

*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 7 TAC, Chapter 85, Subchapter A, §§85.202, 85.203, 85.205, 85.206, 85.211, 85.212, 85.301, 85.304, 85.307, 85.402, 85.405, 85.421, 85.502, 85.601, 85.603, 85.604, 85.606, 85.701, and 85.702, concerning Rules of Operation for Pawnshops.

The commission adopts the amendments without changes to the proposed text as published in the November 2, 2018, issue of the *Texas Register* (43 TexReg 7288).

The commission received one written comment on the proposal from Vianovo, LP. The comment mentions proposed §85.604, concerning Enforcement Action Against Pawnshop License or Pawnshop Employee License. However, the comment does not specify whether it is for or against the adoption of the proposed amendments to this section. The agency's response to the comment is included following the discussion of the changes to §85.604.

The adopted amendments affect rules contained in Division 2, concerning Pawnshop License; Division 3, concerning Pawnshop Employee License; Division 4, concerning Operation of Pawnshops; Division 5, concerning Inspections and Examination; 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 changes

resulting from the commission's review of the subchapter under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Chapter 85, Subchapter A was published in the August 17, 2018, issue of the *Texas Register* (43 TexReg 5402). The commission received no comments in response to that notice.

The agency distributed an early 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. Certain concerns raised during the meeting have been addressed in the rules as proposed and maintained for this adoption. The agency appreciates the thoughtful input provided by stakeholders. 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 three purposes: 1) ensure consistency with current licensing terminology, agency procedures, and streamlined processes; 2) modernize or remove obsolete language; and 3) make technical corrections. Any pawnshop rule not included in this adoption will be maintained in its current form.

The individual purposes of the adopted amendments to each section are provided in the following paragraphs. Specific explanation is included with regard to rule

changes to ensure consistency and modernize language. The remaining changes throughout all sections consist of minor revisions to formatting, grammar, punctuation, and other technical corrections. The technical changes will be summarized more generally.

The agency's acronym "OCCC," currently defined in §85.102(8) replaces the use of "commissioner" in three instances in the introductory language of §85.202. The agency believes that the use of "OCCC" provides better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically. In addition to §85.202, the following rules include amendments replacing "commissioner" with "OCCC": §85.206, concerning Processing of Application; §85.301, concerning Filing of New Application (for pawnshop employees); §85.304, concerning Processing of Application (for pawnshop employees); §85.402, concerning Recordkeeping; §85.502, concerning Annual Report; §85.603, concerning Reinstatement of an Expired Pawnshop License; and §85.604, concerning Revocation or Suspension of Pawnshop License or Pawnshop Employee License.

Section 85.202, concerning Filing of New Application, includes numerous adopted amendments to ensure consistency with current agency procedures. In §85.202(a)(1)(A) and (a)(1)(B), changes streamline the introductory wording (referred to as "taglines") and grammar to more closely track the OCCC's online licensing portal, and to no longer refer to specific titles used on paper licensing forms. In particular, a statement that the "responsible person is also known as the location contact" has been added to §85.202(a)(1)(A)(ii), to further the use of online terminology.

Adopted changes are included in §85.202(a)(1)(A)(iii) regarding the signature on a new license application. These changes involve the deletion of unnecessary language, allowing for the electronic signature of an authorized individual of the applicant, without reference to particular titles of the person signing.

Adopted amendments updating licensing terminology continue in §85.202(a)(1)(C) through (a)(1)(I) and (a)(2)(A) to better align the rule with the OCCC's online portal.

Section 85.202(a)(1)(D) contains several adopted amendments to ensure consistency with current agency procedure. First, the term "registered agent" replaces "statutory agent." These terms have been used synonymously, but "registered agent" is used by the Texas Secretary of State (SOS) and has become the more common term. Second, a natural person requires simply a different address from the licensed location, as opposed to the outdated requirement of a physical residential address. Third, a company's secretary may submit certification identifying an agent that differs from the SOS filing. Furthermore, these amendments are consistent with rule revisions previously adopted for other industries regulated by the agency and will provide consistency in the licensing process.

In §85.202(a)(1)(I)(i), an adopted amendment adds language requiring all entity types to provide a bank confirmation if requested by the agency. This amendment memorializes the long-standing OCCC licensing procedure to obtain bank confirmations if necessary to confirm account balance information with financial institutions of applicants.

Section 85.202(a)(2)(A)(iv) relates to the fingerprints of individuals who have

previously been licensed by the agency and who are principal parties of currently licensed entities. Adopted amendments in clause (iv) update the fingerprinting requirements and clarify when applicants will not need to resubmit if acceptable fingerprints are on file. Upon request, previously licensed individuals and principal parties may need to submit a new set of fingerprints due to unsubcription requirements from the Texas Department of Public Safety. The last sentence in clause (iv) provides clearer guidance to applicants and will enhance the agency's ability to fulfill its criminal background check requirements.

Moreover, the adopted amendments to §85.202(a)(2)(A)(iv) updating fingerprinting correspond to changes approved by the commission in the OCCC's other licensed areas and will provide consistency across regulated entities.

Regarding the entity documents under §85.202(a)(2)(B), several adopted amendments update the documents required for new applications, increasing the efficiency of the licensing process. The provisions under former (a)(2)(C)(ii)(II) and (III), and (a)(2)(C)(iv)(II) and (III) required that applicants provide copies of the relevant portions of bylaws, operating agreements, and minutes addressing the number and election of officers and directors. The agency recognizes that these documents are only necessary in limited situations. Thus, these provisions have been shifted to the end of each respective clause and language has been added to reflect that such documents should only be provided upon request. In addition, the requirements in §85.202(a)(2)(C)(ii)(IV)(-a-) and (a)(2)(C)(iv)(IV)(-a-) have been deleted. These provisions required applicants to provide minutes electing the statutory agent.

