

SUBJECT: Regulation of metal recycling entities

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 5 ayes — Bonnen, Hancock, Lucio, Driver, West
1 present not voting — Kuempel
0 nays
1 absent — T. King

SENATE VOTE: On final passage, April 12, 31-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 441 by Phillips:*)
For — Lewis Griffith, Association of Electric Companies of Texas; Scott Norman, Texas Association of Builders; (*Registered, but did not testify:* Dennis Kearns, BNSF Railway & Texas Railroad Association; Ron Olson, Union Pacific Railroad)

Against — (*Registered, but did not testify:* Tristan Castaneda, Gulf Coast Chapter, Institute of Scrap Recycling Industries)

BACKGROUND: Occupations Code, ch. 1956, regulates the sale of certain metals to metal dealers. It establishes tracking procedures for certain metal items that have the potential to be stolen and then sold to a metal dealer. These items either have significant commercial or sentimental value, such as electrical wiring or a cemetery vase. These tracking procedures aid law enforcement in apprehending thieves and identifying stolen property.

DIGEST: CSSB 1154 would change the regulations for selling metal to a metal recycling entity by:

- expanding the types and forms of regulated metals;
- allowing local governments to provide additional regulations;
- increasing the amount of information given to a seller;
- increasing the amount of information required to be recorded by the buyer for each transaction;

- allowing law enforcement officers to prevent items that could be stolen from being resold or processed by the buyer;
- regulating the hours in which a metal recycling entity could buy metal;
- criminalizing the providing of false information to a buyer; and
- enhancing the criminal penalties for selling or buying stolen regulated materials or failing to adhere to the records provisions of Occupations Code, ch. 1956.

Types and forms of regulated metals. CSSB 1154 would expand the definitions of “aluminum material” and “bronze material” specifically to include wiring. The definition of “regulated material” would be expanded to include “regulated metals,” such as:

- manhole covers and street signs;
- railroad materials;
- materials commonly found in construction sites; and
- historical markers, cemetery vases, or memorials made from metal other than aluminum.

CSSB 1154 also would change the regulatory term for “second hand metal dealer” to “metal recycling entity.” A metal recycling entity would be a business predominantly engaged in performing the manufacturing process by which scrap, used, or obsolete metal was converted into raw material products consisting of prepared grades and having an existing or potential economic value, by methods including processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form of that metal. A metal recycling entity also could be a business that manufactured the raw material products from the recycling process into producer or consumer goods.

The bill also would remove a passport from the list of acceptable identification that a metal recycling entity would be allowed to accept for record keeping purposes.

CSSB 1154 would remove the purchase of regulated material by a manufacturer whose primary business was the manufacture of iron and steel products made from melting scrap iron and scrap steel from regulation under Occupations Code, ch. 1956. Further, the bill would exempt the purchase of regulated material from a public utility, or a

manufacturing, industrial, commercial, retail, or other seller that sold regulated material in the ordinary course of the seller's business.

Local regulatory authority. CSSB 1154 would allow a local government or political subdivision of the state to adopt a rule, charter, or ordinance or issue an order or impose standards that were more stringent than state law but did not conflict with it. Additionally, CSSB 1154 would allow local governments or political subdivisions to issue licenses or permits to a business to allow the business to act as a metal recycling entity in that county or municipality.

Information provided by seller. CSSB 1154 would require a person attempting to sell regulated metal to a metal recycling entity to display personal identification, provide a description and license plate number of the vehicle used to transport the regulated material, and either:

- provide evidence in writing that the person was the legal owner or lawfully was entitled to sell the regulated material; or
- sign a written statement provided by the entity that the person legally owned or was entitled to sell the material offered for sale.

The recycling entity would be required to visually verify and photocopy the seller's identification for record keeping purposes. The entity also would be allowed to take a picture of the seller and the vehicle used to transport the material, a photo of which could be accepted in lieu of the description and license plate number. The entity would not be required to make a copy of the identification if:

- the seller signed a written statement evidencing ownership or authority to sell the material; or
- the seller previously had provided this information, and the information had not changed.

CSSB 1154 would require a metal recycling entity to provide a notice in two inch lettering warning a person who wished to sell regulated metal that written proof of ownership was required by state law.

Record of the purchase. CSSB 1154 would require that all purchases of copper, brass, or aluminum material, regardless of weight, be recorded by the recycling entity. The bill also would allow buyers to keep electronic records of the information they were required to keep on file.

