

BILL ANALYSIS

Senate Research Center

S.B. 1095
By: Carona
Transportation & Homeland Security
10/12/2009
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The primary mission of the Texas Department of Transportation (TxDOT) is planning, designing, building, operating, and maintaining the state's transportation system, not the regulation of businesses and occupations. However, under current law, the Texas automotive recycling industry is under the purview of TxDOT.

As noted in the Sunset Advisory Commission (Sunset) Report to the 81st Texas Legislature on TxDOT, the automotive recycling regulatory program is lost within TxDOT's largest division, which is also charged with titling and registering all vehicles in Texas. The Sunset report states that it is the only occupational regulatory function handled by the division and one of the few such programs in TxDOT. TxDOT does not utilize the administrative enforcement tools provided in statute for the regulation of the industry.

Criminal activities associated with unlicensed and unregulated salvage operations include auto theft, dealing in stolen and damaged auto parts, money laundering, and drug trafficking. In addition, illegitimate salvage yards do not comply with local, state, and federal environmental laws, health and safety codes, or zoning and visual blight ordinances. Unlicensed and unregulated salvage operations harm the legitimate industry as well as the public.

S.B. 1095 amends current law relating to the licensing and regulation of used automotive parts recyclers and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation (TCLR) in SECTION 7 (Sections 2309.102, 2309.103, 2309.106, 2309.154, and 2309.156, Occupations Code) of this bill.

Rulemaking authority of TCLR is expressly restricted in SECTION 7 (Section 2309.105, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2302.001(6), Occupations Code, to redefine "salvage vehicle agent."

SECTION 2. Amends Section 2302.006(b), Occupations Code, to delete existing text providing that this chapter applies to a transaction in which a motor vehicle is sold, transferred, released, or delivered to a metal recycler as a source of used parts and is used for that purpose.

SECTION 3. Amends Subchapter A, Chapter 2302, Occupations Code, by adding Section 2302.008, as follows:

Sec. 2302.008. **APPLICABILITY OF CHAPTER TO USED AUTOMOTIVE PARTS RECYCLERS.** Provides that this chapter does not apply to a used automotive parts recycler licensed under Chapter 2309.

SECTION 4. Amends Section 2302.103(b), Occupations Code, to delete existing text authorizing an applicant to apply for a salvage vehicle dealer license with an endorsement in the classification of used vehicle parts dealer. Makes nonsubstantive changes.

SECTION 5. Amends Section 2302.107(d), Occupations Code, to delete existing text authorizing a salvage vehicle agent to acquire, sell, or otherwise deal in, used parts as directed by the authorizing dealer.

SECTION 6. Amends Section 2302.202, Occupations Code, to delete existing text requiring a salvage vehicle dealer to maintain a record of each used part purchased or sold by the dealer.

SECTION 7. Amends Subtitle A, Title 14, Occupations Code, by adding Chapter 2309, as follows:

CHAPTER 2309. USED AUTOMOTIVE PARTS RECYCLERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2309.001. SHORT TITLE. Authorizes this chapter to be cited as the Texas Used Automotive Parts Recycling Act.

Sec. 2309.002. DEFINITIONS. Defines "insurance company," "metal recycler," "motor vehicle," "nonrepairable motor vehicle," "nonrepairable vehicle title," "salvage motor vehicle," "salvage vehicle title," "salvage vehicle dealer," "commission," "department," "executive director," "used automotive part," "used automotive parts recycler," and "used automotive parts recycling."

Sec. 2309.003. APPLICABILITY OF CHAPTER TO METAL RECYCLERS. (a) Provides that, except as provided by Subsection (b), this chapter does not apply to a transaction to which a metal recycler is a party.

(b) Provides that this chapter applies to a transaction in which a motor vehicle is sold, transferred, released, or delivered to a metal recycler as a source of used automotive parts; and is used as a source of used automotive parts.

Sec. 2309.004. APPLICABILITY OF CHAPTER TO SALVAGE VEHICLE DEALERS. (a) Provides that, except as provided by Subsection (b), this chapter does not apply to a transaction in which a salvage vehicle dealer is a party.

(b) Provides that this chapter applies to a salvage vehicle dealer who deals in used automotive parts as more than an incidental part of the salvage vehicle dealer's primary business.

Sec. 2309.005. APPLICABILITY OF CHAPTER TO INSURANCE COMPANIES. Provides that this chapter does not apply to an insurance company.

[Reserves Sections 2309.006-2309.050 for expansion.]