The agency has streamlined the process for verification of the registered agent by certification from the secretary of the company.

Further, these adopted changes align the rule with the OCCC's online portal, listing the required documents first, removing documents no longer required, and listing last documents to only be provided "if requested" by the agency. While uncommon, the "if requested" documents may be necessary to obtain missing information or resolve conflicts that may arise when determining the appropriate number and identity of an applicant's current officers and directors required for the owners and principal parties section of the application, or to address other discrepancies with business filings.

Parallel changes to streamline the required entity documents are adopted for corporations in §85.202(a)(2)(C)(ii), and for limited liability companies in §85.202(a)(2)(C)(iv).

In §85.203, concerning Relocation, adopted amendments continue use of the agency's acronym and update licensing terminology. Additionally, the adopted amendments to §85.205(e)(4), concerning Transfer of License; New License Application on Transfer of Ownership, provide corresponding revisions to licensing terminology.

Section 85.206, concerning Processing of Application, contains several adopted amendments to ensure consistency with current agency procedure and make technical corrections. First, the former terminology related to "acceptance" was intended to address paper applications that did not contain enough information to trigger initial processing. With the online portal, the

majority of pawnshop license applications are submitted electronically, and there is no longer a need to distinguish application "acceptance" as opposed to "completion." The adopted amendments delete "acceptance" terminology and focus on completion, as built into the online portal to improve the efficiency of application processing.

Second, the adopted amendments to §85.206(e) enhance the OCCC's ability to more quickly deliver the required notice of application and protest procedures when a competing application has been filed in an existing pawnshop's county. Section 371.057 of the Texas Finance Code requires that these notices be "given" to existing pawnshops when a competing application is filed. Adopted new §85.206(e)(1)-(2) will allow the OCCC to e-mail the notice of application and protest procedures to the master file e-mail address on file. If the OCCC receives notice that the e-mail is not deliverable or if an existing licensee does not have a master file e-mail address, the notice will be sent by first class mail.

And third, the remaining amendments adopted in §85.206 continue use of the agency's acronym and update an internal reference to the criminal history rule in §85.601, which was consolidated from two rules into one last year.

The following two sections include adopted amendments to make technical corrections. In §85.211, concerning Fees, an internal reference has been updated to refer to the appropriate subsection.

In §85.212, concerning Application and Notices as Public Records, the agency name for the Texas State Library and Archives Commission (TSLAC) has been corrected. A

parallel change regarding the reference to TSLAC has also been made in §85.307, which is the public records rule for pawnshop employees.

In §85.301, concerning Filing of Application (for pawnshop employees), adopted amendments continue use of the agency's acronym, update licensing terminology, and make technical corrections.

The adopted amendments to §85.304, concerning Processing of Application (for pawnshop employees), provide parallel changes to those outlined in the discussion regarding the corresponding rule for pawnshops, §85.206. The amendments to §85.304 remove "acceptance" terminology, use the agency's acronym, and update a reference to the criminal history rule.

In §85.402(c), concerning Recordkeeping, an adopted amendment streamlines the compliance file requirements to align with examinations issued through the online portal. An additional amendment removes the requirement to maintain compliance bulletins, as these are now posted on the OCCC's website.

In §85.405(a)(6)(A), concerning Pawn Transaction, an adopted amendment updates a citation to the Texas Business and Commerce Code. The cited section was redesignated to a different section number by the 2017 legislature.

The adopted amendments to §85.421, concerning Consumer Information, provide modernization. While pawnshops may request additional copies of consumer brochures from the agency, the amendment clarifies that licensees may print additional copies of these brochures, as available on the OCCC's website.

In §85.502, concerning Annual Report, the adopted amendments align this reporting rule with those in the agency's other regulated areas. The amendments streamline the language to more simply state compliance with posted agency instructions. Additionally, the July 31st due date for pawnshop annual reports has been added to the introductory paragraph.

In §85.601(d)(2), concerning Denial, Suspension, or Revocation Based on Criminal History, an adopted amendment corrects a citation to the Texas Finance Code.

The adopted amendments to §85.603, concerning Reinstatement of an Expired Pawnshop License, include changes to update terminology, including use of the agency's acronym.

Section 85.604, concerning Revocation or Suspension of Pawnshop License or Pawnshop Employee Licensee, contains several adopted amendments to ensure consistency with current agency procedures and make technical corrections. The primary changes update agency enforcement procedures and terminology.

As a result of the adopted amendments, §85.604 will better reflect the enforcement actions available to the agency under the Texas Finance Code: injunction, administrative penalty, suspension, and revocation. Accordingly, the title of §85.604 has been amended, replacing the phrase "Revocation or Suspension of" with the phrase "Enforcement Action Against" to more accurately describe the agency's authority. Thus, the full amended title of §85.604 as maintained in this adoption will be: "Enforcement Action Against Pawnshop License or Pawnshop Employee License."

In general, the agency is moving away from an approach where every violation results in an immediate administrative penalty. Once a violation is referred to the legal department, the agency's first response will often be an injunction with no penalties. An injunction is an order issued by the commissioner that directs the person to either take some action required by law or to refrain from action prohibited by law. Thus, the adopted amendments to §85.604 include several added references to injunctions.

For many first-time violations, the agency believes that this enforcement posture will better allow licensees to bring their practices into compliance without the added burden of paying an administrative penalty.

