

BILL ANALYSIS

Senate Research Center
82R16947 MAW-D

C.S.S.B. 694
By: West
Natural Resources
3/31/2011
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 642 passed the Texas Senate with broad, bipartisan support during the 80th Legislature. It was created in response to an epidemic rise in theft of metals such as copper, bronze, brass, and aluminum, recognized under the term "regulated metals." S.B. 642 in its entirety, was rolled into S.B. 1154 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 Department of Public Safety of the State of Texas (DPS) was unsure of the number of metal recycling entities operating in Texas. Through registration and reporting required under S.B. 1154, 867 metal recycling locations have registered with the state. About one-half have submitted required reports within the last year. DPS estimates that there may be 2,400 unspecified recycling entities operating in Texas.

C.S.S.B. 694 amends current law relating to the regulation of metal recycling entities and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Public Safety Commission in SECTION 19 (Section 411.422, Government Code) of this bill.

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 (a-1), (a-2), (f), (g) and (h), as follows:

(a-1) Authorizes a county, municipality, or other political subdivision to require the record of purchase described under Section 1956.033 (Record of Purchase) to contain a clear and legible thumbprint of a seller of regulated material.

(a-2) Requires a county, municipality, or other political subdivision that, as authorized under Subsection (a), requires a metal recycling entity to report to the county, municipality, or political subdivision information relating to a sale of regulated material to:

(1) include in any contact entered into by the county, municipality, or political subdivision relating to the reporting of the information a provision that:

(A) requires any contractor, subcontractor, or third party that has access to, comes into possession of, or otherwise obtains information relating to a sale of regulated material to maintain the confidentiality of all information

received, including the name of the seller, the price paid for a purchase of regulated material, and the quantity of regulated material purchased; and

(B) allows the county, municipality, or political subdivision to terminate the contract of any contractor, subcontractor, or third party that violates the confidentiality provision required by Paragraph (A); and

(2) investigate a complaint alleging that a contractor, subcontractor, or third party has failed to maintain the confidentiality of information relating to a sale of regulated material.

(f) Provides that a person commits an offense if the person owns or operates a metal recycling entity and does not hold a license or permit required by a county, municipality, or other political subdivision as authorized under Subsection (b). Provides that an offense under this subsection is a Class B misdemeanor unless it is shown on the trial of the offense that the person has been previously convicted under this subsection, in which event the offense is a Class A misdemeanor.

(g) Provides that it is an exception to the application of Subsection (f) that:

(1) the person held a license or permit issued by the appropriate county, municipality, or other political subdivision at one point during the 12-month period preceding the date of the alleged offense; and

(2) the person obtains or submits an application for the appropriate license or permit not later than the 15th day after the date the person receives notice from the appropriate county, municipality, or other political subdivision informing the person that the metal recycling entity is operating without the required license or permit.

(h) Provides that this subsection and Subsection (g) expire March 1, 2013.

SECTION 4. Amends Subchapter A, Chapter 1956, Occupations Code, by adding Section 1956.004, as follows:

Sec. 1956.004. CIVIL PENALTY. (a) Provides that a person who owns or operates a metal recycling entity and does not hold a license or permit required by a county, municipality, or other political subdivision as authorized under Section 1956.003(b) is subject to a civil penalty of not more than \$1,000 for each violation. Requires the court, in determining the amount of the civil penalty, to consider:

(1) any other violations of the person; and

(2) the amount necessary to deter future violations.

(b) Authorizes a district attorney, county attorney, or municipal attorney to institute an action to collect the civil penalty provided by this section.

(c) Provides that each day a violation occurs or continues to occur is a separate violation.

(d) Authorizes the district attorney, county attorney, or municipal attorney to recover reasonable expenses incurred in obtaining a civil penalty under this section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

(e) Provides that it is an exception to the application of this section that:

(1) the person held a license or permit issued by the appropriate county, municipality, or other political subdivision at one point during the 12-month period preceding the date of the alleged violation; and

(2) the person obtains or submits an application for the appropriate license or permit not later than the 15th day after the date the person receives notice from the appropriate county, municipality, or other political subdivision informing the person that the metal recycling entity is operating without the required license or permit.

