

## **BILL ANALYSIS**

Senate Research Center  
84R6291 TSR-F

S.B. 513  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The issue of metal theft and its easy conversion to cash has reinforced the need to address transactions related to transfer of a regulated material (aluminum, bronze, copper, brass and other metals). Legislation adopted during prior sessions sought to address the matter of regulated materials theft, but unfortunately such theft remains a significant public policy problem across the state, making Texas the second highest state with insurance claims for theft of regulated materials.

S.B. 513 addresses this problem by eliminating the immediate cash transaction between a metal recycling entity (entity) and the seller (seller or person), limiting more than one transaction per seller per day, and requiring that a seller must sign a written statement certifying that they have not been previously convicted of a regulated material theft. In addition to the elimination of a cash transaction, a transaction equal to or higher than \$25.00 must be paid by mailing either of the following: (1) a check or money order payable to the seller to the address on the seller's identification card; or (2) a notice stating the time after which the seller may pick up a check or money order made payable to the seller at the metal recycling entity. Failure to comply with the payment provisions would subject the metal recycler to a criminal penalty. If a seller makes a false representation in connection with the written statement, the seller is subject to a criminal penalty.

As proposed, S.B. 513 amends current law relating to the regulation of metal recycling entities and imposes an administrative penalty.

### **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 1956.032, Occupations Code, by adding Subsection (a-1), as follows:

(a-1) Requires a person attempting to sell regulated material to a metal recycling entity to sign a written statement provided by the metal recycling entity certifying that the person has not previously been convicted of an offense:

- (1) under Section 31.03 (Theft), Penal Code, if the property stolen was regulated material; or
- (2) under another law of this state or of another jurisdiction involving the sale of regulated material.

SECTION 2. Amends Section 1956.033(b), Occupations Code, as follows:

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

- (1)-(4) Makes no change to these subdivisions.

(5) the information required by Sections 1956.032 (Information Regarding Seller) (a)(2) and (3) and (a-1);

(6)-(8) Makes no change to these subdivisions.

SECTION 3. Amends Section 1956.038, Occupations Code, by amending Subsections (a), (b), and (c) and adding Subsection (b-1), as follows:

(a) Prohibits a person, with the intent to deceive, to:

(1) Makes no change to this subdivision;

(2) make a false, material statement or representation to a metal recycling entity in connection with:

(A) that person's execution of a written statement required by Sections 1956.032(a)(3) and (a-1), rather than Section 1956.032(a)(3) ; or

(B) Makes no change to this paragraph;

(3)-(4) Makes no change to these subdivisions.

(b) Provides that a metal recycling entity may only pay for a purchase of regulated material in the manner provided by Section 1956.0381, rather than prohibiting a metal recycling entity from paying for a purchase of regulated material in cash if 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 the entity has been prohibited by the Texas Department of Public Safety (DPS) from paying cash under Section 1956.036(e).

(b-1) Prohibits a metal recycling entity from entering into more than one transaction for the purchase of regulated material from the same seller in a business day.

(c) Prohibits a person from selling or attempting to sell regulated material to a metal recycling entity if the person has been previously convicted of an offense:

(1) under Section 31.03 (Theft), Penal Code, if the property stolen was regulated material; or

(2) under another law of this state or of another jurisdiction involving the sale of regulated material.

Deletes text of existing Subsection (c) prohibiting a county, municipality, or other political subdivision 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), notwithstanding Section 1956.003(a) or any other law.

SECTION 4. Amends Subchapter A-3, Chapter 1956, Occupations Code, by adding Sections 1956.0381 and 1956.041, as follows:

Sec. 1956.0381. PAYMENT BY METAL RECYCLING ENTITY. (a) Authorizes a metal recycling entity to only pay for a purchase of regulated material, except as provided by Subsection (c), by:

(1) check;

(2) money order; or

(3) direct deposit by electronic funds transfer.

(b) Requires that a metal recycling entity that pays for a purchase of regulated material by check or money order obtain a digital photograph or video recording that accurately depicts:

- (1) the seller's entire face; and
- (2) each type of regulated material purchased.

(c) Requires the metal recycling entity pay the seller by mailing to the address located on the personal identification document provided by the seller under Section 1956.032 for any sale of regulated material to a metal recycling entity in which the amount of the transaction is equal to or exceeds \$25:

- (1) a check or money order made payable to the seller; or
- (2) a notice to the seller stating the time after which the seller may pick up at the metal recycling entity a check or money order made payable to the seller.

Sec. 1956.041. ADMINISTRATIVE PENALTY. (a) Authorizes the commission, after notice and an opportunity for a hearing, to impose an administrative penalty on a person who violates Section 1956.036.

(b) Prohibits the amount of the administrative penalty from exceeding \$1,000. Provides that each day a violation occurs or continues to occur is a separate violation for the purpose of imposing a penalty. Requires the commission, in determining the amount of the administrative penalty, to consider:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the economic harm caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts to correct the violation; and
- (6) any other matter that justice may require.

(c) Authorizes the enforcement of the administrative penalty to be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. Authorizes a person who cannot afford to pay the penalty or file the bond to stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the commission to contest the affidavit as provided by those rules.

(d) Authorizes the attorney general to sue to collect the administrative penalty.

(e) Provides that a proceeding to impose an administrative penalty is considered to be a contested case under Chapter 2001 (Administrative Procedure), Government Code.

SECTION 5. Repealers: Sections 1956.036 (e) (authorizing 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) and 1956.038 (d) (providing 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), Occupations Code.

SECTION 6. Makes application of Section 1956.041, Occupations Code, as added by this Act, prospective.

SECTION 7. Effective date: September 1, 2015.