Should an administrative penalty be commensurate with the violation in question, the Texas Finance Code provides the OCCC with discretion in determining the amount of the penalty. The OCCC considers the following factors when determining the amount of an administrative penalty, as provided by Texas Finance Code, §14.252: "(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act; (2) the extent of actual or potential harm to a third party; (3) the history of violations; (4) the amount necessary to deter future violations; (5) efforts to correct the violation; and (6) any other matter that justice may require."

Additionally, before a violation is referred for a potential enforcement action, an applicant or licensee will generally have opportunities to resolve the issue through the agency's other regulatory processes. For example, many licensing deficiencies are resolved when the licensing department requests and receives additional information from an applicant. The OCCC's consumer

assistance staff resolves numerous complaints through communications with licensee compliance officers. Many violations are also resolved as part of the confidential investigation or examination process.

The commission received one comment that refers to the proposed amendments in §85.604. The commenter does not provide any suggestions or recommended changes to the rule text as proposed. Regarding the amendments in §85.604, the commenter states: "No statutory citation is provided for the changes updating enforcement procedures."

Section 14.208(a) of the Texas Finance Code authorizes injunctions against pawnshops and pawnshop employees. Section 14.208(a) states: "If the commissioner has reasonable cause to believe that a person is violating a statute to which this chapter applies, the commissioner, in addition to any other authorized action, may issue an order to cease and desist from the violation or an order to take affirmation action, or both, to enforce compliance." The term "injunction" refers to the order to cease and desist, take affirmative action, or do both, as authorized under Section 14.208(a). Sections 14.208(c), 14.251, and 371.303 of the Texas Finance Code authorize administrative penalties against pawnshops and pawnshop employees. Section 371.251 of the Texas Finance Code authorizes suspension or revocation of a pawnshop license, and Section 371.255 of the Texas Finance Code authorizes suspension or revocation of a pawnshop employee license.

The commenter also expresses concerns about the public nature of enforcement orders (as opposed to confidential examination instructions), and requests additional

information on the OCCC's policies and procedures for handling enforcement actions. For example, the commenter asks whether referrals from the examination department to the legal department will automatically result in an injunction. These requests are outside the scope of the rule amendments in §85.604(a), which simply restate the types of enforcement actions authorized under Chapters 14 and 371 of the Texas Finance Code. The OCCC intends to address the commenter's requests related to agency policies and procedures outside the rulemaking process. The proposed text of §85.604 will be maintained for this adoption.

The remaining amendments adopted in §85.604 continue use of the agency's acronym and update an ATF form number referenced in subsection (b)(4).

In §85.606, concerning Surrender of License, adopted amendments to subsection (b) update terminology by replacing the term "administrative action" with the term "enforcement action." The term "enforcement action" is intended to avoid confusion with the more specific term "administrative penalty."

Adopted amendments related to agency enforcement procedures are also contained in §85.701, concerning Failure to Timely File a Pawnshop Employee Application, and in §85.702, concerning Accepting Prohibited Merchandise. The amendments to both of these rules are consistent with those outlined in the discussion of §85.604.

In particular, the adopted amendments to §85.701(a) maintain the approach that a pawnshop employee application will usually not be denied solely because it has been filed late. If no other ground is present upon which to deny the application, the agency will

typically grant the pawnshop employee license, along with an appropriate enforcement action listed in subsection (b).

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 February 1, 2019.

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

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

*Title 7, Texas Administrative Code*

*Chapter 85. Pawnshops and Crafted Precious Metal Dealers*

*Subchapter A. Rules of Operation for Pawnshops*

*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 [~~commissioner~~] at the date of filing and in accordance with the OCCC's [~~commissioner's~~] instructions. The OCCC [~~commissioner~~] 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 [~~Pawnshop 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 [~~will not be accepted~~] if the address or the full legal property description has not yet been determined or the application is for an inactive license.

(ii) 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.

~~[(I) If the applicant is a proprietor, the owner must sign.]~~

~~[(II) If the applicant is a partnership, one general partner must sign.]~~

~~[(III) If the applicant is a corporation, an authorized officer must sign.]~~

~~[(IV) If the applicant is a limited liability company, an authorized member or manager must sign.]~~

~~[(V) If the applicant is a trust or estate, the trustee or executor, as appropriate, must sign.]~~

(B) ~~[Disclosure of]~~ Owners and principal parties ~~[Principal Parties]~~.

(i) - (vii) (No change.)

(C) Disclosure questions. ~~[Application Questionnaire]~~. All questions must be answered. Questions requiring a "yes" answer must be accompanied by an explanatory statement and any appropriate documentation requested.

(D) Registered agent. The registered agent must be provided by each applicant. ~~[Appointment of Statutory Agent and Consent to Service. Each applicant must appoint a statutory agent and consent to service to that agent.]~~The registered ~~[statutory]~~ agent is the person or entity to whom any legal notice may be delivered. The agent must be a Texas resident and list an address for legal service. If the registered

~~[statutory]~~ agent is a natural person, the address must be a different ~~[physical residential]~~ address than the licensed location address. If the applicant is a corporation or a limited liability company, the registered ~~[statutory]~~ agent should be the registered agent on file with the Texas Secretary of State. If the registered ~~[statutory]~~ agent is not the same as the registered agent filed with the Texas Secretary of State, then the applicant must submit certification from the secretary of the company identifying the registered agent ~~[certified minutes appointing the new agent]~~.

(E) Personal affidavit ~~[Affidavit]~~. Each individual meeting the definition of "principal party" as defined in §85.102 of this title (relating to Definitions) must provide a personal affidavit. All requested information must be provided.

