

SUBJECT: Creating a defense for persons engaged in certain recycling transactions

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 5 ayes — Lozano, Blanco, Kacal, Kuempel, Morrison

0 nays

3 absent — E. Thompson, J. Turner, Zwiener

1 present not voting — Reynolds

WITNESSES: For — Kerry Haliburton, Recycling Council of Texas

Against — (*Registered, but did not testify*: Bill Kelberlau)

On — (*Registered, but did not testify*: Beth Seaton and Courtney Sprague, Texas Commission on Environmental Quality)

BACKGROUND: Health and Safety Code sec. 361.271 establishes that a person is responsible for solid waste if the person arranges to process or dispose of or transport for disposal or treatment solid waste owned or possessed by the person or another person or entity at the solid waste facility owned and operated by another person.

Under federal law, 42 U.S.C. sec. 9607(3) and (4) state that liability for certain response costs related to the release of hazardous material, damages for injury to natural resources, and the costs of any health assessment or effects study lies with any person who:

- by contract, agreement, or otherwise, arranged for disposal, treatment or transport of hazardous substances owned or possessed by such person or entity, at any facility containing such hazardous substances; and
- accepts or accepted any hazardous substances for transport to disposal or treatment facilities from which there is a release, or a

threatened release which causes the incurrence of response cost, of a hazardous substance.

42 U.S.C. sec. 9627 defines recyclable material as scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber, scrap metal, and certain other materials. It also establishes that a person who arranges for recycling of recyclable material will not be held liable with respect to such material.

Some have noted that metal recycling entities may arrange for recycling of their material with certain facilities that later go out of business. Concerns have been raised that such situations could leave metal recycling entities that arranged for the recycling open to liability for the pollution.

DIGEST:

Under CSHB 3224, a person who arranged for the recycling of certain recyclable material would not be responsible under Government Code sec. 361.271 for the material if the person could establish by a preponderance of the evidence that the person would not be liable under certain provisions of federal law based on the person meeting the criteria under 42 U.S.C. sec. 9627 relating to transactions involving that type of recycled material.

For the purposes of the bill, recyclable material would not include scrap metal.

The bill would take effect September 1, 2019.

NOTES:

According to the Legislative Budget Board, the bill would have an estimated negative impact of \$510,000 each fiscal year to the General Revenue-Dedicated Hazardous and Solid Waste Remediation Account.