

By: West

S.B. No. 642

A BILL TO BE ENTITLED

AN ACT

relating to registration and regulation of metal recycling entities; providing penalties.

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

SECTION 1. The heading to Chapter 1956, Occupations Code, is amended to read as follows:

CHAPTER 1956. [~~SALES TO METAL DEALERS AND~~]

METAL RECYCLING ENTITIES

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

SUBCHAPTER A. GENERAL PROVISIONS [~~SALE OF ALUMINUM, BRONZE, OR COPPER OR BRASS MATERIAL TO SECONDHAND METAL DEALERS~~]

Sec. 1956.001. DEFINITIONS. In this chapter [~~subchapter~~]:

(1) "Aluminum material" means a product made from aluminum, an aluminum alloy, or an aluminum by-product. The term includes aluminum wiring and an aluminum beer keg but does not include another type of aluminum can used to contain a food or beverage.

(2) "Bronze material" means:

(A) a cemetery vase, receptacle, or memorial made from bronze;

(B) bronze statuary; or

(C) material readily identifiable as bronze,

1 including bronze wiring.

2 (3) "Commission" means the Public Safety Commission.

3 (4) "Copper or brass material" means:

4 (A) insulated or noninsulated copper wire or
5 cable of the type used by a public utility or common carrier that
6 consists of at least 50 percent copper; ~~[or]~~

7 (B) a copper or brass item of a type commonly used
8 in construction or by a public utility; or

9 (C) copper pipe or copper tubing.

10 (5) ~~[(4)]~~ "Department" means the Texas Department of
11 Public Safety.

12 (6) "Director" means the public safety director.

13 (7) "Metal recycling entity" means a business that is
14 operated from a fixed location and is predominantly engaged in:

15 (A) performing the manufacturing process by
16 which scrap, used, or obsolete ferrous or nonferrous metal is
17 converted into raw material products consisting of prepared grades
18 and having an existing or potential economic value, by a method that
19 in part requires the use of powered tools and equipment, including
20 processes that involve processing, sorting, cutting, classifying,
21 cleaning, baling, wrapping, shredding, shearing, or changing the
22 physical form of that metal;

23 (B) the use of raw material products described
24 under Paragraph (A) in the manufacture of producer or consumer
25 goods; or

26 (C) purchasing or otherwise acquiring scrap,
27 used, or obsolete ferrous or nonferrous metals for the eventual use

1 of the metal for the purposes described by Paragraph (A) or (B).

2 (8) [~~(5)~~] "Personal identification document" means:

- 3 (A) a driver's license;
- 4 (B) a military identification card;
- 5 (C) a passport issued by the United States or by
- 6 another country and recognized by the United States; or
- 7 (D) a personal identification certificate issued
- 8 by the department under Section 521.101, Transportation Code, or a
- 9 corresponding card or certificate issued by another state.

10 (9) [~~(6)~~] "Regulated material" means:

- 11 (A) aluminum material;
- 12 (B) bronze material; [~~or~~]
- 13 (C) copper or brass material; or
- 14 (D) regulated metal.

15 (10) "Regulated metal" means metal items regulated

16 under this chapter in accordance with department rules, including:

- 17 (A) manhole covers;
- 18 (B) guardrails;
- 19 (C) compressed cylinders;
- 20 (D) beer kegs made from metal other than
- 21 aluminum;
- 22 (E) historical markers or cemetery vases,
- 23 receptacles, or memorials made from metal other than aluminum;
- 24 (F) unused rebar;
- 25 (G) street signs;
- 26 (H) drain gates;
- 27 (I) safes;

1 (J) communication, transmission, and service
2 wire or cable;

3 (K) condensing or evaporator coils for heating or
4 air conditioning units;

5 (L) electric light poles, including the fixtures
6 and hardware;

7 (M) aluminum or stainless steel containers
8 designed to hold propane for fueling forklifts; and