Restrictions on sale or processing of regulated materials. CSSB 1154 would forbid an entity from disposing of, processing, selling, or removing from the premises an item of regulated metal unless:

- the entity acquired the item more than 72 hours before the disposal, processing, sale, or removal ; or
- the entity purchased the item from a manufacturing, industrial, commercial, retail, or other seller that sold regulated material in the ordinary course of its business.

Peace officers could place on hold an item of regulated material in the possession of a recycling entity if the officer had reasonable suspicion to believe that the item was stolen. The hold would last for 60 days, during which time the entity could not dispose of, process, sell, or remove the item from the purchased material unless the hold was released.

Limited hours for purchasing material. CSSB 1154 would prevent a metal recycling entity from purchasing regulated material for more than 15 consecutive hours in one day or later than 9 p.m. Local governments or political subdivisions of the state would be allowed, within these parameters, to establish the hours during which a metal recycling entity could purchase regulated material.

Criminal offenses and penalties. CSSB 1154 would criminalize knowingly providing false identification or information to an entity or knowingly recording information known to be false in the entity's records. A violation would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) unless the defendant previously had been convicted of failure to comply with identification or recording requirements or buying or selling stolen regulated material, in which case the offense would be a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000).

The purchase of stolen regulated material would be a class A misdemeanor, unless the defendant previously had been convicted of failure to comply with identification or recording requirements or buying or selling stolen regulated material, in which case the offense would be a state-jail felony.

The sale of stolen regulated material would be a state-jail felony, unless the defendant previously had been convicted of failure to comply with

identification or recording requirements or buying or selling stolen regulated material, in which case the offense would be a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000).

CSSB 1154 would allow a court to order an entity to cease doing business as a metal recycling entity for an offense under ch. 1956. The order of closure would be limited to 30 days for a first offense and 180 days if it has been shown that the entity previously had been convicted under this section.

If conduct that constituted an offense under this section also constituted an offense under any other law, a person could be prosecuted under this section or the other law.

Effective date. The bill would take effect on September 1, 2007, and would apply only to an offense committed on or after that date.

**SUPPORTERS
SAY:**

CSSB 154 would strike a blow at the trade in stolen metals. The price of metals has risen because of the enormous volume of construction in Asia. This has led to an increase in metal theft the world over. Thieves will target any source of metal they can find, including railroads, construction projects, beer kegs, and safes. Even historical markers, cemetery vases, receptacles, and memorials sadly are not off limits to thieves. These thefts interrupt commerce and transportation and violate the sanctity of sacred spaces. CSSB 1154 would tackle this problem by adding to the types and forms of regulated materials, expanding record-keeping requirements, and creating criminal penalty for the purchase and sale of stolen metals.

CSSB 1154 would take a balanced approach by targeting both buyers and sellers, thus addressing both the demand and supply sides of criminal metal theft. Stricter record-keeping requirements would help law enforcement track suspects and recover stolen property. The bill would require that all purchases of copper, brass, or aluminum be recorded. This change is necessary to deter small-scale thieves who collectively wreak major damage. Stiffening penalties would curb theft and the enhancements for repeat offenders would deter career thieves. This is necessary because metal theft is becoming an increasingly organized criminal enterprise.

Further, CSSB 1154 would exempt the purchase of regulated material from a public utility or a manufacturing, industrial, commercial, retail, or other seller that sold regulated material in its ordinary course of business.

This would exempt large-scale reputable businesses that sell old appliances and other items.

OPPONENTS
SAY:

CSSB 1154 would enhance penalties on actions that already are considered crimes under statutes that regulate theft, criminal mischief, and the sale of stolen property. Texas cannot continue to increase penalties and jail time for offenders because the criminal justice system already is operating at capacity.

Requiring a record of every purchase of bronze, brass, aluminum, or regulated material would impose an onerous burden. The metal recycling industry does not need any further governmental regulation. It already practices extensive record keeping to assist law enforcement and extensively trains and educates its members to prevent the purchase of stolen metal. Recycling is an environmentally friendly industry that also helps the market by keeping the price of metals down and thus spurring development and construction. Efforts to thwart metal theft should not be conducted at the expense of this beneficial industry.

NOTES:

The House committee substitute differs from the Senate-passed version in that the committee substitute would:

- define “metal recycling entity”;
- contain a more extensive list of regulated materials;
- allow local governments to regulate metal recycling entities;
- exempt manufacturers whose primary business was the manufacture of iron and steel products made from melting scrap iron and scrap steel; and
- change the notice to sellers.

The identical companion bill, HB 441 by Phillips, was heard in the House Environmental Regulation Committee on March 13.