(f) Provides that subsection and Subsection (e) expire March 1, 2013.

SECTION 5. Amends Section 1956.015, Occupations Code, by amending Subsection (d) and adding Subsections (e) and (f), as follows:

(d) Provides that information under this section is not subject to disclosure under Chapter 552 (Public Information), Government Code. Requires the Texas Department of Public Safety (DPS) to maintain the confidentiality of all information provided under this section, including the name of the seller, the price paid for a purchase of regulated material, and the quantity of regulated material purchased, rather than requires DPS to maintain the confidentiality of information provided under this Section that relates to the financial condition or business affairs of a metal recycling entity or that is otherwise commercially sensitive. Deletes existing text providing that the confidential information is not subject to disclosure under Chapter 552 (Public Information), Government Code.

(e) Authorizes DPS to enter into contracts relating to the operation of the statewide electronic reporting system established by this section. Requires that a contract under this subsection:

(1) require that any contractor, subcontractor, or third party that has access to, comes into possession of, or otherwise obtains information provided under this section maintain the confidentiality of all information provided under this section, including the name of the seller, the price paid for a purchase of regulated material, and the quantity of regulated material purchased; and

(2) provide that DPS may terminate the contract of any contractor, subcontractor, or third party that violates the confidentiality provision required by Subdivision (1).

(f) Requires DPS to investigate a complaint alleging that a contractor, subcontractor, or third party has failed to maintain the confidentiality of information relating to a sale of regulated material.

SECTION 6. Amends Subchapter A-1, Chapter 1956, Occupations Code, by adding Sections 1956.016 and 1956.017, as follows:

Sec. 1956.016. REGISTRATION DATABASE. Requires DPS to make available on its Internet website a publicly accessible list of all registered metal recycling entities. Requires that the list contain the following for each registered metal recycling entity:

(1) the entity's name;

(2) the entity's physical address; and

(3) the name of and contact information for a representative of the entity.

Sec. 1956.017. ADVISORY COMMITTEE. (a) Requires DPS to establish an advisory committee to advise DPS on matters related to DPS's regulation of metal recycling entities under this chapter.

(b) Provides that the advisory committee consists of 12 members appointed by the director as follows:

- (1) one representative of DPS;
- (2) two representatives of local law enforcement agencies located in different municipalities, each with a population of 500,000 or more;
- (3) two representatives of local law enforcement agencies located in different municipalities, each with a population of 200,000 or more but less than 500,000;
- (4) one representative of a local law enforcement agency located in a municipality with a population of less than 200,000;
- (5) four representatives of metal recycling entities; and
- (6) two members who represent industries that are impacted by theft of regulated material.

(c) Requires the public safety director to ensure that the members of the advisory committee reflect the diverse geographic regions of this state.

(d) Requires the advisory committee to elect a presiding officer from among its members to serve a two-year term. Authorizes a member to serve more than one term as presiding officer.

(e) Requires the advisory committee to meet annually and at the call of the presiding officer or the director.

(f) Provides that an advisory committee member is not entitled to compensation or reimbursement of expenses.

(g) Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the size, composition, or duration of the advisory committee or the appointment of the committee's presiding officer.

SECTION 7. Amends the heading to Section 1956.032, Occupations Code, to read as follows:

Sec. 1956.032. INFORMATION REGARDING SELLER.

SECTION 8. Amends Section 1956.032, Occupations Code, by amending Subsection (a) and adding Subsection (g), as follows:

(a) Requires, except as provided by Subsection (f), a person attempting to sell regulated material to a metal recycling entity to:

- (1) display to the metal recycling entity the person's personal identification document;
- (2) provide to the metal recycling entity the make, model, color, and license plate number of the motor vehicle used to transport the regulated material and the name of the state issuing the license plate;
- (3) either present written documentation evidencing that the person is the legal owner or is lawfully entitled to sell the regulated material; or sign a written statement provided by the metal recycling entity that the person is the legal owner of or is lawfully entitled to sell the regulated material offered for sale;

(4) if the regulated material includes condensing or evaporator coils for central heating or air conditioning units, display to the metal recycling entity:

(A) the person's air conditioning and refrigeration contractor license issued under Subchapter F (License Requirements) or G (Municipal Licensing and Regulation), Chapter 1302 (Air Conditioning and Refrigerating Contractors);