9 (N) metal railroad equipment, including tie
10 plates, signal houses, control boxes, signs, signals, traffic
11 devices, traffic control devices, traffic control signals, switch
12 plates, e-clips, and rail tie functions

13 [~~(7) "Secondhand metal dealer" means:~~

14 [~~(A) an auto wrecker, a scrap metal processor, or~~
15 ~~another person or organization that purchases, collects, or~~
16 ~~solicits regulated material; or~~

17 [~~(B) a person who operates or maintains a scrap~~
18 ~~metal yard or other place in which scrap metal or cast-off regulated~~
19 ~~material is collected or kept for shipment, sale, or transfer].~~

20 Sec. 1956.002. EXCEPTION. This chapter [~~subchapter~~] does
21 not apply to:

22 (1) a purchase of regulated material from a
23 manufacturing, industrial, [~~or other~~] commercial, retail, or other
24 seller [~~vendor~~] that sells regulated material in the ordinary
25 course of the seller's [~~vendor's~~] business; or

26 (2) a purchase of regulated material by a manufacturer
27 whose primary business is the manufacture of iron and steel

1 products made from melting scrap iron and scrap steel.

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

7 (b) A county, municipality, or political subdivision of
8 this state may issue a license or permit to a business to allow the
9 business to act as a metal recycling entity in that county or
10 municipality and may impose a fee not to exceed \$250 for the
11 issuance or renewal of the license or permit.

12 (c) A county, municipality, or political subdivision of
13 this state that issues a license or permit to a business as
14 authorized under Subsection (b) shall submit to the department in
15 the manner required by the department information on each business
16 that is issued a license or permit.

17 [Sections 1956.004-1956.010 reserved for expansion]

18 SUBCHAPTER A-1. POWERS AND DUTIES

19 Sec. 1956.011. ADMINISTRATION OF CHAPTER. The department
20 shall administer this chapter.

21 Sec. 1956.012. DEPARTMENT STAFF. The department may employ
22 administrative and clerical staff as necessary to carry out this
23 chapter.

24 Sec. 1956.013. RULES. The commission may adopt rules to
25 administer this chapter, including rules:

26 (1) establishing minimum requirements for
27 registration under this chapter; and

1 (2) adopting forms required by this chapter.

2 Sec. 1956.014. FEES. The commission by rule shall
3 prescribe fees in reasonable amounts sufficient to cover the costs
4 of administering this chapter, including fees for:

5 (1) an initial application for a certificate of
6 registration;

7 (2) issuance of a certificate of registration;

8 (3) issuance of a renewal certificate of registration;

9 and

10 (4) issuance of a duplicate certificate of
11 registration or duplicate renewal certificate of registration.

12 Sec. 1956.015. STATEWIDE ELECTRONIC REPORTING SYSTEM.

13 (a) The department shall establish a statewide electronic
14 reporting system to track the sales of regulated metal reported to
15 the department under Section 1956.036.

16 (b) The department shall post a summary of the reports
17 provided to the department under Section 1956.036 on the
18 department's Internet website. The summary must include by county
19 or region the frequency with which a person presents regulated
20 materials for sale to a metal recycling entity. The summary may not
21 identify any person to which the metal recycling entity sells the
22 regulated materials.

23 (c) Subsection (b) does not apply to regulated material sold
24 by a utility company, municipality, manufacturer, railroad,
25 cemetery, cable or satellite entity, or other business entity that
26 routinely has access to regulated metal.

27 (d) The department shall maintain the confidentiality of

1 information provided under this section that relates to the
2 financial condition or business affairs of a metal recycling entity
3 or that is otherwise commercially sensitive. The confidential
4 information is not subject to disclosure under Chapter 552,
5 Government Code.

6 [Sections 1956.016-1956.020 reserved for expansion]

7 SUBCHAPTER A-2. CERTIFICATE OF REGISTRATION

8 Sec. 1956.021. REGISTRATION REQUIRED. A person may not act
9 as a metal recycling entity or represent to the public that the
10 person is a metal recycling entity unless the person is registered
11 under this chapter.

