

BILL ANALYSIS

C.S.H.B. 2187
By: Smith
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Recent reports indicate that Texas, along with most states nationwide, is experiencing an increase in thefts of metals, such as copper, bronze, and brass. Losses from the theft of these regulated metals include not only the value of the stolen metal but also the losses resulting from damage caused during the extraction of the metal from property and equipment. Current law regulates the sale of certain metals and materials and establishes tracking procedures to aid law enforcement in detecting possible sales or purchases of items obtained unlawfully, but interested parties contend that current law does not go far enough to deter criminals from stealing regulated metals. C.S.H.B. 2187 seeks to address these issues by revising the applicable law relating to the regulation of metal recycling entities.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2187 amends the Occupations Code to restrict the methods of payment for a metal recycling entity's purchase of regulated materials, as defined under statutory provisions governing metal recycling entities, to payment by cash or debit card, if the seller has been issued a cash transaction card; check; money order; or direct deposit by electronic funds transfer. The bill authorizes a metal recycling entity to pay a seller for a purchase of regulated material by cash or debit card only if, before the entity issues payment, the seller presents to the entity a valid cash transaction card issued by the entity or by another metal recycling entity located in Texas or the entity obtains a copy of the seller's cash transaction card from the entity's records. The bill sets out requirements regarding the application for the issuance or renewal of a cash transaction card and regarding the issuance of the card. The bill establishes that a cash transaction card is not transferable and requires a metal recycling entity to preserve each cash transaction card application received until the second anniversary of the date the application was received and a copy of each cash transaction card the entity issues or renews until the second anniversary of the date the card was issued or renewed. The bill includes a cash transaction card application submitted to a metal recycling entity among the records the entity is required to permit a peace officer of the state, a representative of the Texas Department of Public Safety (DPS), or a representative of a county, municipality, or other political subdivision that issues a metal recycling entity license or permit to inspect on request.

C.S.H.B. 2187 expands the information required in a metal recycling entity's record of purchase

of regulated material to include the amount of the purchase and, as applicable, a copy of the seller's cash transaction card or approved cash transaction card application if the entity paid for a purchase of regulated material by cash, the debit card receipt and the seller's cash transaction card or approved application if the entity paid for a purchase of regulated material by debit card, or the check if the entity paid for a purchase of regulated material by check.

C.S.H.B. 2187 authorizes the Public Safety Commission, after notice and an opportunity for a hearing, to impose an administrative penalty of up to \$1,000 on a person who violates specified statutory provisions requiring a metal recycling entity to furnish an electronic transaction report to DPS following the purchase or other acquisition of a regulated material for which a record of purchase is required. The bill sets out criteria the commission must consider in determining the amount of such penalty and establishes that each day a violation occurs or continues to occur is a separate violation for the purpose of imposing the penalty. The bill authorizes a stay of the penalty's enforcement while the order is under judicial review if the person pays the penalty to the clerk of the court; files a supersedeas bond with the court in the amount of the penalty; or, if the person cannot afford to do either, files an affidavit in the manner required for a party who cannot afford to file security for costs, subject to the commission's right to contest the affidavit. The bill authorizes the attorney general to sue to collect the penalty and establishes that a proceeding to impose an administrative penalty is considered to be a contested case under the Administrative Procedure Act.

C.S.H.B. 2187, for purposes of statutory provisions regulating metal recycling entities, changes the definition of "copper or brass material" and defines "lead material" as a commercial grade lead battery, lead-acid battery, or spiral cell battery or a material or an item readily identifiable as being made of or containing lead. The bill expands the definition of "regulated material" to include lead material and expands the definition of "regulated metal" to include commercial grade lead batteries or lead-acid batteries. The bill exempts from statutory provisions regulating metal recycling entities a purchase of regulated material from a telecommunications provider, a cable service provider, and a video service provider, as defined by specified statutory provisions.