(F) Personal questionnaire ~~[Questionnaire]~~. Each individual meeting the definition of "principal party" as defined in §85.102 of this title must provide a personal questionnaire. Each question must be answered. If any question, except question 1, is answered "yes," an explanation must be provided.

(G) Employment history ~~[History]~~. Each individual meeting the definition of "principal party" as defined in §85.102 of this title must provide an employment history. Each principal party should provide a continuous 10-year history, accounting for time spent as a student, unemployed, or retired. The employment history must also include the individual's association with the entity applying for the license.

(H) Statement of experience ~~[Experience]~~. Each applicant for a new

license should provide a statement setting forth the details of the applicant's prior experience in the pawn or credit-granting business. If the applicant or its principal parties do not have significant experience in the pawnshop business as planned for the prospective licensee, the applicant must provide a written statement explaining the applicant's relevant background, why the commissioner should find that the applicant has the requisite experience, and how the applicant plans to obtain the necessary knowledge to operate lawfully and fairly.

(I) Financial statement and supporting financial information [~~Statement and Supporting Financial Information~~].

(i) All entity types. The financial statement must be dated no earlier than 60 days prior to the date of application submission. Applicants may also submit audited financial statements dated within one year prior to the application date in lieu of completing the supporting financial information [~~Supporting Financial Information~~]. All financial statements must be certified as true, correct, and complete. If requested, a bank confirmation to confirm account balance information with financial institutions must be submitted. All financial statements must reflect the net assets as defined in the Texas Pawnshop Act, §371.003 of at least the lesser of the following amounts:

(I) As required in the Texas Pawnshop Act, §371.072(a), \$150,000; or

(II) The amount required by the Texas Pawnshop Act, §371.072(b) as the license existed or should have existed under the law and rules in effect on August 31, 1999. A change in net asset requirement

occurs with respect to any change of ownership or other event causing a change in the net asset requirement that may have occurred prior to September 1, 1999. The change in the net asset requirement is effective as of the date of change of ownership or other event causing the change of the net asset requirement.

(ii) Sole proprietorships. Sole proprietors must complete all sections of the financial statement and supporting financial information [~~Financial Statement and Supporting Financial Information~~], or provide a personal financial statement that contains all of the same information requested by the financial statement and supporting financial information [~~Financial Statement and Supporting Financial Information~~]. The financial statement and supporting financial information [~~Financial Statement and Supporting Financial Information~~] must be as of the same date.

(iii) Partnerships. A balance sheet for the partnership itself as well as each general partner must be submitted. In addition, the information requested in the supporting financial information [~~Supporting Financial Information~~] must be submitted for the partnership itself and each general partner. All of the balance sheets and supporting financial information [~~Supporting Financial Information~~] documents for the partnership and all general partners must be as of the same date.

(iv) Corporations and limited liability companies. Corporations and limited liability companies must file a balance sheet that complies with generally accepted accounting principles (GAAP). The information requested in the supporting financial information [~~Supporting Financial Information~~] must be submitted. The balance

sheet and supporting financial information [~~Supporting Financial Information~~] must be as of the same date. Financial statements are generally not required of related parties, but may be required by the commissioner if the commissioner believes they are relevant. The financial information for the corporation or limited liability company applicant should contain no personal financial information.

(v) Trusts and estates. Trusts and estates must file a balance sheet that complies with generally accepted accounting principles (GAAP). The information requested in the supporting financial information [~~Supporting Financial Information~~] must be submitted. The balance sheet and supporting financial information [~~Supporting Financial Information~~] must be as of the same date. Financial statements are generally not required of related parties, but may be required by the commissioner if the commissioner believes they are relevant. The financial information for the trust or estate applicant should contain no personal financial information.

(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 [~~Disclosure of 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 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) Entity documents.

(i) Partnerships. A partnership applicant must submit a complete and executed copy of the partnership agreement. This copy must be signed and dated by all partners. If the applicant is a limited partnership or a limited liability partnership, provide evidence of filing with the Texas Secretary of State and a certificate of good standing from the Texas Comptroller of Public Accounts.

(ii) Corporations. A corporate applicant, domestic or foreign, must provide the following documents:

(I) a complete copy of the articles of incorporation and any amendments;

(II) a certification from the secretary of the corporation identifying the current officers and directors as listed in the owners and principal parties section of the application [~~a copy of the relevant portions of the bylaws addressing the required number of directors and the required officer positions for the corporation~~];

(III) a certificate of good standing from the Texas Comptroller of Public Accounts [~~a copy of the minutes of corporate meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties, or a certification from the secretary of the corporation identifying the current officers and directors as listed on the Disclosure of Owners and Principal Parties~~];

(IV) if the registered agent is not the same as the one filed with the Texas Secretary of State, a certification from the secretary of the corporation identifying the registered agent; [~~if the statutory agent is not~~

~~the same as the registered agent filed with the Texas Secretary of State~~];

~~[(a) a copy of the minutes of corporate meetings that record the election of the statutory agent; or]~~

~~[(b) a certification from the secretary of the corporation identifying the statutory agent; and]~~

(V) if requested, a copy of the relevant portions of the bylaws addressing the required number of directors and the required officer positions for the corporation; and

(VI) if requested, a copy of the minutes of corporate meetings that record the election of all current officers and directors as listed in the owners and principal parties section of the application [~~a certificate of good standing from the Texas Comptroller of Public Accounts~~].

(iii) Publicly held corporations. In addition to the items required for corporations, a publicly held corporation must file the most recent 10K or 10Q for the applicant or for the parent company.