12 Sec. 1956.022. ISSUANCE OF CERTIFICATE; QUALIFICATIONS.

13 (a) The department shall issue a certificate of registration to an
14 applicant who:

15 (1) applies and pays a registration fee; and

16 (2) presents any relevant evidence relating to the
17 applicant's qualifications as required by commission rule.

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

23 Sec. 1956.023. TERM OF CERTIFICATE. (a) A certificate of
24 registration is valid for two years after the date of issuance.

25 (b) The department shall adopt a system under which
26 certificates of registration expire and are renewed on various
27 dates.

1 (c) Not later than the 45th day before the date a person's
2 certificate of registration is scheduled to expire, the department
3 shall send written notice of the impending expiration to the person
4 at the person's last known address according to the records of the
5 department.

6 (d) A person whose certificate of registration has expired
7 may not make a representation for which a certificate of
8 registration is required under Section 1956.021 or perform
9 collections services until the certificate has been renewed.

10 Sec. 1956.024. RENEWAL OF CERTIFICATE. (a) To renew a
11 certificate of registration, a person must submit an application
12 for renewal in the manner prescribed by the department.

13 (b) A person who is otherwise eligible to renew a
14 certificate of registration may renew an unexpired certificate by
15 paying the required renewal fee to the department before the
16 expiration date of the certificate.

17 (c) A person whose certificate of registration has been
18 expired for 90 days or less may renew the certificate by paying to
19 the department a renewal fee that is equal to 1-1/2 times the
20 normally required renewal fee.

21 (d) A person whose certificate of registration has been
22 expired for more than 90 days but less than one year may renew the
23 certificate by paying to the department a renewal fee that is equal
24 to two times the normally required renewal fee.

25 (e) A person whose certificate of registration has been
26 expired for one year or more may not renew the certificate. The
27 person may obtain a new certificate of registration by complying

1 with the requirements and procedures, including the examination
2 requirements, for an original certificate.

3 [Sections 1956.025-1956.030 reserved for expansion]

4 SUBCHAPTER A-3. PRACTICE BY CERTIFICATE HOLDERS

5 Sec. 1956.031 [~~1956.003~~]. NOTICE TO SELLERS. (a) A metal
6 recycling entity [~~secondhand metal dealer~~] shall at all times
7 maintain in a prominent place in the entity's [~~dealer's~~] place of
8 business, in open view to a seller of regulated material, a notice
9 in two-inch lettering that:

10 (1) includes the following language:

11 "A PERSON ATTEMPTING TO SELL ANY REGULATED MATERIAL MUST
12 PRESENT SUFFICIENT IDENTIFICATION AND WRITTEN PROOF OF OWNERSHIP
13 REQUIRED BY STATE LAW."

14 "WARNING: STATE LAW PROVIDES A CRIMINAL PENALTY FOR A PERSON
15 WHO INTENTIONALLY PROVIDES A FALSE DOCUMENT OF IDENTIFICATION OR
16 OTHER FALSE INFORMATION TO A METAL RECYCLING ENTITY [~~SECONDHAND~~
17 ~~METAL DEALER~~] WHILE ATTEMPTING TO SELL ANY REGULATED MATERIAL.";

18 and

19 (2) states the metal recycling entity's [~~secondhand~~
20 ~~metal dealer's~~] usual business hours.

21 (b) The notice required by this section may be contained on
22 a sign that contains another notice if the metal recycling entity
23 [~~secondhand metal dealer~~] is required to display another notice
24 under applicable law.

