

BILL ANALYSIS

S.B. 642
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Business & Industry
Committee Report (Amended)

BACKGROUND AND PURPOSE

Under current law, current forms of identification are required for persons attempting to redeem or sell materials at secondary metals recycling facilities and purchases exceeding a certain weight are required to be reported by the recycling entity, but the reporting system is failing to identify or deter those persons who have obtained such materials illegally. Furthermore, the Texas Department of Public Safety (DPS) requires a weekly report on the purchases and sales of regulated metals. However, due to volume and demand of such purchases and sales, these reports are not immediately available for use by local law enforcement agencies. Dallas estimates that there are approximately 363 salvage yards and scrap dealers in Texas, but only 167 regulated metals purchase and sales reports were submitted in 2005. It is also of note that the current system consists of a paper-driven reporting format that relies on manual data entry.

Dallas is among the cities across Texas and the United States that are experiencing a drastic increase in the theft of regulated metals such as copper, bronze, and brass. In 2006, Dallas Police filed reports on more than 2,592 regulated metal thefts, surpassing the total of 1,022 metal thefts reported for 2005. These crimes impact homeowners, the construction industry, businesses, and utility operators.

Senate Bill 642 creates an electronic statewide regulated metals purchase reporting system. This bill reclassifies certain items as regulated metals and requires proof of ownership or legitimate access in order for these materials to be redeemed or sold by a person. This bill also authorizes cities to limit the hours that a metal recycling entity is authorized to accept materials and be open to the general public. Finally, this bill requires all metal recycling entities to register with DPS.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Public Safety Commission in SECTION 2 (Sections 1956.013, 1956.014, and 1956.022, Occupations Code and rulemaking authority is expressly granted to counties, municipalities, and political subdivisions of this state in SECTION 2 (Section 1956.003, Occupations Code) of this bill.

ANALYSIS

SECTION 1. Amends the heading to Chapter 1956, Occupations Code, to read as follows:

CHAPTER 1956. METAL RECYCLING ENTITIES

SECTION 2. Amends Chapter 1956, Occupations Code, by amending Subchapter A and adding Subchapters A-1, A-2, and A-3, as follows:

SUBCHAPTER A. New heading: GENERAL PROVISIONS.

Sec. 1956.001. DEFINITIONS. Defines "commission," "metal recycling entity," "director," and "regulated metal." Redefines "aluminum material," "bronze material," "copper or brass material," and "regulated material." Deletes existing text defining "secondhand metal dealer." Makes conforming and nonsubstantive changes.

Sec. 1956.002. EXCEPTION. Provides that this chapter does not apply to a purchase of regulated material from a manufacturing, industrial, commercial, retail or other seller, rather than from a manufacturing, industrial, or other commercial vendor, that sells

regulated material in the ordinary course of the seller's, rather than vendor's business. Provides that this chapter does not apply to a purchase of regulated material by a manufacturer whose primary business is the manufacture of iron and steel products made from melting scrap iron and scrap steel or for the transport or hauling of recyclable materials to or from the metal recycling entity. Makes conforming and non-substantive changes.

Sec. 1956.003. LOCAL LAW. (a) Authorizes a county, municipality, or political subdivision of this state to adopt a rule, charter, or ordinance or issue an order or impose standards that are more stringent than but do not conflict with this chapter or rules adopted under this chapter.

(b) Authorizes a county, municipality, or political subdivision of this state to issue a license or permit to a business to allow the business to act as a metal recycling entity in that county or municipality and caps the fee for the license or permit to not exceed \$250 for the issuance or renewal of the license or permit.

(c) Requires a county, municipality, or political subdivision of this state that issues a license or permit to a business as authorized under Subsection (b) to submit to the Texas Department of Public Safety (DPS) in the manner required by DPS information on each business that is issued a license or permit.

[Reserves Sections 1956.004-1956.010 for expansion.]

SUBCHAPTER A-1. POWERS AND DUTIES

Sec. 1956.011. ADMINISTRATION OF CHAPTER. Requires DPS to administer this chapter.

Sec. 1956.012. DEPARTMENT STAFF. Authorizes DPS to employ administrative and clerical staff as necessary to carry out this chapter.

Sec. 1956.013. RULES. Authorizes the Public Safety Commission (commission) to adopt rules to administer this chapter, including certain rules.

Sec. 1956.014. FEES. Requires the commission by rule to prescribe certain fees in reasonable amounts sufficient to cover the costs of administering this chapter.

Sec. 1956.015. STATEWIDE ELECTRONIC REPORTING SYSTEM. (a) Requires DPS to establish a statewide electronic reporting system to track the sales of regulated metal reported to DPS under Section 1956.036.

(b) Requires DPS to post a summary of the reports provided to DPS under Section 1956.036 on the DPS website. Requires the summary to include by county or region the frequency with which a person presents regulated materials for sale to a metal recycling entity. Prohibits the summary from identifying any person to which the metal recycling entity sells the regulated materials.

(c) Provides that Subsection (b) does not apply to regulated material sold by certain entities that routinely have access to regulated metal.