(B) the person's air conditioning and refrigeration technician registration issued under Subchapter K (Air Conditioning and Refrigerating Technicians), Chapter 1302;

(C) a receipt, bill of sale, or other documentation showing that the seller purchased the coils the seller is attempting to sell; or

(D) a receipt, bill of sale, or other documentation showing that the seller has purchased a replacement central heating or air conditioning unit; and

(5) if the regulated material includes insulated utility, communications, or electrical wire that has been burned wholly or partly to remove the insulation, display to the metal recycling entity documentation from an insurance or demolition company or the fire department of a county, municipality, or other political subdivision stating that the material was salvaged from a fire.

(g) Requires a metal entity, notwithstanding Section 1956.002 (Exception), to verify the registration of a person attempting to sell regulated material who represents that the person is a metal recycling entity as follows:

(1) by using the database described by Section 1956.016; or

(2) by obtaining from the person a copy of the person's certificate of registration issued under Section 1956.022 (Issuance of Certificate; Qualifications) in addition to the information required under Subsection (a).

SECTION 9. Amends Section 1956.033, Occupations Code, as follows:

Sec. 1956.033. RECORD OF PURCHASE. (a) Requires each metal recycling entity in this state to keep an accurate electronic record or an accurate and legible written record of each purchase of regulated material made in the course of the entity's business from an individual. Deletes existing text relating to each purchase of copper or brass material, bronze material, aluminum material, or regulated metal.

(b) Requires that the record be in English and include:

(1) the place and date of the purchase;

(2) the name and address of the seller in possession of the regulated material purchased, rather than the name and address of each individual from whom the regulated material is purchased or obtained;

(3) the identifying number of the seller's personal identification document;

(4) a description made in accordance with the custom of the trade of the commodity type and quantity of regulated material purchased;

(5) the information required by Sections 1956.032(a)(2) and (3);

(6) as applicable, the identifying number of the seller's air conditioning and refrigeration contractor license displayed under Section 1956.032(a)(4)(A); a copy of the seller's air conditioning and refrigeration

technician registration displayed under Section 1956.032(a)(4)(B); a copy of the documentation described by Section 1956.032(a)(4)(C); or a copy of the documentation described by Section 1956.032(a)(4)(D);

(7) a copy of the documentation described by Section 1956.032(a)(5); and

(8) a copy of the documentation described by Section 1956.032(g).

SECTION 10. Amends Section 1956.034, Occupations Code, as follows:

Sec. 1956.034. PRESERVATION OF RECORDS. Requires a metal recycling entity to preserve each record required by Sections 1956.032 and 1956.033 until the second anniversary of the date the record was made, rather than the third anniversary of the date the record was made. Requires that the records be kept in an easily retrievable format and be available for inspection as provided by Section 1956.035 not later than 72 hours after the time of purchase.

SECTION 11. Amends Section 1956.035, Occupations Code, as follows:

Sec. 1956.035. New heading: INSPECTION OF RECORDS. (a) Requires a metal recycling entity, on request, to permit a peace officer of this state, a representative of DPS, or a representative of a county, municipality, or other political subdivision that issues a license or permit under Section 1956.003(b) to inspect, during the entity's usual business hours:

(1) a record required by Section 1956.033; or

(2) regulated material in the entity's possession.

(b) Requires the person seeking to inspect a record or material, rather than the inspecting officer, to inform the entity of the person's, rather than officer's status, as a peace officer, representative of DPS, or representative of a county, municipality, or other political subdivision.

SECTION 12. Amends Section 1956.036, Occupations Code, by amending Subsections (a) and (b) and adding Subsections (d) and (e), as follows:

(a) Requires the entity, except as provided by Subsections (b) and (d), not later than the close of business on a metal recycling entity's second working 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 DPS via DPS's Internet website. Requires that the report contain the information required to be recorded under Section 1956.033, rather than requires a metal recycling entity, except as provided by Subsection (b), not later than the seventh day after the date of the purchase or other acquisition of material for which a record is required under Section 1956.033, a metal recycling entity to send by facsimile or electronic mail to or file with DPS a report containing the information required to be recorded under that section.

