

BILL ANALYSIS

Senate Research Center
85R15677 TSR-F

C.S.S.B. 208
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Natural Resources & Economic Development
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Department of Public Safety (DPS) has growing concerns with the incidence and dangers associated with undetonated explosive devices that knowingly or unknowingly are presented for sale at metal recycling entities throughout Texas. DPS reports that unexploded munitions are often recovered from sites that are currently or have previously been used by the military. Some of these former military properties have been transferred to public uses.

Despite the inherent hazards, the sale of these explosive devices is technically legal and unregulated in Texas.

The presence of unexploded explosive devices at metal recycling entities poses a threat to the general public and areas nearby the recycling entity. They pose a more immediate danger to unsuspecting workers as these dormant devices have exploded causing injury, including dismemberment, to persons in proximity.

S.B. 208 prohibits the public from knowingly presenting for sale at a metal recycling entity, an explosive device or component of an explosive device.

S.B. 208 prohibits a metal recycling entity from knowingly purchasing from the public, an explosive device or component of an explosive device.

S.B. 208 contains criminal penalties for sellers and metal recycling entities that knowingly sell or purchase an explosive device. A metal recycling entity is also prohibited from knowingly storing an explosive device on its premises.

S.B. 208 limits the administrative penalty for violations to \$1,000 per violation, not to exceed \$10,000 for multiple violations.

The provisions of S.B. 208 do not apply to firearms or certain ammunition that does not contain explosive ingredients. A similar bill, S.B. 1194 was filed during the 84th Legislative Session.

C.S.S.B. 208 will:

1. Delete all references to the terms explosive component and explosive weapon to be replaced by the term "explosive device."
2. Delete new language in the filed version amending Section 1956.015(a) to retain existing language:
 - a. The department shall establish a statewide electronic reporting system to track the sales of regulated metal reported to the department under Section 1956.036. The department shall use the system to track the sale or attempted sale of an explosive component or an explosive weapon reported to the department under Section 1956.036(f).
3. Amend Section 1 of the bill to create a new definition of "explosive device" in (6-a).

4. Add new language amending Section 1956.036 that will allow an MRE to report the presence of an explosive device to the nearest military base or law enforcement agency for disposal in Bill Section 3 lines 21-26. This is following or in addition to reporting to DPS.
5. Add language saying that an MRE is not liable for how long it takes DPS, a law enforcement agency or military entity to respond after the presence of an explosive device has been reported in Bill Section 3 (c-4), lines 18-22.
6. Define store to mean 72 hours or more that an explosive device has been presented or discovered at an MRE without it being reported to DPS in Bill Section 3 (c-4), lines 9-18.
7. Add language requested by DPS for local jurisdictions to report all inspections performed at an MRE and any disciplinary actions taken in Bill Section 2 (c), lines 10-13.

These references are based on the Committee Substitute, Draft # 85R15677.

C.S.S.B. 208 amends current law relating to the regulation of metal recycling entities, provides an administrative penalty, and creates a criminal offense.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Public Safety Commission in SECTION 5 (Section 1956.041, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1956.001, Occupations Code, by amending Subdivision (6-a) and adding Subdivisions (6-b) and (6-c), as follows:

(6-a) Defines "explosive device."

(6-b) Redesignates existing Subdivision (6-a) as Subdivision (6-b) and makes no further changes to this subdivision.

SECTION 2. Amends Section 1956.003(c), Occupations Code, as follows:

(c) Includes inspection reports for the business, information regarding violations of this chapter (Metal Recycling Entities) by the business, and information regarding disciplinary actions initiated against the business to information on each business that is issued a license or permit that is required to be submitted to the Texas Department of Public Safety (DPS) in the manner required by DPS.

SECTION 3. Amends Section 1956.036, Occupations Code, by adding Subsection (f), to require a metal recycling entity to report to DPS by telephone, e-mail, or through the DPS website the entity's possession of an explosive device unknowingly purchased or otherwise obtained by the entity not later than the close of business on the entity's first working day after the date the possession of the device is discovered. Authorizes a metal recycling entity to report to an appropriate law enforcement authority or the nearest military installation the possession of an explosive device that the entity unknowingly purchased or otherwise obtained so that the explosive device may be removed from the entity or disposed of as soon as possible.

SECTION 4. Amends Section 1956.040, Occupations Code, by adding Subsections (c-1), (c-2), (c-3), (c-4), (c-5), and (d-1), as follows:

(c-1) Provides that a person commits an offense if the person knowingly sells an explosive device to a metal recycling entity.

(c-2) Provides that a metal recycling entity commits an offense if the entity knowingly buys an explosive device.

(c-3) Provides that, except as provided by Subsection (c-5), an offense under Subsection (c-1) or (c-2) is a Class A misdemeanor.

(c-4) Provides that a metal recycling entity commits an offense if the entity knowingly stores or allows to be stored on the entity's premises an explosive device. Provides that, except as provided by Subsection (c-5), an offense under this subsection is a Class A misdemeanor. Provides that, for purposes of this subsection, a metal recycling entity is considered to store an explosive device on the entity's premises beginning not earlier than 72 hours after the time a person presents the explosive device to the entity for sale or an attempted sale and ending at the time the entity reports the presence of the explosive device on the entity's premises to DPS. Provides that a metal recycling entity is not liable under this section for the time it takes for DPS, a law enforcement agency, or a military installation to respond to the entity's report that the entity possesses an explosive device.

(c-5) Provides that an offense under Subsection (c-1), (c-2), or (c-4) is a second degree felony if it is shown at the trial of the offense that a person suffered death or serious bodily injury, as defined by Section 1.07 (Definitions), Penal Code, as a result of the detonation of an explosive device.

(d-1) Authorizes the court to order the defendant to make restitution to certain parties on the conviction of an offense under Subsection (c-1), (c-2), or (c-4).

SECTION 5. Amends Section 1956.041, Occupations Code, by amending Subsections (a) and (b) and adding Subsections (b-1) and (f), as follows:

(a) Authorizes the Public Safety Commission (commission), after notice and an opportunity for a hearing, to impose an administrative penalty on a person who violates this subchapter (Practice by Certificate Holders), Subchapter A-2 (Certificate of Registration), or a commission rule or order under this chapter (Metal Recycling Entities), rather than on a person who violates Section 1956.036.

(b) Prohibits the amount of the administrative penalty from exceeding \$1,000 for each violation. Prohibits the aggregate penalty for multiple violations from exceeding \$10,000.

(b-1) Requires the commission, by rule, to adopt a standardized penalty schedule for a violation based on Subsection (b).

(f) Requires an administrative penalty collected under this section to be deposited in a special account in the general revenue fund and authorizes it to be appropriated only to DPS.

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

SECTION 7. Effective date: September 1, 2017.