SUBCHAPTER B. ADVISORY BOARD

Sec. 2309.051. USED AUTOMOTIVE PARTS RECYCLING ADVISORY BOARD. (a) Provides that the advisory board (board) consists of five members representing the used automotive parts industry in this state appointed by the presiding officer of the Texas Commission of Licensing and Regulation (TCLR) with the approval of TCLR.

(b) Requires the board to include members who represent a used automotive parts businesses owned by domestic entities, as defined by Section 1.002 (Definitions), Business Organizations Code.

(c) Requires the board to include one member who represents a used automotive parts business owned by a foreign entity, as defined by Section 1.002, Business Organizations Code.

(d) Prohibits the board from including more than one member from any one used automotive parts business entity.

(e) Requires that appointments to the board be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Sec. 2309.052. TERMS; VACANCIES. (a) Provides that board members serve terms of six years, with the terms of one or two members expiring on February 1 of each odd-numbered year.

(b) Prohibits a board member from serving more than two full consecutive terms.

(c) Requires the presiding officer of TCLR, if a vacancy occurs during a term, to appoint a replacement who meets the qualifications of the vacated position to serve for the remainder of the term.

Sec. 2309.053. PRESIDING OFFICER. Requires the presiding officer of TCLR to appoint one of the board members to serve as presiding officer of the board for a term of one year. Authorizes the presiding officer of the board to vote on any matter before the board.

Sec. 2309.054. POWERS AND DUTIES OF ADVISORY BOARD. Requires the board to provide advice and recommendations to the Texas Department of Licensing and Regulation (TDLR) on technical matters relevant to the administration and enforcement of this chapter, including licensing standards.

Sec. 2309.055. COMPENSATION; REIMBURSEMENT OF EXPENSES. Prohibits board members from receiving compensation but entitles them to reimbursement for actual and necessary expenses incurred in performing the functions of the board, subject to the General Appropriations Act.

Sec. 2309.056. MEETINGS. Requires the board to meet twice annually and authorizes the board to meet at other times at the call of the presiding officer of TCLR or the executive director of TDLR (executive director).

[Reserves Sections 2309.057-2309.100 for expansion.]

SUBCHAPTER C. POWERS AND DUTIES OF COMMISSION AND DEPARTMENT

Sec. 2309.101. GENERAL POWERS AND DUTIES. Authorizes the executive director or TCLR, as appropriate, to take action as necessary to administer and enforce this chapter.

Sec. 2309.102. RULES. (a) Requires TCLR to adopt rules for licensing used automotive parts recyclers and used automotive parts employees.

(b) Requires TCLR by rule to adopt standards of conduct for license holders under this chapter.

Sec. 2309.103. RULES REGARDING LICENSING AND STANDARDS OF CONDUCT. (a) Requires TCLR to adopt rules for licensing applicants, including rules for denial of an application if the applicant, a partner, principal, officer, or general manager of the applicant, or another license or permit holder with a connection to the applicant, has:

(1) before the application date, been convicted of, pleaded guilty or nolo contendere to, or been placed on deferred adjudication for a felony or a misdemeanor punishable by confinement in jail or by a fine exceeding \$500;

(2) violated an order of TCLR or executive director, including an order for sanctions or administrative penalties; or

(3) knowingly submitted false information on the application.

(b) Requires TCLR by rule to adopt standards of conduct for license holders under this chapter.

Sec. 2309.104. FEES. Requires TCLR to establish and collect reasonable and necessary fees in amounts sufficient to cover the costs of administering this chapter.

Sec. 2309.105. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) Prohibits TCLR from adopting a rule restricting advertising or competitive bidding by a person who holds a license issued under this chapter except to prohibit false, misleading, or deceptive practices by the person.

(b) Prohibits TCLR from including in its rules to prohibit false, misleading, or deceptive practices a rule that restricts the use of any advertising medium, restricts the person's personal appearance or use of the person's voice in an advertisement, relates to the size or duration of an advertisement by the person, or restricts the use of a trade name in advertising by the person.

Sec. 2309.106. PERIODIC AND RISK-BASED INSPECTIONS. (a) Requires TDLR to inspect each used automotive parts recycling facility at least once every two years.

(b) Authorizes TDLR to enter and inspect at any time during business hours the place of business of any person regulated under this chapter, or any place in which TDLR has reasonable cause to believe that a license holder is in violation of this chapter or in violation of a rule or order of TCLR or executive director.

(c) Requires TDLR to conduct additional inspections based on a schedule of risk-based inspections using the following criteria: the inspection history, any history of complaints involving a used automotive parts recycler, and any other factor determined by TCLR by rule.

