitness, the OCCC will consider the criminal history of the applicant and any principal parties. ~~[The OCCC considers the offenses described by subsections (c)(1) and (f)(2) of this section to be crimes involving moral character.]~~ If the applicant or a principal party has been

convicted of an offense described by subsections (c)(1) or (f)(2) of this section, this reflects negatively on an applicant's ~~[moral]~~ 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 ~~[moral]~~ character and fitness.

(e) (No change.)

(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);

(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)(3) - (4);

(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);

(4) errors or incomplete information in the license application;

(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);

(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

(7) a finding by the OCCC that the ~~moral~~ 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).

§85.603. Reinstatement of an Expired Pawnshop License.

If a pawnshop license expires as prescribed by §85.104 of this title (relating to License Term, Renewal, and Expiration [~~Renewal Dates of Licenses~~]) for failure to pay annual assessment fees, the OCCC will notify the pawnshop license holder by mailing notice to the current registered agent on file via certified mail that the license has expired and that the licensee may not make or renew a pawn loan. The holder of the expired license may elect to reinstate the license by submitting the fees required by §85.211(d) of this title (relating to Fees) and a \$1,000

reinstatement fee postmarked on or before December 27 of that same year. An expired pawnshop license holder may not conduct any licensed business at the formerly licensed location during the time the license is expired. Any unlicensed acts are subject to enforcement action by the OCCC should the holder of the expired license not cease operations upon expiration of the license on July 1. An expired license is considered an operating pawnshop location for the duration of the period of reinstatement right for the purpose of statutory distance requirements.

§85.604. Enforcement Action Against Pawnshop License or Pawnshop Employee License.

(a) Applicability. In this section:

(1) the requirements imposed on a pawnbroker apply to all pawnbrokers; and

(2) the requirements imposed on a pawnshop employee apply only to employees of pawnbrokers that participate in the pawnshop employee license program.

(b) [(a)] Generally. For the reasons in subsection (c) [(b)] of this section, the OCCC may take one or more of the following enforcement actions under Texas Finance Code, Chapters 14 and 371:

- (1) an injunction;
- (2) an administrative penalty;
- (3) a suspension; or
- (4) a revocation.

(c) [(b)] Basis for enforcement actions.

- (1) - (9) (No change.)

Division 7. Enforcement; Penalties

§85.701. Failure to Timely File a Pawnshop Employee Application.

(a) Applicability. This section applies only to pawnbrokers that participate in the pawnshop employee license program and employees of these pawnbrokers.

(b) [(a)] Reasonable ground for denial. Failure to file a pawnshop employee application with the OCCC within 75 calendar days of the first day the employee participated or trained in a transaction subject to Texas Finance Code, §371.101(c), will be a reasonable ground for denial of the license. Should the OCCC find that no other ground is present on which to base a denial of the license, the OCCC may grant the license and take an enforcement action as provided in subsection (c) [(b)] of this section.

(c) [(b)] Enforcement actions. Failure to file a pawnshop employee application with the OCCC within 75 calendar days of the first day the employee participated or trained in a transaction subject to Texas Finance Code, §371.101(c), may subject both the pawnbroker [pawnshop] and the pawnshop employee to one or more of the following enforcement actions under Texas Finance Code, Chapters 14 and 371:

- (1) an injunction;
- (2) an administrative penalty;
- (3) a suspension; or
- (4) a revocation.

(d) [(c)] Pattern of violations. A pattern of violations may result in an additional enforcement action or denial.

§85.702. Accepting Prohibited Merchandise.

(a) Applicability. In this section:

(1) the requirements imposed on a pawnbroker apply to all pawnbrokers; and

(2) the requirements imposed on a pawnshop employee apply only to employees of pawnbrokers that participate in the pawnshop employee license program.

(b) [(a)] Reasonable ground for revocation. Reasonable ground for revocation of the license exists when a pawnbroker or pawnshop employee, knowingly or without exercising due care, fails to prevent a transaction of stolen property, in violation of Texas Finance Code, Chapter 371.

(c) [(b)] Enforcement actions. The acceptance of prohibited merchandise in violation of §85.418(a)(1) or (3) of this title (relating to Acceptance of Goods), may subject the pawnbroker [pawnshop] and pawnshop employee to one or more of the following enforcement actions under Texas Finance Code, Chapters 14 and 371:

- (1) an injunction;
- (2) an administrative penalty;
- (3) a suspension; or
- (4) a revocation.

(d) [(c)] Multiple violations. Multiple violations may result in an additional enforcement action.

Certification

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on August 16, 2019.

Matthew J. Nance
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Office of Consumer Credit Commissioner