(b) Requires the entity, if a metal recycling entity purchases bronze material that is a cemetery vase, receptacle, memorial, or statuary or a pipe that can reasonably be identified as an aluminum irrigation pipe, to:

(1) not later than the close of business on the entity's first working day after the purchase date, notify DPS by telephone, by e-mail, or via DPS's Internet website; and

(2) not later than the close of business on the entity's second working day after the purchase date, submit to DPS electronically via DPS's Internet website or file with DPS a report containing the information required to be recorded under Section 1956.033, rather than not later than the fifth day after the purchase date, mail to or

file with DPS a report containing the information required to be recorded under Section 1956.033.

(d) Authorizes a metal recycling entity to submit the transaction report required under Subsection (a) by facsimile if:

(1) 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

(2) DPS approves the entity's application under this subsection.

(e) Authorizes DPS, after notice and an opportunity for a hearing, to prohibit a metal recycling entity from paying cash for a purchase of regulated material for a period determined by DPS if DPS finds that the entity has failed to comply with this section.

SECTION 13. Amends Section 1956.037(a), Occupations Code, as follows:

(a) Prohibits a metal recycling entity from disposing of, processing, selling, or removing from the premises an item of regulated metal unless:

(1) the entity acquired the item more than four days, rather than 72 hours, excluding weekends and holidays, before the disposal, processing, sale, or removal;

(2) the entity purchased the item from a manufacturing, industrial, commercial, retail, or other seller that sells regulated material in the ordinary course of its business; or

(3) the entity acquired the item more than 72 hours, excluding weekends and holidays, before the disposal, processing, sale, or removal; and either obtained a digital or video photograph of the seller of the regulated metal and the regulated metal purchased; or retains a sample representative of the items of regulated metal disposed of, processed, sold, or removed until the eighth day following the date the sample was acquired.

Makes a nonsubstantive change.

SECTION 14. 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 taking certain actions, including displaying or providing to a metal recycling entity any information required under Section 1956.032 that the person knows is false or invalid; or display another individual's personal identification document in connection with the sale of regulated material. Makes a nonsubstantive change,

(b) Prohibits a metal recycling entity from paying for a purchase of regulated material in cash if:

(1) the entity does not hold a certificate of registration under Subchapter A-2 and, if applicable, a license or permit required by a county, municipality, or other political subdivision as authorized under Section 1956.003(b); or

(2) the entity has been prohibited by DPS from paying cash under Section 1956.036(e).

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

(d) Provides that Subsection (c) does not apply to a rule, charter, ordinance, or order of a county, municipality, or other political subdivision in effect on January 1, 2011.

(d-1) Requires DPS, not later than January 1, 2012, to issue a notice to each known owner or operator of a metal recycling entity in this state informing the owner or operator of the requirement to obtain a certificate or registration under Subchapter A-2 and, if applicable, to obtain a license or permit required by a county, municipality, or other political subdivision under Section 1956.003. Sets forth the language required to be on the notice.

(d-2) Provides that this subsection and Subsection (d-1) expire March 1, 2012.

(e) Authorizes DPS or a county, municipality, or other political subdivision to bring an action in the county in which a metal recycling entity is located to enjoin the business operations of the owner or operator of the metal recycling entity for a period of not less than 30 days and not more than 90 days if the owner or operator has not submitted an application for a certificate of registration or the appropriate license or permit required by a county, municipality, or other political subdivision.

(f) Requires that an action under Subsection (e) be brought in the name of the state. Requires the court, if the judgment is in favor of the state, to:

(1) enjoin the owner or operator from maintaining or participating in the business of a metal recycling entity for a definite period of not less than 30 days and not more than 90 days, as determined by the court; and

(2) order that the place of business of the owner or operator be closed for the same period.

SECTION 15. Amends Section 1956.040, Occupations Code, by adding Subsections (a-1), (a-2), (a-3), and (a-4), as follows:

(a-1) Provides that a person commits an offense if the person knowingly violates Section 1956.021, 1956.023(d) (relating to an expired certificate of registration), 1956.036(a), or 1956.039 (Hours for Purchasing Material); or buys insulated utility, communications, or electrical wire that has been burned wholly or partly to remove the insulation, unless the wire is accompanied by documentation from an insurance or demolition company or the fire department of a county, municipality, or other political subdivision stating that the material was salvaged from a fire.