(d) Requires a used automotive parts recycler to pay a fee for each risk-based inspection performed under this section. Requires TCLR by rule to set the amount of the fee.

(e) Authorizes TDLR, in conducting an inspection under this section, to inspect a facility, a used automotive part, a business record, or any other place or thing reasonably required to enforce this chapter or a rule or order adopted under this chapter.

Sec. 2309.107. PERSONNEL. Authorizes TDLR to employ personnel necessary to administer and enforce this chapter.

[Reserves Sections 2309.108-2309.150 for expansion.]

SUBCHAPTER D. LICENSE REQUIREMENTS

Sec. 2309.151. USED AUTOMOTIVE PARTS RECYCLER LICENSE REQUIRED.

(a) Prohibits a person, unless the person holds a used automotive parts recycler license issued under this chapter, from owning or operating a used automotive parts recycling business or selling used automotive parts.

(b) Provides that a used automotive parts recycler license is valid only with respect to the person who applied for the license and authorizes the license holder to operate a used automotive parts recycling business only at the one facility listed on the license.

Sec. 2309.152. GENERAL LICENSE APPLICATION REQUIREMENTS. Requires an applicant for a used automotive parts recycler license under this chapter to submit to TDLR a completed application on a form prescribed by the executive director, the required fees, and any other information required by TCLR rule.

Sec. 2309.153. LICENSE REQUIREMENTS. Requires an applicant for a used automotive parts recycler license under this chapter to provide in a manner prescribed by the executive director:

- (1) a federal tax identification number;
- (2) proof of general liability insurance in an amount not less than \$250,000; and
- (3) proof of a storm water permit if the applicant is required by the Texas Commission on Environmental Quality (TCEQ) to obtain a permit.

Sec. 2309.154. USED AUTOMOTIVE PARTS EMPLOYEE LICENSE REQUIRED.

(a) Prohibits a person employed by a used automotive parts recycler from in the scope of the person's employment acquiring a vehicle or used automotive parts and from selling used automotive parts unless the person holds a used automotive parts employee license issued under this chapter.

(b) Requires TCLR by rule to adopt requirements for the application for and issuance of a used automotive parts employee license under this chapter.

Sec. 2309.155. NONTRANSFERABILITY OF LICENSE. Provides that a license issued by the executive director is valid throughout this state and is not transferable.

Sec. 2309.156. LICENSE RENEWAL. (a) Provides that a license issued under this chapter is valid for one year. Authorizes TDLR to adopt a system under which licenses expire at different times during the year.

(b) Requires TDLR to notify the license holder at least 30 days before the date a license expires. Requires that the notice be in writing and sent to the license holder's last known address according to the records of TDLR.

(c) Requires TCLR by rule to adopt requirements to renew a license issued under this chapter.

[Reserves Sections 2309.157-2309.200 for expansion.]

SUBCHAPTER E. LOCAL REGULATION

Sec. 2309.201. APPLICABILITY OF CERTAIN MUNICIPAL ORDINANCES, LICENSES, AND PERMITS. (a) Provides that the requirements of this chapter apply in addition to the requirements of any applicable municipal ordinance relating to the regulation of a person who deals in used automotive parts.

(b) Provides that this chapter does not prohibit the enforcement of an applicable municipal license or permit requirement that is related to an activity regulated under this chapter.

[Reserves Sections 2309.202-2309.250 for expansion.]

SUBCHAPTER F. ENFORCEMENT

Sec. 2309.251. ADMINISTRATIVE PENALTY. (a) Authorizes TCLR to impose an administrative penalty on a person under Subchapter F (Administrative Penalty), Chapter 51 (Texas Department of Licensing and Regulation), regardless of whether the person holds a license under this chapter, if the person violates this chapter or a rule adopted under this chapter, or a rule or order of the executive director or TCLR.

(b) Prohibits an administrative penalty from being imposed unless the person charged with a violation is provided the opportunity for a hearing.

Sec. 2309.252. CEASE AND DESIST ORDER; INJUNCTION; CIVIL PENALTY. (a) Authorizes the executive director to issue a cease and desist order as necessary to enforce this chapter if the executive director determines that the action is necessary to prevent a violation of this chapter and to protect public health and safety.

(b) Authorizes the attorney general or executive director to institute an action for an injunction or a civil penalty under this chapter as provided by Section 51.352 (Injunctive Relief; Civil Penalty).