C.S.H.B. 2187 increases from 12 to 15 the membership of the DPS advisory committee on matters related to the regulation of metal recycling entities by adding one additional representative of metal recycling entities, one sheriff of a county with a population of 500,000 or more, and one sheriff of a county with a population of less than 500,000. The bill requires, as soon as practicable after the bill's effective date, the public safety director of DPS to appoint these three additional members to the advisory committee and requires the committee, during the calendar year ending December 31, 2023, to study the effects of the cash transaction card provisions and report the committee's findings and recommendations to the legislature before December 1, 2024.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2187 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 1956.001, Occupations Code, is amended.	SECTION 1. Same as introduced version.

SECTION 2. Section 1956.002, Occupations Code, is amended.

SECTION 3. Section 1956.032, Occupations Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) A person attempting to sell regulated material to a metal recycling entity shall sign a written statement provided by the metal recycling entity certifying that the person has not previously been convicted of an offense:

(1) under Section 31.03, Penal Code, if the property stolen was regulated material; or

(2) under another law of this state or of another jurisdiction involving the sale of regulated material.

No equivalent provision.

SECTION 4. Section 1956.033(b), Occupations Code, is amended to read as follows:

(b) The record must be in English and include:

(1) the place and date of the purchase;

SECTION 2. Same as introduced version.

No equivalent provision.

SECTION 3. Section 1956.017(b), Occupations Code, is amended to read as follows:

(b) The advisory committee consists of 15 [~~12~~] members appointed by the director as follows:

(1) one representative of the department;

(2) two representatives of local law enforcement agencies located in different municipalities, each with a population of 500,000 or more;

(3) two representatives of local law enforcement agencies located in different municipalities, each with a population of 200,000 or more but less than 500,000;

(4) one representative of a local law enforcement agency located in a municipality with a population of less than 200,000;

(5) five [~~four~~] representatives of metal recycling entities; [~~and~~]

(6) two members who represent industries that are impacted by theft of regulated material;

(7) one sheriff of a county with a population of 500,000 or more; and

(8) one sheriff of a county with a population of less than 500,000.

SECTION 4. Section 1956.033(b), Occupations Code, is amended to read as follows:

(b) The record must be in English and include:

(1) the place, [~~and~~] date, and amount of the purchase;

- (2) the name and address of the seller in possession of the regulated material purchased;
- (3) the identifying number of the seller's personal identification document;
- (4) a description made in accordance with the custom of the trade of the commodity type and quantity of regulated material purchased;
- (5) the information required by Sections 1956.032(a)(2) and (3) and (a-1);
- (6) as applicable:
 - (A) the identifying number of the seller's air conditioning and refrigeration contractor license displayed under Section 1956.032(a)(4)(A);
 - (B) a copy of the seller's air conditioning and refrigeration technician registration displayed under Section 1956.032(a)(4)(B);
 - (C) a copy of the documentation described by Section 1956.032(a)(4)(C); or
 - (D) a copy of the documentation described by Section 1956.032(a)(4)(D);
- (7) if applicable, a copy of the documentation described by Section 1956.032(a)(5); and
- (8) a copy of the documentation described by Section 1956.032(g).

- (2) the name and address of the seller in possession of the regulated material purchased;
- (3) the identifying number of the seller's personal identification document;
- (4) a description made in accordance with the custom of the trade of the commodity type and quantity of regulated material purchased;
- (5) the information required by Sections 1956.032(a)(2) and (3);
- (6) as applicable:
 - (A) the identifying number of the seller's air conditioning and refrigeration contractor license displayed under Section 1956.032(a)(4)(A);
 - (B) a copy of the seller's air conditioning and refrigeration technician registration displayed under Section 1956.032(a)(4)(B);
 - (C) a copy of the documentation described by Section 1956.032(a)(4)(C); or
 - (D) a copy of the documentation described by Section 1956.032(a)(4)(D);
- (7) if applicable, a copy of the documentation described by Section 1956.032(a)(5); ~~and~~
- (8) a copy of the documentation described by Section 1956.032(g); and
- (9) a copy of the documentation described by Section 1956.0381(b).

