

## **BILL ANALYSIS**

S.B. 1818  
By: Zaffirini  
Environmental Regulation  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Metal recycling entities purchase scrap metal from the public, private businesses, and law enforcement and then arrange for the disposal of the scrap metal with treatment facilities, incineration vessels, steel plants, and other similar industrial entities. Sometimes a facility with which a metal recycling entity has arranged for scrap metal recycling goes out of business after having polluted the environment with the scrap metal, and under current state law the metal recycling entity could be held liable for that pollution. Federal law has a different liability standard, and concerns have been raised regarding this incongruity between federal and state law and whether state law should be aligned with federal law.

To help address this issue, the legislature passed legislation last session that required the Texas Commission on Environmental Quality to conduct a study on the creation of a defense under the Solid Waste Disposal Act for persons engaged in certain recycling transactions. A workgroup met this interim to conduct the study and submitted a report to the legislature. S.B. 1818 creates such a defense in accordance with the workgroup's legislative recommendation.

### **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 rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 2 of this bill.

### **ANALYSIS**

S.B. 1818 amends the Health and Safety Code to establish a defense under the Solid Waste Disposal Act for persons engaged in certain scrap metal recycling transactions who would otherwise be responsible for solid waste on the following grounds:

- the person arranged to process, store, or dispose of, or arranged with a transporter for transport to process, store, or dispose of, solid waste owned or possessed by the person, by any other person or entity at the following locations:
  - the solid waste facility owned or operated by another person or entity that contains the solid waste; or
  - the site to which the solid waste was transported that contains the solid waste; or
- the person accepts or accepted any solid waste for transport to a solid waste facility or site selected by the person.

The bill establishes that a person who arranges for recycling of scrap metal is not responsible for the scrap metal on such grounds if the person can establish by a preponderance of the evidence that specified criteria, as provided by the bill, were met at the time of the recycling

transaction. The bill sets out conditions under which this defense does not apply to a person who arranges for the recycling of scrap metal.

S.B. 1818 applies only to a scrap metal transaction that occurs on or after November 29, 1999, and does not apply to any material that is not scrap metal. The bill authorizes the Texas Commission on Environmental Quality (TCEQ) to adopt rules as necessary to administer the bill's provisions.

S.B. 1818 makes a person who commences an action for contribution against a person who is not responsible for the scrap metal under the bill's provisions liable to that person for all reasonable costs incurred in defending that action, including reasonable attorney's fees and expert witness fees. The bill prohibits its provisions from being construed to do the following:

- affect any defenses or liabilities of any person to whom the bill's defense does not apply;
- create any presumption of liability against any person to whom the bill's defense does not apply; or
- affect a person's responsibility for solid waste if they are an owner or operator of a solid waste facility or they owned or operated a solid waste facility at the time of processing, storage, or disposal of any solid waste.

S.B. 1818 defines "scrap metal" for purposes of its provisions as bits and pieces of metal parts, such as bars, turnings, rods, sheets, or wire, or metal pieces that may be combined together with bolts or soldering, such as radiators, scrap automobiles, or railroad boxcars, which when worn or superfluous can be recycled. The bill excludes the following from the term:

- certain shipping containers;
- any item of material that contained polychlorinated biphenyls at a concentration in excess of 50 parts per million or any new standard adopted pursuant to applicable federal laws;
- any material excluded from the definition by TCEQ rule; or
- any material excluded from the definition of scrap metal under specified federal law by a federal regulation.

S.B. 1818 does not apply to any judicial or administrative action initiated by TCEQ that is pending or on appeal on the bill's effective date and does not affect any final decision in a judicial or administrative action that exists on that date.

#### **EFFECTIVE DATE**

September 1, 2021.