

BILL ANALYSIS

Senate Research Center
81R21109 JAM-F

C.S.S.B. 1203
By: West
Natural Resources
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

During the 80th Legislature, Regular Session, 2007, S.B. 642 passed the Texas Senate with broad, bipartisan support. The bill was created in response to an epidemic rise in the theft of metals such as copper, bronze, brass, and aluminum, which are recognized under the term regulated metals. S.B. 642 in its entirety was rolled into S.B. 1154, 80th Legislature, Regular Session, 2007, which was signed into law. This language created an electronic statewide database wherein the sales of regulated metals and other regulated materials could be monitored by law enforcement to detect possible purchases of items obtained by unlawful means.

The prior system of statewide reporting consisted of a paper-driven format sent weekly by some metal recycling entities by postal mail or facsimile. The Texas Department of Public Safety was unsure of the number of metal recycling entities operating in Texas. Through legislation and reporting required under S.B. 1154, 469 metal recycling dealers with 917 locations are now known to operate in Texas.

S.B. 1154 also established a list of items known as "regulated materials" that should not be accepted for sales from the general public to metal recycling entities, unless presented by commercial, industrial, or governmental entities or their agents. S.B. 1154 enhanced identification requirements for persons who present items containing regulated metals for sale to metal recycling entities.

This bill is the follow-up to S.B. 1154 and S.B. 642. Since 2007, discussions have continued with metal recyclers, businesses, cities, law enforcement and other stakeholders to identify issues that require additional legislative attention. This bill is the result of those discussions.

C.S.S.B. 1203 makes revisions to existing state law relating to the regulation of metal recycling entities and provides penalties.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1956.001(10), Occupations Code, to redefine "regulated metal."

SECTION 2. Amends the heading to Section 1956.003, Occupations Code, to read as follows:

Sec. 1956.003. LOCAL LAW; CRIMINAL PENALTY.

SECTION 3. Amends Section 1956.003, Occupations Code, by adding Subsections (f)-(h), as follows:

(f) Requires a county, municipality, or political subdivision that issues a license or permit authorized under Subsection (b) to issue a notice to an owner or operator of a metal recycling entity operating without a license or permit informing the owner or operator that the entity is operating without the required license or permit and that the owner or operator may be subject to criminal penalties if the owner or operator does not obtain the appropriate license or permit before the 31st day after the date the notice is received.

(g) Provides that a person commits an offense if the person owns or operates a metal recycling entity and does not obtain the appropriate license or permit before the 31st day after the date of receiving a notice under Subsection (f).

(h) Provides that an offense under Subsection (g) is a Class A misdemeanor.

SECTION 4. Amends Section 1956.032(a), Occupations Code, to require a person , except as provided by Subsection (f), attempting to sell regulated material to a metal recycling entity to provide to the metal recycling entity the make, model, and license plate number of the motor vehicle used to transport the regulated material and the name of the state issuing the license plate.

SECTION 5. Amends Section 1956.033, Occupations Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires that the record be in English and include the information required by Sections 1956.032(a)(2) (relating to requiring a person selling regulated material to a metal recycling entity to provide the make, model, and license plate number to the entity) and (3) (relating to requiring a person selling regulated material to a metal recycling entity to present written documentation or sign a written statement stating the person is the legal owner or entitled to sell the regulated materials), rather than Section 1956.032(a)(3).

(c) Authorizes the record to include a clear and legible thumbprint of a seller of regulated material.

SECTION 6. Amends Section 1956.034, Occupations Code, to require that the records be kept in an easily retrievable format.

SECTION 7. Amends Section 1956.036, Occupations Code, as follows:

Sec. 1956.036. FURNISHING OF REPORT TO DEPARTMENT. (a) Requires a metal recycling entity, except as provided by Subsections (b) and (d), not later than the fifth day, rather than seventh day, after the date of the purchase or other acquisition of material for which a record is required under Section 1956.033, to send an electronic transaction report to the Texas Department of Public Safety (DPS) via DPS's Internet website, rather than sending an electronic transaction by facsimile or electronic mail to or file with DPS a report containing certain information. Requires that the report contain the information required to be recorded under Section 1956.033. Makes nonsubstantive changes.