25 Sec. 1956.032 [~~1956.004~~]. INFORMATION PROVIDED BY SELLER.

26 (a) A person attempting to sell regulated material to a metal
27 recycling entity [~~secondhand metal dealer~~] shall:

1 (1) display to the metal recycling entity [~~secondhand~~
2 ~~metal dealer~~] the person's personal identification document [~~or~~
3 ~~sign a statement that the person does not possess such a document~~];
4 and

5 (2) either:

6 (A) present written documentation evidencing
7 that the person is the legal owner or is lawfully entitled to sell
8 the regulated material; or

9 (B) sign a written statement provided by the
10 metal recycling entity [~~secondhand metal dealer~~] that the person is
11 the legal owner of or is lawfully entitled to sell the regulated
12 material offered for sale.

13 (b) A person required by a municipality to prepare a signed
14 statement consisting of the information required by Subsection
15 (a)(2) [~~(a)(1) or (2)~~] may use the statement required by the
16 municipality to comply with Subsection (a)(2) [~~(a)(1) or (2)~~].

17 (c) The metal recycling entity [~~secondhand metal dealer~~] or
18 the entity's [~~dealer's~~] agent shall visually verify the accuracy of
19 the identification presented by the seller at the time of the
20 purchase of regulated material and retain a copy of the
21 identification in the entity's records.

22 Sec. 1956.033 [~~1956.005~~]. RECORD OF PURCHASE. (a) Each
23 metal recycling entity [~~A secondhand metal dealer~~] in this state
24 shall keep an accurate electronic record or an accurate and legible
25 written record of each purchase made in the course of the entity's
26 [~~dealer's~~] business from an individual of:

27 (1) copper or brass material [~~in excess of 50 pounds~~];

- 1 (2) bronze material; [~~or~~]
- 2 (3) aluminum material; or
- 3 (4) regulated metal [~~in excess of 40 pounds~~].

4 (b) The record must be in English and include:

- 5 (1) the place and date of the purchase;
- 6 (2) the name and address of each individual from whom
- 7 the regulated material is purchased or obtained;
- 8 (3) the identifying number of the seller's personal
- 9 identification document;
- 10 (4) a description made in accordance with the custom
- 11 of the trade of the type and quantity of regulated material
- 12 purchased; and
- 13 (5) the statement required by Section 1956.032(a)(2)
- 14 [~~1956.004(a)(2)~~].

15 Sec. 1956.034 [~~1956.006~~]. PRESERVATION OF RECORDS. A metal

16 recycling entity [~~secondhand metal dealer~~] shall preserve each

17 record required by Section 1956.033 [~~1956.005~~] until the third

18 anniversary of the date the record was made.

19 Sec. 1956.035 [~~1956.007~~]. INSPECTION OF RECORDS BY PEACE

20 OFFICER. (a) On request, a metal recycling entity [~~secondhand~~

21 ~~metal dealer~~] shall permit a peace officer of this state to inspect,

22 during the entity's [~~dealer's~~] usual business hours:

- 23 (1) a record required by Section 1956.033 [~~1956.005~~];
- 24 or
- 25 (2) regulated material in the entity's [~~dealer's~~]
- 26 possession.

27 (b) The inspecting officer shall inform the entity [~~dealer~~]

1 of the officer's status as a peace officer.

2 Sec. 1956.036 [~~1956.008~~]. FURNISHING OF REPORT TO
3 DEPARTMENT. (a) Except as provided by Subsection (b), not later
4 than the seventh day after the date of the purchase or other
5 acquisition of material for which a record is required under
6 Section 1956.033 [~~1956.005~~], a metal recycling entity [~~secondhand~~
7 ~~metal dealer~~] shall mail to or file with the department a report
8 containing the information required to be recorded under that
9 section.

10 (b) If a metal recycling entity [~~secondhand metal dealer~~]
11 purchases bronze material that is a cemetery vase, receptacle,
12 memorial, or statuary or a pipe that can reasonably be identified as
13 aluminum irrigation pipe, the entity [~~dealer~~] shall:

14 (1) not later than the close of business on the
15 entity's [~~dealer's~~] first working day after the purchase date,
16 [~~orally~~] notify the department; and

17 (2) not later than the fifth day after the purchase
18 date, mail to or file with the department a report containing the
19 information required to be recorded under Section 1956.033
20 [~~1956.005~~].

