

1-1 By: Zaffirini S.B. No. 1818
 1-2 (In the Senate - Filed March 12, 2021; March 26, 2021, read
 1-3 first time and referred to Committee on Natural Resources &
 1-4 Economic Development; April 19, 2021, reported adversely, with
 1-5 favorable Committee Substitute by the following vote: Yeas 8, Nays
 1-6 0; April 19, 2021, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16			X	
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1818 By: Zaffirini

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to a defense under the Solid Waste Disposal Act for persons
 1-22 engaged in certain scrap metal recycling transactions.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 361.275(a), Health and Safety Code, is
 1-25 amended to read as follows:

1-26 (a) Except as provided by Section 361.2755, a [A] person
 1-27 responsible for solid waste under Section 361.271 is liable under
 1-28 Section 361.272 or 361.273 unless the person can establish by a
 1-29 preponderance of the evidence that the release or threatened
 1-30 release was caused solely by:

- 1-31 (1) an act of God;
- 1-32 (2) an act of war;
- 1-33 (3) an act or omission of a third person; or
- 1-34 (4) any combination of Subdivisions (1), (2), and (3).

1-35 SECTION 2. Subchapter I, Chapter 361, Health and Safety
 1-36 Code, is amended by adding Section 361.2755 to read as follows:

1-37 Sec. 361.2755. SCRAP METAL RECYCLING TRANSACTIONS; DEFENSE.

1-38 (a) In this section:

1-39 (1) "Consuming facility" means the facility where the
 1-40 scrap metal was handled, processed, reclaimed, stored,
 1-41 transported, or otherwise managed by a person other than the person
 1-42 who arranged for recycling of the scrap metal.

1-43 (2) "Scrap metal" means bits and pieces of metal
 1-44 parts, such as bars, turnings, rods, sheets, or wire, or metal
 1-45 pieces that may be combined together with bolts or soldering, such
 1-46 as radiators, scrap automobiles, or railroad boxcars, which when
 1-47 worn or superfluous can be recycled. The term does not include:

1-48 (A) a shipping container, whether intact or not,
 1-49 that:

1-50 (i) has a capacity of not less than 30
 1-51 liters and not more than 3,000 liters; and

1-52 (ii) has any hazardous substance contained
 1-53 in or adhering to the container, other than metal bits and pieces or
 1-54 a hazardous substance that forms an integral part of the container;

1-55 (B) any item of material that contained
 1-56 polychlorinated biphenyls at a concentration in excess of 50 parts
 1-57 per million or any new standard adopted pursuant to applicable
 1-58 federal laws;

1-59 (C) any material excluded from this definition by
 1-60 commission rule; or

2-1 (D) any material excluded from the definition of
2-2 scrap metal under 42 U.S.C. Section 9627(d) by a federal
2-3 regulation.
2-4 (b) This section:
2-5 (1) applies only to a scrap metal transaction that
2-6 occurs on or after November 29, 1999; and
2-7 (2) does not apply to any material that is not scrap
2-8 metal.
2-9 (c) A person who arranges for recycling of scrap metal,
2-10 other than a person described by Subsection (f), is not responsible
2-11 for the scrap metal under Section 361.271(a)(3) or (4) if the person
2-12 can establish by a preponderance of the evidence that the following
2-13 criteria were met at the time of the recycling transaction:
2-14 (1) the scrap metal met a commercial specification
2-15 grade;
2-16 (2) a market existed for the scrap metal;
2-17 (3) a substantial portion of the scrap metal was made
2-18 available for use as feedstock for the manufacture of a new saleable
2-19 product;
2-20 (4) the scrap metal could have been a replacement or
2-21 substitute for a virgin raw material, or the product to be made from
2-22 the scrap metal could have been a replacement or substitute for a
2-23 product made, in whole or in part, from a virgin raw material;
2-24 (5) the person was in compliance with any applicable
2-25 regulations or standards regarding the handling, processing,
2-26 reclamation, storage, transport, or management of the scrap metal
2-27 or other activities associated with the recycling of scrap metal;
2-28 (6) the person did not melt the scrap metal prior to
2-29 the transaction; and
2-30 (7) the person exercised reasonable care to determine
2-31 that the consuming facility was in compliance with the substantive
2-32 provisions of any:
2-33 (A) federal, state, or local environmental law or
2-34 regulation applicable to the handling, processing, reclamation,
2-35 storage, or transport of scrap metal or other management activities
2-36 associated with scrap metal; or
2-37 (B) compliance order or decree issued pursuant to
2-38 a law or regulation described by Paragraph (A).
2-39 (d) For purposes of Subsection (c)(6), thermal separation
2-40 of two or more materials due to differences in melting points of the
2-41 materials does not constitute melting.
2-42 (e) For purposes of Subsection (c)(7), reasonable care
2-43 shall be determined using criteria that include:
2-44 (1) the price paid for the scrap metal in the recycling
2-45 transaction;
2-46 (2) the ability of the person to detect the nature of
2-47 the consuming facility's operations concerning the facility's
2-48 handling, processing, reclamation, storage, or transport of scrap
2-49 metal or other management activities associated with the scrap
2-50 metal; and
2-51 (3) the result of inquiries made by the person to the
2-52 appropriate federal, state, or local environmental agency
2-53 regarding the consuming facility's past and current compliance
2-54 with:
2-55 (A) substantive provisions of any law,
2-56 regulation, order, or decree described by Subsection (c)(7); and
2-57 (B) any requirement to obtain a permit applicable
2-58 to the handling, processing, reclamation, storage, or transport of
2-59 scrap metal or other management activity associated with scrap
2-60 metal.
2-61 (f) Subsection (c) does not apply to a person who arranges
2-62 for the recycling of scrap metal if the person:
2-63 (1) had an objectively reasonable basis to believe at
2-64 the time of the scrap metal transaction that:
2-65 (A) the scrap metal would not be recycled;
2-66 (B) the scrap metal would be burned as fuel or for
2-67 energy recovery or incineration; or
2-68 (C) the consuming facility was not in compliance
2-69 with:

3-1 (i) a substantive provision of any law,
 3-2 regulation, order, or decree described by Subsection (c)(7); or
 3-3 (ii) a requirement to obtain a permit
 3-4 applicable to the handling, processing, reclamation, storage, or
 3-5 transport of the scrap metal or other management activity
 3-6 associated with the scrap metal;
 3-7 (2) had reason to believe that hazardous substances
 3-8 had been added to the scrap metal for purposes other than processing
 3-9 for recycling; or

3-10 (3) failed to exercise reasonable care with respect to
 3-11 the handling, processing, reclamation, storage, transport, and
 3-12 management of the scrap metal, including adhering to customary
 3-13 industry practices current at the time of the recycling transaction
 3-14 designed to minimize, through source control, contamination of the
 3-15 scrap metal by hazardous substances.

3-16 (g) For purposes of Subsection (f)(1), an objectively
 3-17 reasonable basis for belief shall be determined using criteria that
 3-18 include:

- 3-19 (1) the size of the person's business;
- 3-20 (2) customary industry practices, including customary
 3-21 industry practices current at the time of the recycling transaction
 3-22 designed to minimize, through source control, contamination of the
 3-23 scrap metal by hazardous substances;
- 3-24 (3) the price paid for the scrap metal in the recycling
 3-25 transaction; and
- 3-26 (4) the ability of the person to detect the nature of
 3-27 the consuming facility's operations concerning the facility's
 3-28 handling, processing, reclamation, storage, or transport of scrap
 3-29 metal or other management activities associated with scrap metal.

3-30 (h) The commission may adopt rules as necessary to
 3-31 administer this section.

3-32 (i) A person who commences an action for contribution
 3-33 against a person who is not responsible for the scrap metal under
 3-34 this section is liable to that person for all reasonable costs
 3-35 incurred in defending that action, including reasonable attorney's
 3-36 fees and expert witness fees.

3-37 (j) This section may not be construed to:

- 3-38 (1) affect any defenses or liabilities of any person
 3-39 to whom Subsection (c) does not apply;
- 3-40 (2) create any presumption of liability against any
 3-41 person to whom Subsection (c) does not apply; or
- 3-42 (3) affect the responsibility of a person for solid
 3-43 waste under Section 361.271(a)(1) or (2).

3-44 SECTION 3. The change in law made by this Act:

- 3-45 (1) does not apply to any judicial or administrative
 3-46 action initiated by the Texas Commission on Environmental Quality
 3-47 that is pending or on appeal on the effective date of this Act; and
- 3-48 (2) does not affect any final decision in a judicial or
 3-49 administrative action that exists on the effective date of this
 3-50 Act.

3-51 SECTION 4. This Act takes effect September 1, 2021.

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