SECTION 5. Section 1956.038, Occupations Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (b-1) to read as follows:

- (a) A person may not, with the intent to deceive:
 - (1) display to a metal recycling entity a false or invalid personal identification document in connection with the person's attempted sale of regulated material;
 - (2) make a false, material statement or representation to a metal recycling entity in connection with:
 - (A) that person's execution of a written statement required by Sections ~~[Section]~~ 1956.032(a)(3) and (a-1); or
 - (B) the entity's efforts to obtain the information required under Section 1956.033(b);
 - (3) display or provide to a metal recycling entity any information required under Section 1956.032 that the person knows is false or invalid; or

No equivalent provision.

(4) display another individual's personal identification document in connection with the sale of regulated material.

(b) A metal recycling entity may only ~~not~~ pay for a purchase of regulated material in the manner provided by Section 1956.0381 ~~in cash if:~~

~~[(1) the entity does not hold a certificate of registration under Subchapter A 2 and, if applicable, a license or permit required by a county, municipality, or other political subdivision as authorized under Section 1956.003(b); or~~

~~[(2) the entity has been prohibited by the department from paying cash under Section 1956.036(e)].~~

(b-1) A metal recycling entity may not enter into more than one transaction for the purchase of regulated material from the same seller in a business day.

(c) A person may not sell or attempt to sell regulated material to a metal recycling entity if the person has been previously convicted of an offense:

(1) under Section 31.03, Penal Code, if the property stolen was regulated material; or

(2) under another law of this state or of another jurisdiction involving the sale of regulated material ~~[Notwithstanding Section 1956.003(a) or any other law, a county, municipality, or other political subdivision may not adopt or enforce a rule, charter, or ordinance or issue an order or impose standards that limit the use of cash by a metal recycling entity in a manner more restrictive than that provided by Subsection (b)].~~

No equivalent provision.

SECTION 5. Section 1956.035(a), Occupations Code, is amended to read as follows:

(a) On request, a metal recycling entity shall permit a peace officer of this state, a representative of the department, or a representative of a county, municipality, or other political subdivision that issues a license or permit under Section 1956.003(b) to inspect, during the entity's usual business hours:

(1) a record required by Section 1956.033;

(2) a digital photograph or video recording required by Section 1956.0331; ~~or~~

(3) regulated material in the entity's possession; or

(4) an application for a cash transaction card submitted to the entity.

No equivalent provision.

SECTION 6. Subchapter A-3, Chapter 1956, Occupations Code, is amended by adding Sections 1956.0381 and 1956.041 to read as follows:

Sec. 1956.0381. PAYMENT BY METAL RECYCLING ENTITY. (a) Except as provided by Subsection (c), a metal recycling entity may only pay for a purchase of regulated material by:

- (1) check;
- (2) money order; or
- (3) direct deposit by electronic funds transfer.

(b) A metal recycling entity that pays for a purchase of regulated material by check or money order shall obtain a digital photograph or video recording that accurately depicts:

- (1) the seller's entire face; and
- (2) each type of regulated material purchased

(c) For any sale of regulated material to a metal recycling entity in which the amount of the transaction is equal to or exceeds \$25, the metal recycling entity must pay the seller by mailing to the address located on the personal identification document provided by the seller under Section 1956.032:

- (1) a check or money order made payable to the seller; or
- (2) a notice to the seller stating the time after which the seller may pick up at the metal recycling entity a check or money order made payable to the seller.

No equivalent provision.

SECTION 6. Section 1956.038, Occupations Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) A metal recycling entity may only pay for a purchase of regulated material in the manner provided by Section 1956.0381.