(iv) Limited liability companies. A limited liability company applicant, domestic or foreign, must provide the following documents:

(I) a complete copy of the articles of organization;

(II) a certification from the secretary of the company identifying the current officers and directors as listed in the owners and principal parties section of the application [~~a copy of the relevant portions of~~

~~the operating agreement or regulations addressing responsibility for operations];~~

(III) a certificate of good standing from the Texas Comptroller of Public Accounts ~~[a copy of the minutes of company meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties, or a certification from the secretary of the corporation identifying the current officers and directors as listed on the Disclosure of Owners and Principal Parties];~~

(IV) if the registered agent is not the same as the one filed with the Texas Secretary of State, a certification from the secretary of the corporation identifying the registered agent; ~~[if the statutory agent is not the same as the registered agent filed with the Texas Secretary of State:]~~

~~[(a) a copy of the minutes of company meetings that record the election of the statutory agent; or]~~

~~[(b) a certification from the secretary of the company identifying the statutory agent; and]~~

(V) if requested, a copy of the relevant portions of the operating agreement or regulations addressing responsibility for operations; and

(VI) if requested, a copy of the minutes of company meetings that record the election of all current officers and directors a listed in the owners and principal parties section of the application ~~[a certificate of good standing from the Texas Comptroller of Public Accounts].~~

(v) - (viii) (No change.)

(C) - (H) (No change.)

(b) Subsequent applications. If the applicant is currently licensed and filing an application for a new location, the applicant must provide the information that is unique to the new location including the application for license, disclosure questions, owners and principal parties, a new financial statement ~~[Application for License, Application Questionnaire, Disclosure of Owners and Principal Parties, a new Financial Statement],~~ a map of the area where the proposed license will be situated as provided in subsection (a)(2)(C) of this section, a certificate of occupancy or other evidence that the operation of a pawnshop is permitted at the proposed site, a lease agreement or proof of ownership, and proof of general liability and fire insurance as provided in subsection (a)(2)(G) of this section. Other information required by this section need not be filed if the information on file with the OCCC is current and valid.

(c) (No change.)

§85.203. *Relocation.*

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

(c) Filing requirements. An application for relocation must be submitted in a format prescribed by the OCCC ~~[commissioner]~~ at the date of filing and in accordance with the OCCC's ~~[commissioner's]~~ instructions. The OCCC ~~[commissioner]~~ may accept the use of prescribed alternative formats in order to accept approved electronic submissions. The application for relocation must include the following:

(1) Application for relocation ~~[Relocation]~~.

(2) Financial statement and supporting financial information [~~Statement and Supporting Financial Information~~]. If the license requested for relocation includes the activation of a license that is inactive at the date of the request for relocation, a new financial statement [~~Financial Statement~~] is required. The instructions in §85.202 of this title (relating to Filing of New Application) are applicable to this filing.

(3) (No change.)

(d) - (g) (No change.)

*§85.205. Transfer of License; New License Application on Transfer of Ownership.*

(a) - (d) (No change.)

(e) Application requirements.

(1) Generally. This subsection describes the application requirements for a license transfer application or a new license application on transfer of ownership. A transferee must submit the application in a format prescribed by the OCCC. The OCCC may accept prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. The transferee must pay appropriate fees in connection with the application.

(2) Documentation of transfer of ownership. The application must include documentation evidencing the transfer of ownership. The documentation should include one or more of the following:

(A) a copy of the asset purchase agreement when only the assets have been purchased;

(B) a copy of the purchase agreement or other evidence relating to the acquisition of the equity interest of a licensee that has been purchased or otherwise acquired;

(C) any document that transferred ownership by gift, devise, or descent, such as a probated will or a court order; or

(D) any other documentation evidencing the transfer event.

(3) Application information for new licensee. If the transferee does not hold a pawnshop license at the time of the application, then the application must include the information required for new license applications under §85.202 of this title (relating to Filing of New Application). The instructions in §85.202 of this title apply to these filings.

(4) Application information for transferee that holds a license. If the transferee holds a pawnshop license at the time of the application, then the application must include amendments to the transferee's original license application describing the information that is unique to the transfer event, including the application for license, disclosure questions, owners and principal parties, a new financial statement [~~Application for Pawnshop License, Application Questionnaire, Disclosure of Owners and Principal Parties, a new Financial Statement~~], and a lease agreement or proof of ownership, as provided in §85.202 of this title. The instructions in §85.202 of this title apply to these filings. Other information required by §85.202 of this title need not be filed if the information on file with the OCCC is current and valid.

(5) (No change.)

(f) - (h) (No change.)

*§85.206. Processing of Application.*

(a) Initial review. A response to an incomplete application will ordinarily be made within 14 calendar days of receipt stating that the application is incomplete and specifying the information required for completion [~~acceptance~~].

(b) Application requirements [~~acceptance~~]. An application must contain [~~will not be accepted until it contains the appropriate fees and substantially~~] all of the items required in accordance with §85.202 of this title (relating to Filing of New Application), §85.203 of this title (relating to Relocation), or §85.205 of this title (relating to Transfer of License; New License Application on Transfer of Ownership) as appropriate.

(c) Complete application. An application is complete when:

(1) the application conforms to the statutes, rules, and published instructions;

(2) all fees have been paid; and

(3) all requests for additional information have been satisfied.

(d) Competing application. An application in a county with a population of 250,000 or more will be acted upon based on the chronological order in which the application was accepted pursuant to subsection (b) of this section. A competing application may not be granted until a final ruling on any preceding competing application has been made.

