

SUBJECT: Registration and regulation of metal recycling entities.

COMMITTEE: Business and Industry — favorable, with amendment

VOTE: 5 ayes — Giddings, Elkins, Darby, Solomons, Zedler

0 nays

4 absent — Bailey, Bohac, Castro, Martinez

SENATE VOTE: On final passage, April 25 — 29-0

WITNESSES: For — (*Registered, but did not testify*: Walt Baum, Association of Electric Companies of Texas (AECT); Eric Craven, Texas Electric Cooperatives; Catarina Cron, Harris County Judge Ed Emmett; Darrin Hall, City of Houston; Gordon Johnson, Miller Brewing Company; David Parker, AT&T; Patricia Shipton, Coors Brewing Company; Mark Zion, Texas Public Power Association)

Against — None

DIGEST: SB 642, as amended, would require the Department of Public Safety (DPS) to establish a statewide electronic reporting system to track sales of regulated metal and publish a summary report on its website. The summary would include by county or region the frequency with which a person sold regulated materials to a metal recycling entity but would prohibit identifying where the metal recycling entity ultimately sold its regulated materials. This summary would not have to include sales made by entities that routinely had access to regulated metal. DPS would maintain the confidentiality of the financial condition or business affairs of a metal recycling entity that was otherwise commercially sensitive. The bill would specify that the confidential information collected would not be subject to disclosure under the Public Information Act.

This bill would authorize the Public Safety Commission to adopt rules for metal recycling entities and authorize DPS to employ administrative and clerical staff to carry out those rules. The commission could prescribe administrative fees to cover costs associated with processing applications,

registrations, renewals, and duplicate certificates for metal recycling entities.

A governmental entity of this state could adopt rules, charters, ordinances, orders or standards that were more stringent than, but did not conflict with, the regulated metal rules established by the state. Governmental entities of the state also could charge a fee not to exceed \$250 for the issuance and renewal of licenses or permits for businesses acting as metal recycling entities in their jurisdictions. Governmental entities would then have to report all businesses who were issued or renewed permits to the Texas Department of Public Safety (DPS).

The bill would prohibit a person from acting as a metal recycling entity unless registered with the appropriate governmental entities. DPS would issue a certificate of registration to qualified applicants and authorize the commission to establish qualification rules for the holder of a certificate of registration, which could include accepting copies of a license or permit issued by another governmental entity authorizing a metal recycling entity to conduct business.

A certificate of registration would be valid for two years. DPS would adopt a system for the expiration and renewal of certificates of registration and would send written notice at least 45 days before the certificate of registration was scheduled to expire. A person could renew a certificate of registration by paying a renewal fee. The bill would allow penalty fees to be collected for late renewals but would prohibit a person from renewing a certificate of registration if it had been expired for one year or more, in which case the person would have to obtain a new certificate of registration.

The bill would require a metal recycling entity to maintain in a prominent place in the business a notice in two-inch lettering that, among other things, let a seller know that written proof of ownership was required by state law before attempting to sell regulated material. The seller would have to show a personal identification document and either:

- present written documentation showing that the person was the legal owner or lawfully entitled to sell the regulated material; or
- sign a written statement provided by the metal recycling entity, that the person was the legal owner of or was lawfully entitled to sell the regulated material offered for sale.

The metal recycling entity would have to keep a copy of the identification in the entity's records.

This bill would require each metal recycling entity to keep an accurate electronic record or an accurate and legible written record for each purchase made in the course of the entity's business, regardless of weight, for three years. If a report was requested by DPS, the metal recycling entity would submit it by mail, fax, or e-mail.

This bill would prohibit a metal recycling 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, excluding holidays and weekends, 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.

A metal recycling entity would have to hold, for at least 60 days, any item a peace officer had identified and provided notice to the entity was stolen, unless the hold were released at an earlier time in writing by a peace officer of this state or a court order. Further, if a hold were placed on a purchase of regulated material, a metal recycling entity could not dispose, process, sell, or remove that material until the hold had been released.

Governmental entities of the state could establish the hours during which a metal recycling entity could purchase regulated material. This bill would prohibit a metal recycling entity from purchasing regulated material from the general public more than 15 consecutive hours in one day or later than 9 p.m.

The bill would require DPS to deny an application, suspend or revoke a certificate of registration, or reprimand a person who was registered for committing certain violations. DPS could investigate violations of the metal recycling entity rules and complaints filed with DPS against a registered person.

The bill would entitle a person whose application for a certificate of registration was denied, whose certificate was suspended or revoked, or

who was reprimanded to have a hearing before DPS if the person submitted a written request to DPS.

Upon receiving a verified complaint, this bill would authorize DPS, the attorney general, or the district, county, or city attorney for the county or municipality in which an alleged violation occurs to bring an appropriate administrative or judicial proceeding. The bill would authorize the attorney general or an attorney representing the state to initiate an action for an injunction to prohibit a person from making a violation.