(b) Requires a metal recycling entity, if the entity purchases bronze material that is a cemetery vase, receptacle, memorial, or statuary or a pipe that can reasonably be identified as aluminum irrigation pipe, to notify DPS by telephone, not later than the close of business on the entity's first working day after the purchase date and to submit to DPS electronically via DPS's Internet website, rather than mailing a report, or file with DPS a report containing the information required to be recorded under Section 1956.033 not later than the fifth day after the purchase date.

(d) Authorizes a metal recycling entity to submit the transaction report required under Subsection (a) by facsimile if the entity submits to DPS annually an application requesting an exception to the electronic reporting requirement and an affidavit stating that the entity does not have an available and reliable means of submitting the transaction report electronically, and DPS approves the entity's application under this subsection.

SECTION 8. Amends Section 1956.037(a), Occupations Code, to 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 five days, rather than 72 hours, excluding weekends and holidays, before the disposal, processing, sale, or removal or the entity acquired

the item more than 72 hours, excluding weekends and holidays, before the disposal, processing, sale, or removal; and obtained a digital or video photograph of the seller of the regulated material purchased.

SECTION 9. Amends Section 1956.038, Occupations Code, as follows:

Sec. 1956.038. PROHIBITED ACTS. (a) Creates this subsection from existing text. Prohibits a person, with the intent to deceive, from displaying another individual's personal identification document in connection with the sale of regulated material.

(b) Prohibits a metal recycling entity from paying more than \$250 in cash for a purchase of regulated metal or paying more than \$500 in cash for a purchase of regulated material, other than regulated metal.

(c) Prohibits a county, municipality, or political subdivision, notwithstanding Section 1956.003(a) or any other law, from adopting 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).

SECTION 10. Amends Section 1956.040(a), Occupations Code, to provide that a person commits an offense if the person knowingly violates Section 1956.021 (Registration Required), Section 1956.023(d) (relating to a person whose certificate of registration has expired), or 1956.038 (Prohibited Acts).

SECTION 11. Amends Section 1956.103(a), Occupations Code, to prohibit a person from selling or otherwise transferring to a metal recycling entity a metal alcoholic beverage keg, regardless of condition, unless the seller is the manufacturer of the keg, the brewer or distiller of the beverage that was contained in the keg, or an authorized representative of the manufacturer, brewer, or distiller.

SECTION 12. Amends Section 1956.151, Occupations Code, to require DPS to deny an application for a certificate of registration, suspend or revoke a certificate of registration, or reprimand a person who is registered under this chapter if the person violates a provision of this chapter or a rule adopted under this chapter.

SECTION 13. Amends Section 1956.202(d), Occupations Code, to prohibit a civil penalty from being assessed under this section for conduct described by Section 1956.021, 1956.023(d), or 1956.038.

SECTION 14. Amends Section 31.03(e), Penal Code, to provide that an offense under this section, except as provided by Subsection (f), is a state felony if the value of the property stolen is less than \$20,000 and the property stolen consists of at least 50 percent aluminum, bronze, copper, or brass. Deletes existing text providing that an offense under this section, except as provided by Subsection (f), is a state felony if the value of the property stolen is less than \$20,000 and the property stolen is insulated or noninsulated wire or cable that consists of at least 50 percent aluminum, bronze, copper, or brass.

SECTION 15. Repealer: Section 1956.014(d) (relating to requiring DPS to submit to both houses of the legislature a report on the actual costs incurred by DPS in administering this chapter), Occupations Code.

SECTION 16. Makes application of this Act prospective.

SECTION 17. Effective date: September 1, 2009.