SECTION 7. Subchapter A-3, Chapter 1956, Occupations Code, is amended by adding Sections 1956.0381, 1956.0382, and 1956.041 to read as follows:

Sec. 1956.0381. PAYMENT BY METAL RECYCLING ENTITY. (a) A metal recycling entity may pay for a purchase of regulated material only by:

- (1) cash or debit card if the seller has been issued a cash transaction card under Section 1956.0382;
- (2) check;
- (3) money order; or
- (4) direct deposit by electronic funds transfer.

No equivalent provision.

No equivalent provision.

(b) A metal recycling entity shall include in the record of purchase required by Section 1956.033, as applicable, a copy of:

- (1) the seller's cash transaction card or approved application for a cash transaction card if the entity paid for a purchase of regulated material by cash;
- (2) the debit card receipt and the seller's cash transaction card or approved application for a cash transaction card if the entity paid for a purchase of regulated material by debit card; or
- (3) the check if the entity paid for a purchase of regulated material by check.

No equivalent provision.

Sec. 1956.0382. CASH TRANSACTION CARD. (a) A metal recycling entity may pay a seller for a purchase of regulated material by cash or debit card only if, before the entity issues payment:

- (1) the seller presents to the entity a valid cash transaction card issued by the entity or by another metal recycling entity located in this state; or
- (2) the entity obtains a copy of the seller's cash transaction card from the records of the entity.

(b) An application for the issuance or renewal of a cash transaction card must include:

- (1) the name, address, sex, and birth date of the applicant;
- (2) the identification number from the applicant's personal identification document;
- (3) a digital photograph that accurately depicts the applicant's entire face taken at the time the applicant completes the application;
- (4) a clear and legible thumbprint of the applicant; and
- (5) the signature of the applicant.

(c) On receipt of an application that contains the information required by Subsection (b), a metal recycling entity may approve the application and issue a cash transaction card to the applicant. The individual approving the application on behalf of the metal recycling entity must sign the application.

(d) A cash transaction card must include:

- (1) the name and address of the seller; and
- (2) the expiration date of the card, which may not be later than two years from the date the card was issued or renewed.

(e) A metal recycling entity must mail the issued cash transaction card to the address provided on the application for the card.

(f) A cash transaction card issued under this section is not transferable.

(g) A metal recycling entity shall preserve:

(1) each application for a cash transaction card the entity receives until the second anniversary of the date the application was received; and

(2) a copy of each cash transaction card the entity issues or renews until the second anniversary of the date the card was issued or renewed.

Sec. 1956.041. ADMINISTRATIVE PENALTY.

SECTION 7. The following provisions of the Occupations Code are repealed:

- (1) Section 1956.036(e); and
- (2) Section 1956.038(d).

SECTION 8. Section 1956.041, Occupations Code, as added by this Act, applies only to a violation of Section 1956.036, Occupations Code, as amended by this Act, committed on or after the effective date of this Act. A violation committed before the effective date of this Act is governed by the law in effect on the date the violation was committed, and the former law is continued in effect for that purpose.

No equivalent provision.

No equivalent provision.

Sec. 1956.041. ADMINISTRATIVE PENALTY.

No equivalent provision.

SECTION 8. Section 1956.041, Occupations Code, as added by this Act, applies only to a violation of Section 1956.036, Occupations Code, committed on or after the effective date of this Act. A violation committed before the effective date of this Act is governed by the law in effect on the date the violation was committed, and the former law is continued in effect for that purpose.

SECTION 9. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 10. As soon as practicable after the effective date of this Act, the public safety director of the Department of Public Safety of the State of Texas shall appoint the three additional members to the advisory committee as required by Section 1956.017, Occupations Code, as amended by this Act.

No equivalent provision.

SECTION 11. During the calendar year ending December 31, 2023, the advisory committee established under Section 1956.017, Occupations Code, as amended by this Act, shall study the effects of the cash transaction card provisions of Section 1956.0382, Occupations Code, as added by this Act, and report the committee's findings and recommendations to the legislature before December 1, 2024.

SECTION 9. This Act takes effect September 1, 2015.

SECTION 12. Same as introduced version.