Sec. 2309.253. SANCTIONS. Authorizes TDLR to impose sanctions as provided by Section 51.353 (Administrative Sanctions).

Sec. 2309.254. CRIMINAL PENALTY; LICENSING. (a) Provides that a person commits an offense if the person violates the licensing requirements of this chapter, deals in used parts without a license required by this chapter, or employs an individual who does not hold the appropriate license required by this chapter.

(b) Provides that an offense under this section is a Class C misdemeanor.

[Reserves Sections 2309.255-2309.300 for expansion.]

SUBCHAPTER G. CONDUCTING BUSINESS

Sec. 2309.301. DUTIES ON ACQUISITION OF SALVAGE MOTOR VEHICLE. (a) Requires a used automotive parts recycler who acquires ownership of a salvage motor vehicle to obtain a properly assigned title from the previous owner of the vehicle.

(b) Requires a used automotive parts recycler who acquires ownership of a motor vehicle, nonrepairable motor vehicle, or salvage motor vehicle for the purpose of dismantling, scrapping, or destroying the motor vehicle, to, before the 31st day after the date of acquiring the motor vehicle, submit to the Texas Department of Transportation (TxDOT) a properly assigned manufacturer's certificate of origin, regular certificate of title, nonrepairable vehicle title, salvage vehicle title, other ownership document, or comparable out-of-state ownership document for the motor vehicle.

(c) Requires TxDOT, after receiving the title or document, to issue the used automotive parts recycler a receipt for the manufacturer's certificate of origin, regular certificate of title, nonrepairable vehicle title, salvage vehicle title, other ownership document, or comparable out-of-state ownership document.

(d) Requires the recycler to comply with Subchapter E (Nonrepairable and Salvage Motor Vehicles), Chapter 501 (Certificate of Title Act), Transportation Code.

Sec. 2309.302. RECORDS OF PURCHASES. Requires a used automotive parts recycler to maintain a record of or sales receipt for each motor vehicle, salvage motor vehicle, nonrepairable motor vehicle, and used automotive part purchased.

Sec. 2309.303. REGISTRATION OF NEW BUSINESS LOCATION. Requires a used automotive parts recycler, before moving a place of business, to notify TDLR of the new location. Requires the used automotive parts recycler to provide a storm water permit for the location if a permit is required by TCEQ.

[Reserves Sections 2309.304-2309.350 for expansion.]

SUBCHAPTER H. ADDITIONAL DUTIES OF USED AUTOMOTIVE PARTS RECYCLER
IN CONNECTION WITH MOTOR VEHICLE COMPONENT PARTS

Sec. 2309.351. DEFINITIONS. Defines "component part," "interior component part," "minor component part," and "special accessory part."

Sec. 2309.352. REMOVAL OF LICENSE PLATES. Requires a used automotive parts recycler, immediately on receipt of a motor vehicle, to remove any unexpired license plates from the vehicle and place the license plates in a secure place until destroyed by the used automotive parts recycler.

Sec. 2309.353. DISMANTLEMENT OR DISPOSITION OF MOTOR VEHICLE. Prohibits a used automotive parts recycler from dismantling or disposing of a motor vehicle unless the recycler first obtains a certificate of authority to dispose of the vehicle, a sales receipt, or a transfer document for the vehicle issued under Chapter 683 (Abandoned Motor Vehicles), Transportation Code; or a certificate of title showing that there are no liens on the vehicle or that all recorded liens have been released.

Sec. 2309.354. RECORD OF PURCHASE; INVENTORY OF PARTS. (a) Requires a used automotive parts recycler to keep an accurate and legible record of each used component part purchased by or delivered to the recycler. Requires that the record include the date of purchase or delivery; the driver's license number of the seller and a legible photocopy of the seller's driver's license; and a description of the part and, if applicable, the make and model of the part.

(b) Authorizes a used automotive parts recycler, as an alternative to the information required by Subsection (a), to record the name of the person who sold the part or the motor vehicle from which the part was obtained and the Texas certificate of inventory number or the federal taxpayer identification number of the person.

(c) Requires TDLR to prescribe the form of the record required by Subsection (a) and to make the form available to used automotive parts recyclers.

(d) Provides that this section does not apply to an interior component part or special accessory part from a motor vehicle more than 10 years old or a part delivered to a used automotive parts recycler by a commercial freight line, commercial carrier, or licensed used automotive parts recycler.

Sec. 2309.355. RETENTION OF COMPONENT PARTS. (a) Requires a used automotive parts recycler to retain each component part in its original condition on the business premises of the recycler for at least three calendar days, excluding Sundays, after the date the recycler obtains the part.