The bill would establish a civil penalty of not more than \$1,000 for each violation, based on certain factors. The attorney general could sue to collect the civil penalty and to recover, on behalf of the state, all the expenses incurred in obtaining the penalty.

It would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) to solicit the purchase of regulated material at a location other than a business location at which the material was produced as a by-product in the ordinary course of business.

This bill would require the commission to adopt rules for this chapter by January 1, 2008 and would require DPS to establish the statewide reporting system to track the sales of regulated metal by April 1, 2008. A person would not be required to hold a certificate of registration as a metal recycling entity until April 1, 2008.

The bill and Occupations Code, ch. 1956 would not apply to:

- a purchase of regulated material from a manufacturing, industrial, commercial, retail or other seller that sold regulated material in the ordinary course of business;
- a purchase of regulated material by a manufacturer whose primary business was manufacturing iron and steel products from scrap; or the transport or hauling of recyclable materials to or from the metal recycling entity.

**Definitions.** This bill would amend the definitions of:

- “aluminum material” to include aluminum wiring;
- “bronze material” to include bronze wiring; and
- “copper or brass material” to include copper pipe or tubing.

A “metal recycling entity” would be defined as a business operated in a fixed location that predominantly engaged in:

- performing the manufacturing process to convert scrap metals into raw material products that have or will have an economic value ;
- the use of the raw material metal products to manufacture goods; or
- purchasing or otherwise acquiring scrap, used, or obsolete metals for the eventual use of the metal for conversion or manufacture.

“Regulated metal” would be:

- manhole covers;
- guardrails;
- metal cylinders designed to contain compressed air, oxygen, gases or liquids ;
- beer kegs;
- historical markers or cemetery vases, receptacles, or memorials;
- unused rebar;
- street signs;
- drain gates;
- safes;
- communication, transmission, and service wire or cable;
- condensing or evaporator coils for heating or air conditioning units;
- utility structures, including the fixtures and hardware;
- aluminum or steel containers that hold propane for forklifts; and
- metal railroad equipment.

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

**SUPPORTERS  
SAY:**

SB 642 would update the current system for tracking the sale of regulated materials. Under current law, those attempting to redeem or sell materials must show identification only if the purchases exceed a certain weight, but the reporting system is failing to identify or deter those who have obtained these materials illegally. While DPS requires a weekly report on the purchase and sale of regulated metals, the volume and demand of this trade makes it nearly impossible for these paper-based reports to be made available to local law enforcement agencies in a timely fashion.

The bill 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.

In 2006, Dallas Police filed reports on more than 2,592 regulated metal thefts, and Houston filed roughly 1,400 thefts. Common items stolen during thefts included air conditioning units from homes, churches, and construction sites; wiring from public roadway streetlights; and plumbing equipment. These crimes impact homeowners, the construction industry, businesses, and utility operators alike. The bill would help prevent thefts by reclassifying certain items as regulated metals, requiring proof of ownership, and limiting the hours during which a metal recycling entity was authorized to accept materials and be open to the general public.

OPPONENTS  
SAY:

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, thus spurring development and construction. Efforts to thwart metal theft should not be conducted at the expense of this beneficial industry.

NOTES:

A similar bill, SB 1154 by Carona, which would add to the types and forms of regulated materials, expand record-keeping requirements, and create criminal penalties for the purchase and sale of stolen metals, passed the House by 143-0-3 on May 17.

Two related bills, HB 1766 and HB 1767 by Peña, et al., would increase the penalties from misdemeanors to a state jail felony for the theft of aluminum wire or cable worth up to \$1,500 and would set the penalty for criminal mischief as a third-degree felony if the property damaged, destroyed, or tampered with was transportation communications equipment or devices valued at less than \$100,000. HB 1766 was reported enrolled and sent to the governor on May 17.

The fiscal note estimates that there would be a \$161,062 cost to general revenue during fiscal 2008-09 for additional costs associated with

implementing the statewide electronic database, registration system, and additional FTEs. After that time, the registration and regulation of metal recycling entities would be revenue positive, with a \$150,287 increase in general revenue in fiscal 2010-11.

The committee amendments would define regulated metals as the specific list provided in the bill, rather than as metals regulated in accordance with DPS rules, including the list; specify the definition of compressed cylinders; broaden the regulation of metals to those derived from “utility structures,” rather than from “electric light poles”; provide an exemption for those that transport or haul materials to or from metal recycling facilities; allow reports to DPS to be submitted by fax or e-mail; specify that the 72-hour waiting time for an item on hold would exclude weekends and holidays; and provide that a person would commit an offense by soliciting the purchase of regulated material at a location other than a business at which the material was produced as a by-product in the ordinary course of that business.