(e) Notice of application and protest procedures. A notice of the application will be sent [~~mailed~~] to each pawnshop licensee in the county of the proposed location in accordance with this subsection. The notice will state a date and time, 10 working days following the date of notice, by which any interested person may request a hearing. Any pawnbroker who believes that the applicant's proposed pawnshop will significantly affect that pawnbroker's current business may submit a sworn petition to be admitted as a party in opposition to an application for a new or relocated pawnshop. The sworn petition must contain facts relevant to the eligibility of the applicant and how the protesting pawnshop licensee will be affected by the approving of the proposed application. The commissioner will admit a protesting pawnshop licensee as a party if the protestor can show that it would be significantly affected by the granting of the license and if the protestor can show facts relevant to the eligibility of the applicant. A copy of the sworn petition will be delivered to the applicant and certification of that delivery will be made to the commissioner at the time of filing. A person may appear, present evidence, and be heard on a license only if the person has filed a sworn petition and been accepted as a party by the commissioner.

(1) Notice of application delivered to master file e-mail address. If a pawnshop licensee has provided a master file e-mail address to the OCCC, then the OCCC will send any notice of application applicable to the pawnshop licensee to the master file e-mail address on file for the pawnshop licensee.

(2) Notice of application delivered to master file mailing address. If a pawnshop licensee has not provided a master file e-mail address to the OCCC or the OCCC receives

notice that attempts to send a notice of application via e-mail have been returned as undeliverable, then the OCCC will send any notice of application applicable to the pawnshop licensee via first class mail to the master file mailing address on file for the pawnshop licensee.

(f) Decision on application. The OCCC [~~commissioner~~] may approve or deny an application.

(1) Approval. The OCCC [~~commissioner~~] 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 [Effect of Criminal History Information on Applicants and Licensees] and the applicant's conduct and activities as described in §85.602 of this title (relating to Crimes Directly Related to Fitness for License; Mitigating Factors)).

(ii) - (vi) (No change.)

(B) (No change.)

(2) (No change.)

(g) (No change.)

(h) Processing time. The OCCC [~~commissioner~~] will ordinarily approve or deny a license application within 60 days

after the date the application is complete. The OCCC [~~commissioner~~] may take more time if previous competing applications are on file, the placement of a reinstated expired pawnshop license would have an impact on the approval of an application, or where other good cause exists as defined by Texas Government Code, §2005.004 for exceeding the established time periods in this section.

*§85.211. Fees.*

(a) New licenses. A \$500 nonrefundable investigation fee is assessed each time an application for a new license is filed. The applicant is also required to pay the initial assessment fee required by subsection (e)(5) [~~(e)(5)~~] of this section. This assessment fee will be refunded if the application is not approved.

(b) Subsequent licenses. A \$250 nonrefundable investigation fee is assessed each time an application for an additional license of an existing licensee is filed or if the application involves substantially identical principals and owners of a licensed pawnshop. The applicant is also required to pay the initial assessment fee required by subsection (e)(5) [~~(e)(5)~~] of this section. This assessment fee will be refunded if the application is not approved.

(c) - (j) (No change.)

*§85.212. Application and Notices as Public Records.*

Once a license application or notice is filed with the OCCC, it becomes a "state record" under Texas Government Code, §441.180(11), and "public information" under Government Code, §552.002. Under Government Code, §§441.190, 441.191 and 552.004, the original applications and notices must be preserved as "state records" and

"public information" unless destroyed with the approval of the director and librarian of the Texas State Library and Archives Commission [~~State Archives and Library Commission~~] under Government Code, §441.187. Under Government Code, §441.191, the OCCC may not return any original documents associated with a pawnshop license application or notice to the applicant or licensee. An individual may request copies of a state record under the authority of the Texas Public Information Act, Government Code, Chapter 552.

*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 [~~commissioner~~] at the date of filing and in accordance with the OCCC's [~~commissioner's~~] instructions. [~~The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions.~~] All questions must be answered. Appropriate fees must be filed with the application, and the application must include the following:

(1) Application [~~Form~~].

(A) Identifying information. The application must contain complete and accurate information identifying the applicant.

(B) Residence information. The application must report a continuous five-year residential history.

(C) Employment information. The application must report a continuous five-year employment history. If an applicant

was unemployed for a period of time or was enrolled as a student during a period of time, the application must state that fact.

(D) Background and history. Any response about an employee's background and history must be true, correct, and complete. Additional information as required must be provided with the application.

(E) Signature. The applicant must sign and affirm the application as true, correct, and complete.

(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 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.

*§85.304. Processing of Application.*

(a) Application requirements [acceptance]. An application for a pawnshop employee license must contain [will not be accepted until it contains the appropriate fees and] the items required in accordance with §85.301 of this title (relating to Filing of New Application).

(b) Complete application. An application is complete when:

(1) the application conforms to the rules and published instructions;

(2) all fees have been paid; and

(3) all requests for additional information have been satisfied.

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

(1) Approval. The OCCC [commissioner] 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 [Effect of Criminal History Information on Applicants and Licensees]) and the applicant's conduct and activities as described in §85.602 of this title (relating to Crimes

~~Directly Related to Fitness for License; Mitigating Factors)]~~.

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

(C) Character and fitness to warrant belief that pawnshop will be operated lawfully and fairly. The applicant's overall background and 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) - (e) (No change.)

(f) Processing time. The OCCC [commissioner] will ordinarily approve or deny a license application within 60 days after the date the application is complete. The OCCC [commissioner] may take more time where good cause exists, as defined by Texas Government Code, §2005.004.