(b) Provides that this section does not apply to the purchase by a used automotive parts recycler of a nonoperational engine, transmission, or rear axle assembly from another used automotive parts recycler or an automotive-related business.

Sec. 2309.356. MAINTENANCE OF RECORDS. Requires a used automotive parts recycler to maintain copies of each record required under this subchapter until the first anniversary of the purchase date of the item for which the record is maintained.

Sec. 2309.357. SURRENDER OF CERTAIN DOCUMENTS OR LICENSE PLATES. (a) Requires a used automotive parts recycler to surrender to TxDOT for cancellation a certificate of title or authority, sales receipt, or transfer document, as required by TDLR.

(b) Requires TxDOT to provide a signed receipt for a surrendered certificate of title.

Sec. 2309.358. INSPECTION OF RECORDS. (a) Authorizes a peace officer at any reasonable time to inspect a record required to be maintained under this subchapter, including an inventory record.

(b) Requires a used automotive parts recycler, on demand by a peace officer, to provide to the officer a copy of a record required to be maintained under this subchapter.

(c) Authorizes a peace officer to inspect the inventory on the premises of a used automotive parts recycler at any reasonable time to verify, check, or audit the records required to be maintained under this subchapter.

(d) Provides that a used automotive parts recycler or an employee of the recycler is required to allow and is prohibited from interfering with a peace officer's inspection of the recycler's inventory, premises, or required inventory records.

[Reserves Sections 2309.359-2309.400 for expansion.]

SUBCHAPTER I. MOTOR VEHICLE SALVAGE YARDS IN CERTAIN COUNTIES

Sec. 2309.401. APPLICABILITY OF SUBCHAPTER. Provides that this subchapter applies only to a used automotive parts facility located in a county with a population of 2.8 million or more.

Sec. 2309.402. LIMITS ON OPERATION OF HEAVY MACHINERY. (a) Prohibits a used automotive parts recycler from operating heavy machinery in a used automotive parts recycling facility between the hours of 7 p.m. of one day and 7 a.m. of the following day.

(b) Provides that this section does not apply to conduct necessary to a sale or purchase by the recycler.

SECTION 8. Amends Section 501.091, Transportation Code, by amending Subdivision (17) and adding Subdivision (20), to redefine "salvage vehicle dealer" and to define "used parts dealer" and "used automotive parts recycler."

SECTION 9. Amends Section 501.092(d), Transportation Code, to include a used automotive parts recycler among those that an insurance company is only authorized to sell a motor vehicle to which this section applies, or assign a salvage vehicle title or a nonrepairable vehicle title for the motor vehicle. Makes a nonsubstantive change.

SECTION 10. Amends Sections 501.095(a) and (b), Transportation Code, as follows:

(a) Includes a used automotive parts recycler under Chapter 2309, Occupations Code, among the persons that a certain business or governmental entity is authorized to sell, transfer, or release a nonrepairable motor vehicle or salvage motor vehicle to, if TDLR has not issued a nonrepairable vehicle title or salvage vehicle title for the motor vehicle and an out-of-state ownership document for the motor vehicle has not been issued by another state or jurisdiction.

(b) Includes a used automotive parts recycler licensed to do business in this state, who acquired ownership of a nonrepairable or salvage motor vehicle that has been issued a nonrepairable vehicle title, salvage vehicle title, or a comparable ownership document issued by another state or jurisdiction among the entities required to, before selling the motor vehicle, surrender the properly assigned certificate of title for the motor vehicle to TxDOT and apply to TxDOT for a certain title.

SECTION 11. Amends Section 501.105, Transportation Code, to make a conforming change.

SECTION 12. Repealer: Section 2302.253 (Receipt of Motor Vehicle by Holder of Endorsement as Used Vehicle Parts Dealer), Occupations Code.

SECTION 13. Requires TCLR, not later than January 1, 2010, to adopt rules under Section 2309.102, Occupations Code, as added by this Act.

SECTION 14. Provides that if there is a conflict between a provision of this Act and a provision of another Act of the 81st Legislature, Regular Session, 2009, that becomes law concerning the licensing or regulation of used automotive parts recyclers, this Act prevails regardless of the relative dates of enactment.

SECTION 15. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2009.

(b) Effective date, Sections 2309.151 and 2309.154, Occupations Code, as added by this Act, and Subchapter F, Chapter 2309, Occupations Code, as added by this Act: September 1, 2010.