(a-2) Provides that an offense under Subsection (a-1) is a misdemeanor punishable by a fine not to exceed \$10,000, unless it is shown on trial of the offense that the person has previously been convicted of a violation of Subsection (a-1), in which event the offense is a state jail felony.

(a-3) Provides that it is an affirmative defense to prosecution of a violation of Section 1956.021 or 1956.023(d) that the person made a diligent effort to obtain or renew a certificate of registration at the time of the violation.

(a-4) Authorizes a municipality or county to retain 10 percent of the money collected from a fine for a conviction of an offense under Subsection (a-1) as a service fee for that collection and the clerk of the court is required to remit the remainder of the fine

collected for conviction of an offense under Subsection (a-1) to the comptroller of public accounts (comptroller) in the manner provided for the remission of fees to the comptroller under Subchapter B (Reporting, Collection, and Remittance of Fees), Chapter 133 (Criminal and Civil Fees Payable to the Comptroller), Local Government Code. Requires the comptroller to deposit proceeds received under this subsection to the credit of an account in the general revenue fund, and those proceeds may be appropriated only the DPS and used to:

(1) finance DPS's administration of Subchapters A, A-1, A-2, and A-3 (Practice by Certificate Holders); and

(2) fund grants distributed under the prevention of scrap metal theft grant program established under Subchapter N, Chapter 411, Government Code.

SECTION 16. Amends Section 1956.103(a), Occupations Code, as follows:

(a) Prohibits a person from selling or otherwise transferring to a metal recycling entity certain items, including 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. Makes a nonsubstantive change.

SECTION 17. Amends Section 1956.151, Occupations Code, to require DPS to deny an application for certificate of registration, suspend or revoke a certificate or registration, or reprimand a person who is registered under this chapter if the person commits certain actions, including violating a provision of this chapter or a rule adopted under this chapter.

SECTION 18. 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), 1956.036(a), 1956.038, or 1956.039.

SECTION 19. Amends Chapter 411, Government Code, by adding Subchapter N, as follows:

SUBCHAPTER N. PREVENTION OF SCRAP METAL THEFT GRANT PROGRAM

Sec. 411.421. DEFINITION. Defines "regulated material."

Sec. 411.422. GRANTS TO FUND SCRAP METAL THEFT PREVENTION. (a) Requires the Public Safety Commission (commission), from fines collected and distributed to DPS under Sections 1956.040(a-2) and (a-4), Occupations Code, by rule to establish and implement a grant program to provide funding to assist local law enforcement agencies in preventing the theft of regulated material.

(b) Requires a recipient, to be eligible for a grant, to be a local law enforcement agency that has established a program designed to prevent the theft of regulated material.

(c) Requires that rules adopted under this section include accountability measures for grant recipients and provisions for loss of eligibility for grant recipients that fail to comply with the measures, and require grant recipients to provide to DPS information on program outcomes.

SECTION 20. Amends Section 31.03(e), Penal Code, to provide that an offense under this section, except as provided by Subsection (f), is a state jail felony if the value of the property stolen is less than \$20,000 and the property stolen is aluminum, bronze, copper, or brass, rather than if the value of the property stolen is less than \$20,000 and the property stolen is insulated or noninsulated tubing, rods, water gate stems, wire, or cable that consists of at least 50 percent aluminum, bronze or copper. Makes a nonsubstantive change.

SECTION 21. (a) Makes application of the change in law made by this Act to an offense committed on or after the effective date of this Act, prospective

(b) Provides that an offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

(c) Provides that the enhancement of the punishment of an offense provided under Section 1956.040(a-2), Occupations Code, as added by this Act, applies only to an offense committed on or after January 1, 2012.

(d) Requires the public safety director, not later than January 1, 2012, to appoint the members of the advisory committee established under Section 1956.017, Occupations Code, as added by this Act, and designate the time and place of the committee's first meeting.

SECTION 22. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2011.

(b) Effective date, Sections 1956.003(f), 1956.004 and 1956.038(b) and (e), Occupations Code, as added by this Act: March 1, 2012.