(d) Requires DPS to maintain the confidentiality of information provided under this section that relates to the financial condition or business affairs of a metal recycling entity or that is otherwise commercially sensitive. Provides that the confidential information is not subject to disclosure under Chapter 552 (Public Information), Government Code.

[Reserves Sections 1956.016-1956.020 for expansion.]

SUBCHAPTER A-2. CERTIFICATE OF REGISTRATION

Sec. 1956.021. **REGISTRATION REQUIRED.** Prohibits a person from acting as a metal recycling entity or representing to the public that the person is such unless the person is registered under this chapter.

Sec. 1956.022. **ISSUANCE OF CERTIFICATE; QUALIFICATIONS.** (a) Requires DPS to issue a certificate of registration to certain applicants.

(b) Authorizes the commission by rule to establish qualifications for the holder of a certificate of registration under this chapter, which may include accepting copies of a license or permit issued by a county or municipality authorizing a metal recycling entity to conduct business in that county or municipality.

Sec. 1956.023. **TERM OF CERTIFICATE.** (a) Provides that a certificate of registration is valid for two years after the date of issuance.

(b) Requires DPS to adopt a system under which certificates of registration expire and are renewed on various dates.

(c) Requires DPS to send written notice of an impending expiration to the person at the person's last known address according to the records of DPS, not later than the 45th day before the date a person's certificate of registration is scheduled to expire.

(d) Prohibits a person whose certificate of registration has expired from making a representation for which a certificate of registration is required under Section 1956.023 or perform collections services until the certificate has been renewed.

Sec. 1956.024. **RENEWAL OF CERTIFICATE.** Requires a person to submit an application for renewal in the manner prescribed by DPS in order to renew a certificate of registration and sets forth certain renewal fees to be paid based upon when the registration is renewed. Prohibits a person whose certificate of registration has been expired for one year or more from renewing the certificate and authorizes such a person to obtain a new certificate by complying with the requirements and procedures, including the examination requirements, for an original certificate.

[Reserves Sections 1956.025-1956.030 for expansion.]

SUBCHAPTER A-3. PRACTICE BY CERTIFICATE HOLDERS

Sec. 1956.031. **NOTICE TO SELLERS.** Redesignates Section 1956.003 as Section 1956.031. Requires a metal recycling entity, rather than a secondhand metal dealer, at all times, to maintain in a prominent place in the entity's, rather than dealer's, place of business, in open view to a seller of regulated material, a notice in two-inch lettering that includes specific language and states the entity's, rather than dealer's, usual business hours. Makes conforming changes.

Sec. 1956.032. **INFORMATION PROVIDED BY SELLER.** Redesignates Section 1956.004 as Section 1956.032. Requires a person attempting to sell regulated material to a metal recycling entity, rather than a secondhand metal dealer, to display to that entity, rather than dealer, the person's personal identification document and either present written documentation evidencing that the person is the legal owner or is lawfully entitled to sell the regulated material or sign a written statement provided by the metal recycling entity, rather than the secondhand metal dealer, that the person is the legal owner of or is lawfully entitled to sell the regulated material offered for sale. Requires the metal recycling entity to retain a copy of the identification in the entity's records. Makes conforming changes.

Sec. 1956.033. **RECORD OF PURCHASE.** Redesignates Section 1956.005 as Section 1956.033. Includes regulated material as a material that a metal recycling entity, rather than a secondhand metal dealer, in this state is required to keep an accurate electronic record of or an accurate and legible written record for each purchase made in the course

of the entity's business. Deletes existing text requiring cooper and brass material to be in excess of 50 pounds and aluminum material to be in excess of 40 pounds in order for such materials to be included in this provision. Makes conforming and nonsubstantive changes.

Sec. 1956.034. PRESERVATION OF RECORDS. Redesignates Section 1956.006 as Section 1956.034. Makes conforming changes.

Sec. 1956.035. INSPECTION OF RECORDS BY PEACE OFFICER. Redesignates Section 1956.007 as Section 1956.035. Makes conforming changes.

Sec. 1956.036. FURNISHING OF REPORT TO DEPARTMENT. Redesignates Section 1956.008 as Section 1956.036. Makes conforming changes and allows for the report to be submitted by facsimile or electronic mail.

Sec. 1956.037. PLACEMENT OF ITEMS ON HOLD. Redesignates Section 1956.009 as Section 1956.037. Prohibits a metal recycling entity from disposing of, processing, selling, or removing from the premises an item of regulated metal unless the entity acquired the item more than 72 hours, excluding weekends and holidays, before the disposal, processing, sale, or removal or the entity purchased the item from a manufacturing, industrial, commercial, retail, or other seller that sells regulated material in the ordinary course of its business.

(b) Creates this subsection from existing text. Makes conforming changes.

(c) Redesignates this subsection from existing Subsection (b). Prohibits, except as provided by Subsection (e), the entity, rather than the dealer, on receiving the notice, from processing or removing from the entity's, rather than dealer's, premises the item identified on the notice before the 60th, rather than the 11th, day after the date the notice is issued unless the hold is released at an earlier time in writing by a peace officer of this state or a court order.