*§85.307. Application and Notices as Public Records.*

Once a license application or notice is filed with the OCCC, it becomes a "state record" under Texas Government Code, §441.180(11), and "public information" under Government Code, §552.002. Under Government Code, §§441.190, 441.191 and 552.004, the original applications and notices must be preserved as "state records" and "public information" unless destroyed with the approval of the director and librarian of the Texas State Library and Archives Commission [State Archives and Library Commission] under Government Code, §441.187. Under Government Code,

§441.191, the OCCC may not return any original documents associated with a pawnshop employee license application or notice to the applicant or licensee. An individual may request copies of a state record under the authority of the Texas Public Information Act, Government Code, Chapter 552.

*Division 4. Operation of Pawnshops*

*§85.402. Recordkeeping.*

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

(c) Compliance file. A separate file must be maintained at each licensed location for all communications from the OCCC and for copies of correspondence and reports addressed to the OCCC. This file must include, at a minimum, electronic or paper copies of the current Texas Finance Code, Chapter 371, the last three examination reports, correspondence relating to compliance[~~, compliance bulletins~~] issued in the last two years, and current rules issued by the OCCC [commissioner]. A licensee will be considered to have maintained copies of the Texas Finance Code and current rules by having access to the websites containing the official versions of the current Texas Finance Code and the current Texas Administrative Code. A licensee will be considered to have maintained copies of some or all of the last three examination reports if those reports were issued electronically by the OCCC.

(d) - (h) (No change.)

*§85.405. Pawn Transaction.*

(a) Pawn Ticket.

(1) - (5) (No change.)

(6) Identification of pledgor or seller.

(A) Proper identification. The pledgor must present a proper form of identification at the time of the pawn transaction. For purposes of this paragraph, any form of identification found in Texas Finance Code, §371.174(b) that is either current or has not been expired for more than one year will be considered acceptable. A Texas handgun license issued under Texas Government Code, Chapter 411 is an acceptable form of identification, as provided by Texas Business and Commerce Code, §507.001(a) [~~§506.001(a)~~]. A pawnbroker is not required to take a photograph of any pledgor or seller for purposes of identification.

(B) Prohibited identification. The following forms of identification are not acceptable for the identification of a pledgor or seller:

(i) a driver's license issued by a foreign country;

(ii) a state identification card issued by an entity other than the Texas Department of Public Safety or comparable agency in another state;

(iii) an inmate or parolee identification card; and

(iv) a social security card.

(7) (No change.)

(b) - (h) (No change.)

*§85.421. Consumer Information.*

(a) Consumer education. 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.)

*Division 5. Inspections and Examination*

*§85.502. Annual Report.*

As part of the examination process, a report must be filed in conjunction with the pawnshop license renewal providing certain information in a format prescribed by the OCCC and must comply with all instructions relating to submitting the report. [~~commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions.~~] These submissions are collected under the examination authority of Texas Finance Code, §371.201, and are confidential under the provisions of Texas Finance Code, §371.206. The OCCC [~~commissioner~~] will publish an aggregated report. A report for each licensed location must be filed by July 31st for the period of January 1st to December 31st of the preceding year and include:

(1) Number of pawn loans made during the year;

(2) Amount advanced in connection with pawn loans made during the year;

(3) Number of pawn loans outstanding on the December 31st

immediately preceding the due date of the report; and

(4) Amount of pawn loans outstanding on the December 31st immediately preceding the due date of the report.

*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) [~~§371.102(b)~~].

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

*§85.603. Reinstatement of an Expired Pawnshop License.*

If a pawnshop license expires as prescribed by §85.104 of this title (relating to 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 [~~statutory~~] 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 [~~administrative~~] action by the

OCCC [~~of the commissioner~~] 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* [~~Revocation or Suspension of~~] *Pawnshop License or Pawnshop Employee License.*

(a) Generally. For [~~The commissioner may initiate an administrative action for~~] the reasons in subsection (b) of this section, the OCCC may take one or more of the following enforcement actions under Texas Finance Code, Chapters 14 and 371 [~~and assess any or all of the penalties in paragraphs (1) and (2) of this subsection~~]:

(1) an injunction [~~revoke or suspend a license~~];

(2) [~~assess~~] an administrative penalty; [~~;~~]

(3) a suspension; or

(4) a revocation.

(b) Basis for enforcement [~~administrative~~] actions.

(1) Eligibility. A pawnbroker or pawnshop employee who fails to maintain eligibility under the Texas Pawnshop Act and the administrative rules promulgated by the OCCC [~~commissioner~~] is subject to an injunction, an administrative penalty, suspension or revocation.

(2) Character and fitness. A pawnbroker or a pawnshop employee must report within 30 calendar days to the OCCC

[~~commissioner~~] knowledge of any arrest, charge, indictment, or conviction of any of the following filed with the OCCC:

(A) a principal party named on a pawnshop application;

(B) a principal party named on a pawnshop license;

(C) an individual named on a pawnshop employee application; or

(D) an individual named on a pawnshop employee license.

(3) Traffic violations. Traffic violations and any action previously reported to the OCCC [~~commissioner~~] are not required to be reported.

(4) ATF investigations and actions. Any known investigation of potential violations by the pawnbroker of federal laws or rules relating to firearms must be reported to the OCCC [~~commissioner~~], but this does not include compliance inspections by the United States Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). A notice of revocation, suspension, or imposition of civil fine issued by ATF against the federal firearms license must also be reported. Reports must include notices issued on ATF Form 4500 and ATF Form 5300.13 [~~4501~~] as provided by 27 C.F.R. §478.73 and §478.74, and must be made within three business days of receipt of the notice.

(5) Failure to comply with the law. A pawnbroker or pawnshop employee who fails to comply with this subchapter or the provisions of Texas Finance Code, Chapter 14 or Chapter 371, is subject to an injunction, suspension, revocation, or an administrative penalty.