21 (c) Subsection (b) does not apply to a purchase from:

22 (1) the manufacturer or fabricator of the material or
23 pipe;

24 (2) a seller bearing a bill of sale for the material or
25 pipe; or

26 (3) the owner of the material or pipe.

27 Sec. 1956.037 [~~1956.009~~]. PLACEMENT OF ITEMS ON HOLD.

1 (a) A metal recycling entity may not dispose of, process, sell, or
2 remove from the premises an item of regulated metal unless:

3 (1) the entity acquired the item more than 72 hours
4 before the disposal, processing, sale, or removal; or

5 (2) the entity purchased the item from a
6 manufacturing, industrial, commercial, retail, or other seller
7 that sells regulated material in the ordinary course of its
8 business.

9 (b) A peace officer who has reasonable suspicion to believe
10 that an item of regulated material in the possession of a metal
11 recycling entity [~~secondhand metal dealer~~] is stolen may place the
12 item on hold by issuing to the entity [~~dealer~~] a written notice
13 that:

14 (1) specifically identifies the item alleged to be
15 stolen and subject to the hold; and

16 (2) informs the entity [~~dealer~~] of the requirements of
17 Subsection (c) [~~(b)~~].

18 (c) [~~(b)~~] On receiving the notice, the entity [~~dealer~~] may
19 not, except as provided by Subsection (e), process or remove from
20 the entity's [~~dealer's~~] premises the identified item before the
21 60th [~~11th~~] day after the date the notice is issued unless the hold
22 is released at an earlier time in writing by a peace officer of this
23 state or a court order.

24 (d) [~~(c)~~] After the holding period expires, the entity
25 [~~dealer~~] may dispose of the item unless disposition violates a
26 court order.

27 (e) If a hold is placed on a purchase of regulated material,

1 a metal recycling entity may not dispose of, process, sell, or
2 remove from the premises any item from the purchased material
3 unless the hold on the material is released.

4 Sec. 1956.038 [~~1956.010~~]. PROHIBITED ACTS. A person may
5 not, with the intent to deceive:

6 (1) display to a metal recycling entity [~~secondhand~~
7 ~~metal dealer~~] a false or invalid personal identification document
8 in connection with the person's attempted sale of regulated
9 material; or

10 (2) make a false, material statement or representation
11 to a metal recycling entity [~~secondhand metal dealer~~] in connection
12 with:

13 (A) that person's execution of a written
14 statement required by Section 1956.032(a)(2) [~~1956.004(a)(1) or~~
15 ~~(2)~~]; or

16 (B) the entity's [~~dealer's~~] efforts to obtain the
17 information required under Section 1956.033(b) [~~1956.005(b)~~].

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

22 (b) A metal recycling entity may not purchase from the
23 general public regulated material:

24 (1) more than 15 consecutive hours in one day; or

25 (2) later than 9 p.m.

26 [~~Sec. 1956.011. CRIMINAL PENALTY. (a) A person commits an~~
27 ~~offense if the person knowingly violates this subchapter.~~

1 ~~[(b) Except as provided by Subsection (c), an offense under~~
2 ~~this section is a Class B misdemeanor.~~

3 ~~[(c) An offense under this section is a Class A misdemeanor~~
4 ~~if the person has been convicted of a violation of this subchapter~~
5 ~~within the 36 months preceding the date of the offense.~~

6 ~~[(d) On the conviction of a secondhand metal dealer for an~~
7 ~~offense punishable under Subsection (c), a court, in addition to~~
8 ~~imposing any other applicable penalty, may order that the dealer~~
9 ~~cease doing business as a secondhand metal dealer for a period not~~
10 ~~to exceed 30 days from the date of the order for each violation that~~
11 ~~forms the basis of the conviction.]~~

