

By: Landgraf

H.B. No. 4333

A BILL TO BE ENTITLED

AN ACT

relating to a defense under the Solid Waste Disposal Act for persons engaged in certain scrap metal recycling transactions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 361.275(a), Health and Safety Code, is amended to read as follows:

(a) Except as provided by Section 361.2755, a [A] person responsible for solid waste under Section 361.271 is liable under Section 361.272 or 361.273 unless the person can establish by a preponderance of the evidence that the release or threatened release was caused solely by:

- (1) an act of God;
- (2) an act of war;
- (3) an act or omission of a third person; or
- (4) any combination of Subdivisions (1), (2), and (3).

SECTION 2. Subchapter I, Chapter 361, Health and Safety Code, is amended by adding Section 361.2755 to read as follows:

Sec. 361.2755. SCRAP METAL RECYCLING TRANSACTIONS; DEFENSE. (a) In this section:

(1) "Consuming facility" means the facility where the scrap metal was handled, processed, reclaimed, stored, or otherwise managed by a person other than the person who arranged for recycling of the scrap metal.

(2) "Scrap metal" means bits and pieces of metal parts

1 (e.g., bars, turnings, rods, sheets, or wire) or metal pieces that  
2 may be combined together with bolts or soldering (e.g., radiators,  
3 scrap automobiles, railroad box cars), which when worn or  
4 superfluous can be recycled. The term does not include:

5 (A) a shipping container, whether intact or not,  
6 that:

7 (i) has a capacity of not less than 30  
8 liters and not more than 3,000 liters; and

9 (ii) has any hazardous substance contained  
10 in or adhering to the container, other than metal bits and pieces or  
11 a hazardous substance that forms an integral part of the container;  
12 or

13 (B) any item of material that contained  
14 polychlorinated biphenyls at a concentration in excess of 50 parts  
15 per million or any new standard adopted pursuant to applicable  
16 federal laws;

17 (C) any material excluded from this definition by  
18 commission rule; or

19 (D) any material excluded from the definition of  
20 scrap metal under 42 U.S.C. Section 9627(d) by a federal  
21 regulation.

22 (b) This section:

23 (1) applies only to a scrap metal transaction that  
24 occurs on or after November 29, 1999; and

25 (2) does not apply to any material that is not scrap  
26 metal.

27 (c) A person who arranges for recycling of scrap metal,

1 other than a person described by Subsection (f), is not responsible  
2 for the scrap metal under Section 361.271(a)(3) or (4) if the person  
3 can establish by a preponderance of the evidence that the following  
4 criteria were met at the time of the recycling transaction:

5 (1) the scrap metal met a commercial specification  
6 grade;

7 (2) a market existed for the scrap metal;

8 (3) a substantial portion of the scrap metal was made  
9 available for use as feedstock for the manufacture of a new saleable  
10 product;

11 (4) the scrap metal could have been a replacement or  
12 substitute for a virgin raw material, or the product to be made from  
13 the scrap metal could have been a replacement or substitute for a  
14 product made, in whole or in part, from a virgin raw material;

15 (5) the person was in compliance with any applicable  
16 regulations or standards regarding the handling, processing,  
17 reclamation, storage, transport, or management of the scrap metal  
18 or other activities associated with the recycling of scrap metal;

19 (6) the person did not melt the scrap metal prior to  
20 the transaction; and

21 (7) the person exercised reasonable care to determine  
22 that the consuming facility was in compliance with the substantive  
23 provisions of any:

24 (A) federal, state, or local environmental law or  
25 regulation applicable to the handling, processing, reclamation,  
26 transport, or storage of scrap metal or other management activities  
27 associated with scrap metal; or

1                   (B) compliance order or decree issued pursuant to  
2 a law or regulation described by Paragraph (A).

3                   (d) For purposes of Subsection (c)(6), thermal separation  
4 of two or more materials due to differences in melting points of the  
5 materials does not constitute melting.

6                   (e) For purposes of Subsection (c)(7), reasonable care  
7 shall be determined using criteria that include:

8                   (1) the price paid for the scrap metal in the recycling  
9 transaction;

10                   (2) the ability of the person to detect the nature of  
11 the consuming facility's operations concerning the facility's  
12 handling, processing, storage, transport, or reclamation of scrap  
13 metal or other management activities associated with the scrap  
14 metal; and

15                   (3) the result of inquiries made by the person to the  
16 appropriate federal, state, or local environmental agency  
17 regarding the consuming facility's past and current compliance  
18 with:

19                   (A) substantive provisions of any law,  
20 regulation, order, or decree described by Subsection (c)(7); and

21                   (B) any requirement to obtain a permit applicable  
22 to the handling, processing, storage, transport, or reclamation of  
23 scrap metal or other management activity associated with scrap  
24 metal.

25                   (f) Subsection (c) does not apply to a person who arranges  
26 for the recycling of scrap metal if the person:

27                   (1) had an objectively reasonable basis to believe at

1 the time of the scrap metal transaction that:

2 (A) the scrap metal would not be recycled;

3 (B) the scrap metal would be burned as fuel or for  
4 energy recovery or incineration; or

5 (C) the consuming facility was not in compliance  
6 with:

7 (i) a substantive provision of any law,  
8 regulation, order, or decree described by Subsection (c)(7); or

9 (ii) a requirement to obtain a permit  
10 applicable to the handling, processing, transport, storage, or  
11 reclamation of the scrap metal or other management activity  
12 associated with the scrap metal;

13 (2) had reason to believe that hazardous substances  
14 had been added to the scrap metal for purposes other than processing  
15 for recycling; or

16 (3) failed to exercise reasonable care with respect to  
17 the management, processing, storage, transport, reclamation, and  
18 handling of the scrap metal, including adhering to customary  
19 industry practices current at the time of the recycling transaction  
20 designed to minimize, through source control, contamination of the  
21 scrap metal by hazardous substances.

22 (g) For purposes of Subsection (f)(1), an objectively  
23 reasonable basis for belief shall be determined using criteria that  
24 include:

25 (1) the size of the person's business;

26 (2) customary industry practices, including customary  
27 industry practices current at the time of the recycling transaction

1 designed to minimize, through source control, contamination of the  
2 scrap metal by hazardous substances;

3 (3) the price paid for the scrap metal in the recycling  
4 transaction; and

5 (4) the ability of the person to detect the nature of  
6 the consuming facility's operations concerning the facility's  
7 handling, processing, or reclamation of scrap metal or other  
8 management activities associated with scrap metal.

9 (h) The commission may adopt rules as necessary to  
10 administer this section, including rules excluding additional  
11 materials from the definition of scrap metal.

12 (i) A person who commences an action for contribution  
13 against a person who is not responsible for the scrap metal under  
14 this section is liable to that person for all reasonable costs  
15 incurred in defending that action, including reasonable attorney's  
16 fees and expert witness fees.

17 (j) This section may not be construed to:

18 (1) affect any defenses or liabilities of any person  
19 to whom Subsection (c) does not apply;

20 (2) create any presumption of liability against any  
21 person to whom Subsection (c) does not apply; or

22 (3) affect the liability of a person under Section  
23 [361.271](#) (a)(1) or (2).

24 SECTION 3. The change in law made by this Act:

25 (1) does not apply to any judicial or administrative  
26 action initiated by the commission that is pending or on appeal on  
27 the effective date of this Act; and

1                   (2) does not affect any final decision in a judicial or  
2 administrative action that exists on the effective date of this  
3 Act.

4                   SECTION 4. This Act takes effect September 1, 2021.