(6) Accepting stolen property. A pawnbroker or pawnshop employee who knowingly or without exercise of due care accepts stolen property or accepts property which has been represented to be stolen without reporting it to law enforcement may be subject to an injunction, suspension, revocation, or an administrative penalty. A pawnbroker or pawnshop employee who has personal knowledge of a pawnbroker or a pawnshop employee accepting stolen property without reporting it to law enforcement is subject to an injunction, suspension, revocation, or an administrative penalty.

(7) Failure to comply with OCCC [~~commissioner's~~] order. A pawnbroker or pawnshop employee who fails to comply with an OCCC order [~~of the commissioner~~] is subject to an injunction, suspension, revocation, or an administrative penalty.

(8) Responsibility for compliance. Any licensed pawnbroker or pawnshop employee who knowingly or without exercise of due care violates the purposes of Texas Finance Code, Chapter 371, or this subchapter is subject to an injunction, suspension, revocation, or an administrative penalty.

(9) Responsibility for acts of others. Any person who holds a pawnshop license will be responsible for the acts of its officers, directors, employees, and agents in the conduct of the pawnshop business.

*§85.606. Surrender of License.*

(a) Winding down. When a licensee surrenders its license or ceases business operations, the licensee must comply with §85.605 of this title (relating to Redemption

of Goods After License Revocation or Suspension).

(b) Surrendering to avoid enforcement ~~[administrative]~~ action. A licensee may not surrender a license after an enforcement ~~[administrative]~~ action has been initiated without the written agreement of the OCCC.

*Division 7. Enforcement; Penalties*

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

(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 ~~[commissioner]~~ find that no other ground is present on which to base a denial of the license, the OCCC ~~[commissioner]~~ may grant the license and take an enforcement action as provided ~~[with an agreed suspension as set out]~~ in subsection (b) of this section.

(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 pawnshop and the pawnshop employee to one or more of the following enforcement actions under Texas Finance Code, Chapters 14 and 371: [Agreed suspension. As stated in subsection (a) of this section, if the commissioner finds that no grounds other than failure to timely file is present, the parties may agree upon one of the following options in lieu of denial:]

(1) an injunction ~~[if the applicant has not previously held a pawnshop employee~~

~~license, the application will be granted and then immediately suspended for the number of days equal to 20% of the total number of days past the 75th calendar day which the applicant worked without a license];~~

(2) an administrative penalty ~~[if the applicant has previously held a pawnshop employee license, the application will be granted and then immediately suspended for the number of days equal to 30% of the total number of days past the 75th calendar day which the applicant worked without a license];~~

(3) a suspension ~~[in cases where the pawnshop accepts responsibility for failure to timely file, and the suspension calculated under paragraph (1) or (2) of this subsection results in a suspension period in excess of 14 days, the pawnshop may pay \$30 per suspension day to reduce the suspension period];~~ or

(4) a revocation ~~[another option agreeable to all parties].~~

~~[(e) Suspension calculations. There will be no suspension of less than one complete day. All calculations resulting in fractions will be rounded up to the next full day.]~~

(c) ~~[(d)]~~ Pattern of violations. A pattern of violations may result in an additional enforcement ~~[administrative]~~ action~~[;]~~ or denial ~~[; or the forfeiture of the options in this section].~~

*§85.702. Accepting Prohibited Merchandise.*

(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. ~~[Should the commissioner find that no other ground is present on which to base a revocation of the license, the commissioner may agree to a suspension or an administrative penalty as set out in subsections (b) and (c) of this section.]~~

(b) Enforcement actions. The acceptance of prohibited merchandise ~~[Individual violations. A pawnbroker or a pawnshop employee found to have taken an item]~~ in violation of §85.418(a)(1) or (3) of this title (relating to Acceptance of Goods), ~~[is subject to the following penalty:]~~ may subject the pawnshop and pawnshop employee to one or more of the following enforcement actions under Texas Finance Code, Chapters 14 and 371:

(1) an injunction; ~~[If the violation results from the action of ownership or management, the pawnshop license will be suspended for one day per each item found on premises or the pawnshop may pay an administrative penalty per each item found on premises of:]~~

~~[(A) \$100 for the first violation;]~~

~~[(B) \$200 for the second violation subsequent to the date the first violation is cited;]~~

~~[(C) \$500 for a violation subsequent to the date the second violation is cited.]~~

(2) an administrative penalty; ~~[If the violation results from the action of a pawnshop employee, the employee license will be suspended for one day per each item found on premises or the pawnshop employee may pay an administrative penalty of \$50 for each item found on premises.]~~

(3) a suspension; or

(4) a revocation.

(c) Multiple violations. Multiple violations may result in an additional enforcement action. ~~[A pawnshop that is found to have more than 10 violations of any of the provisions of §85.418(a)(1) and (3) of this title in a two-year period is subject to the following penalties in addition to the penalties of subsection (b) of this section:]~~

~~[(1) suspension of three days; or]~~

~~[(2) in lieu of suspension, an administrative penalty of \$1,000 for each day of suspension.]~~

~~[(d) Alternative resolution. If a pattern of violations indicates a lack of the management's affirmative duty to supervise its employees to prohibit violations of §85.418(a)(1) and (3) of this title, then forfeiture of the options in subsections (b) and (c) of this section will result. If the OCCC has independent proof of violations of §85.418 of this title, the pawnbroker or pawnshop employee may be subject to stronger administrative actions than required by this section.]~~

### **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 December 14, 2018.

Laurie B. Hobbs  
Assistant General Counsel  
Office of Consumer Credit Commissioner