12 SECTION 3. Chapter 1956, Occupations Code, is amended by
13 adding Subchapters D and E to read as follows:

14 SUBCHAPTER D. DISCIPLINARY PROCEDURES

15 Sec. 1956.151. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION.

16 The department shall deny an application for a certificate of
17 registration, suspend or revoke a certificate of registration, or
18 reprimand a person who is registered under this chapter if the
19 person:

20 (1) obtains a certificate of registration by means of
21 fraud, misrepresentation, or concealment of a material fact;

22 (2) sells, barter, or offers to sell or barter a
23 certificate of registration;

24 (3) violates a rule adopted under this chapter; or

25 (4) violates Section 1956.021.

26 Sec. 1956.152. INVESTIGATION. Within the limits of
27 available resources, the department may investigate:

1 (1) a person who engages in a practice that violates
2 this chapter; and

3 (2) a complaint filed with the department against a
4 person registered under this chapter.

5 Sec. 1956.153. HEARING. (a) A person whose application
6 for a certificate of registration is denied, whose certificate of
7 registration is suspended or revoked, or who is reprimanded is
8 entitled to a hearing before the department if the person submits to
9 the department a written request for the hearing.

10 (b) A hearing is governed by department rules for a
11 contested hearing and by Chapter 2001, Government Code.

12 [Sections 1956.154-1956.200 reserved for expansion]

13 SUBCHAPTER E. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

14 Sec. 1956.201. ENFORCEMENT PROCEEDINGS; INJUNCTION.

15 (a) The department, the attorney general, or the district, county,
16 or city attorney for the county or municipality in which an alleged
17 violation of this chapter occurs may, on receipt of a verified
18 complaint, bring an appropriate administrative or judicial
19 proceeding to enforce this chapter or a rule adopted under this
20 chapter.

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

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

1 (b) The amount of the penalty shall be based on:

2 (1) the seriousness of the violation;

3 (2) the history of previous violations;

4 (3) the amount necessary to deter a future violation;

5 and

6 (4) any other matter that justice may require.

7 (c) The attorney general may sue to collect a civil penalty
8 under this section. In the suit the attorney general may recover,
9 on behalf of the state, the reasonable expenses incurred in
10 obtaining the penalty, including investigation and court costs,
11 reasonable attorney's fees, witness fees, and other expenses.

12 Sec. 1956.203. CRIMINAL PENALTY FOR OPERATING AS MOBILE
13 METAL RECYCLING ENTITY. (a) A person commits an offense if the
14 person from a non-fixed or mobile location operates as a metal
15 recycling entity by engaging in an activity described by Section
16 1956.001(7)(A), (B), or (C).

17 (b) An offense under this section is a Class B misdemeanor.

18 SECTION 4. Subdivision (1), Section 1956.101, Occupations
19 Code, is repealed.

20 SECTION 5. (a) Not later than January 1, 2008, the Public
21 Safety Commission shall adopt the rules necessary to implement the
22 changes in law made by this Act to Chapter 1956, Occupations Code.

23 (b) Not later than April 1, 2008, the Department of Public
24 Safety of the State of Texas shall establish the statewide
25 reporting system to track the sales of regulated metal as required
26 under Chapter 1956, Occupations Code, as amended by this Act.

27 SECTION 6. Notwithstanding Section 1956.021, Occupations

1 Code, as added by this Act, a person is not required to hold a
2 certificate of registration as a metal recycling entity under
3 Chapter 1956, Occupations Code, as amended by this Act, before
4 April 1, 2008.

5 SECTION 7. The change in law made by this Act applies only
6 to an offense committed on or after the effective date of this Act.
7 An offense committed before that date is governed by the law in
8 effect when the offense was committed, and the former law is
9 continued in effect for that purpose. For purposes of this section,
10 an offense was committed before the effective date of this Act if
11 any element of the offense was committed before that date.

12 SECTION 8. This Act takes effect September 1, 2007.