(d) Redesignates this subsection from existing Subsection (c). Makes a conforming change.

(e) Prohibits a metal recycling entity, if a hold is placed on a purchase of regulated material, from disposing of, processing, selling, or removing from the premises any item from the purchased material unless the hold on the material is released.

Sec. 1956.038. PROHIBITED ACTS. Redesignates Section 1956.010 as Section 1956.038. Makes conforming changes.

Sec. 1956.039. HOURS FOR PURCHASING MATERIAL. (a) Authorizes a county, municipality, or political subdivision to establish the hours during which a metal recycling entity may purchase regulated material, subject to Subsection (b).

(b) Prohibits a metal recycling entity from purchasing from the general regulated material more than 15 consecutive hours in one day or later than 9 p.m. Deletes existing Section 1956.011 relating to criminal penalties for a person who commits an offense by knowingly violating this subchapter.

SECTION 3. Amends Chapter 1956, Occupations Code, by adding Subchapters D and E, as follows:

SUBCHAPTER D. DISCIPLINARY PROCEDURES

Sec. 1956.151. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION. Requires DPS to deny an application for a certificate of registration, or reprimand a person who is registered under this chapter if the person commits certain acts.

Sec. 1956.152. INVESTIGATION. Requires DPS to investigate, within the limits of available resources, a person who engages in a practice that violates this chapter and a complaint filed with DPS against a person registered under this chapter.

Sec. 1956.153. HEARING. Entitles certain persons to a hearing before DPS if the person submits to DPS a written request for the hearing. Provides that such a hearing is governed by DPS rules for a contested hearing and by Chapter 2001 (Administrative Procedure), Government Code.

[Reserves Sections 1956.154-1956.200 for expansion.]

SUBCHAPTER E. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1956.201. ENFORCEMENT PROCEEDINGS; INJUNCTION. (a) Requires DPS, the attorney general, or the district, county, or city attorney for the county or municipality in which an alleged violation of this chapter occurs to bring an appropriate administrative or judicial proceeding to enforce this chapter or a rule adopted under this chapter on receipt of a verified complaint.

(b) Authorizes the attorney general or an attorney representing the state to initiate an action for an injunction to prohibit a person from violating this chapter or a rule adopted under this chapter.

Sec. 1956.202. CIVIL PENALTY. (a) Provides that a person who violates this chapter or a rule adopted under this chapter is liable to this state for a civil penalty of not more than \$1,000 for each violation.

(b) Requires that the amount of the penalty be based on certain factors.

(c) Authorizes the attorney general to sue to collect a civil penalty under this section. Authorizes the attorney general, in the suit, to recover, on behalf of the state, the reasonable expenses incurred in obtaining the penalty, including certain costs, fees, and expenses.

Sec. 1956.203. CRIMINAL PENALTY. (a) A person commits an offense if the person solicits the purchase of regulated material at a location other than a business location at which the material is produced as a by-product in the ordinary course of that business.

(b) Provides that an offense under this section is a Class B misdemeanor.

SECTION 4. Repealer: Section 1956.101(1) (regarding the definition of "metal recycling entity"), Occupations Code.

SECTION 5. (a) Requires the commission to adopt the rules necessary to implement the changes in law made by this Act to Chapter 1956, Occupations Code, by January 1, 2008.

(b) Requires DPS to establish the statewide reporting system to track the sales of regulated metal as required under Chapter 1956, Occupations Code, as amended by this Act, not later than April 1, 2008.

SECTION 6. Provides that a person is not required to hold a certificate of registration as a metal recycling entity under Chapter 1956, Occupations Code, as amended by this Act, before April 1, 2008, notwithstanding Section 1956.021, Occupations Code, as added by this Act.

SECTION 7. Makes application of this Act prospective.

SECTION 8. Effective date: September 1, 2007.

EFFECTIVE DATE

September 1, 2007

S.B. 642 80(R)

EXPLANATION OF AMENDMENTS

The Committee Amendment makes the following changes to the bill:

1) On page 3, lines 15 and 16, strikes “metal items regulated under this chapter in accordance with department rules, including”

2) On page 3, line 19 strike paragraph (C) and substitute the following: “(C) metal cylinders designed to contain compressed air, oxygen, gases, or liquids;”

3) On page 4, lines 4 and 5 strike paragraph (L) and substitute “(L) utility structures, including the fixtures and hardware;”

4) On page 4, line 25 strike “or”

5) On page 5, line 1 strike “steel” and substitute “steel; or (3) the transport or hauling of recycling materials to or from the metal recycling entity”

6) On page 12, line 7 between “shall” and “mail”, insert “send by facsimile or electronic”.

7) On page 13, line 3 following “72 hours” insert “, excluding weekends and holidays,”

8) One page 17, lines 13 through 16 strike proposed subsection (a) and substitute the following:

“(a) A person commits an offense if the person solicits the purchase of regulated material at a location other than a business location at which the material is produced as a by-product in the ordinary course of that business.”