

## **BILL ANALYSIS**

C.S.H.B. 4524  
By: Phillips  
Environmental Regulation  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Current law regulates the sale of certain metals and materials and establishes tracking procedures to aid law enforcement in detecting possible sales or purchases of items obtained unlawfully. Language in C.S.S.B. 1154, passed in 2007 by the 80th Legislature, Regular Session, amended the Occupations Code to expand the types and forms of regulated materials subject to tracking procedures, increase the information required to be given to a seller and recorded by a buyer for each transaction, and establish a statewide electronic database for the information.

C.S.H.B. 4524 makes revisions to existing state law relating to the regulation of metal recycling entities and provides penalties.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

SECTION 1. Amends Section 1956.001(10), Occupations Code, to redefine "regulated metal."

SECTION 2. Amends the heading to Section 1956.003, Occupations Code, to read "LOCAL LAW; CRIMINAL PENALTY."

SECTION 3. Amends Section 1956.003, Occupations Code, by adding Subsection (a-1) authorizing a county, municipality or political subdivision to require the record of purchase described under Section 1956.033 to contain a clear and legible thumbprint of a seller of regulated material. Adds Subsection (f) requiring a county, municipality or political subdivision that issues a license or permit authorized under Subsection (b) to issue a notice to an owner or operator of a metal recycling entity operating without a license or permit informing the owner or operator that the entity is operating without the required license or permit and that the owner or operator may be subject to criminal penalties if the owner or operator does not submit an application for the appropriate license or permit before the 15th day after the date the notice is received. Adds Subsection (g) providing that a person commits an offense if the person owns or operates a metal recycling entity and does not submit an application for the appropriate license or permit before the 15th day after the date of receiving a notice under Subsection (f). Adds Subsection (h) providing that an offense under Subsection (g) is a Class A misdemeanor unless it is shown on the trial of the offense that the person has been previously convicted under Subsection (g), in which event the offense is a state jail felony.

SECTION 4. Amends Section 1956.015(d), Occupations Code, to provide that information provided under this section is not subject to disclosure under Chapter 552, Government Code. Requires DPS, except as provided by Section 1956.015(b), to maintain the confidentiality of information provided under this section and to require any contractor, subcontractor or third party that has access to, comes into possession of, or otherwise obtains information provided under this section to maintain the confidentiality of the information. Also amends Subsection (d) by striking existing language requiring 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 and providing the confidential information is not subject to disclosure under Chapter 552, Government Code.

SECTION 5. Amends Subchapter A-1, Chapter 1956, Occupations Code, by adding Section 1956.016 requiring DPS to make a publicly accessible list of all registered metal recycling entities available on its Internet website.

SECTION 6. Amends Section 1956.032(a), Occupations Code, by adding the name of the state issuing the license plate to the information a person attempting to sell regulated material to a metal recycling entity is required to provide to the entity. Adds Section 1956.032(g) to provide that, notwithstanding Section 1956.002, a person attempting to sell regulated material who represents that they are a metal recycling entity is required to provide a copy of the certificate of registration issued under Section 1956.022 in addition to the information required in Subsection (a).

SECTION 7. Amends Section 1956.033(b), Occupations Code, to require the record include the information required by Sections 1956.032(a)(2) and (3) and to strike existing language requiring the record include the information required by Section 1956.032(a)(3).

SECTION 8. Amends Section 1956.034, Occupations Code, to require the records be kept in an easily retrievable format.

SECTION 9. Amends Section 1956.036(a), Occupations Code, to require a metal recycling entity, except as provided by Subsections (b) and (d), not later than 48 hours after the date of the purchase or other acquisition of material for which a record is required under Section 1956.033, to send to DPS via the DPS Internet website an electronic transaction report containing the information required to be recorded under Section 1956.033. Strikes existing language requiring the report be submitted to DPS not later than the seventh day after the date of the purchase or acquisition. Amends Subsection (b) by requiring a metal recycling entity that purchases certain items to notify DPS by phone before the close of business on the entity's first business day after the purchase and, not later than 48 hours after the purchase, to submit a report containing required information to DPS electronically via DPS' Internet website or to file the report with DPS. Adds Subsection (d) to authorize a metal recycling entity to submit the transaction report required under Subsection (a) by facsimile if the entity submits annually to DPS an application requesting an exception to the electronic reporting requirement and an affidavit stating that the entity does not have an available and reliable means of submitting the transaction report electronically, and DPS approves the entity's application under this subsection.

SECTION 10. Amends Section 1956.037(a), Occupations Code, to prohibit 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 five days, excluding weekends and holidays, before the disposal, processing, sale or removal. Strikes existing language establishing the retention period at 72 hours. Adds Section 1956.037(a)(3) to prohibit 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 and the entity obtained a digital or video photograph of the seller.

SECTION 11. Amends Section 1956.038, Occupations Code, by creating Subsection (a) from existing text and naming the subsequent subsections accordingly. Adds Section 1956.038(a)(4) to prohibit a person from displaying another individual's personal identification document in connection with the sale of regulated material with the intent to deceive. Adds Subsection (b) to prohibit a metal recycling entity, unless otherwise prohibited under this section, from paying more than \$150 in cash for a purchase of regulated metal or \$1,000 in cash for a purchase of regulated material other than regulated metal. Adds Subsection (c) to prohibit a county, municipality, or political subdivision, notwithstanding Section 1956.003(a) or any other law, from adopting a rule, charter or ordinance or issuing an order or impose standards that limit the use of cash by a metal recycling entity in a manner more restrictive than that provided by Subsection (b).

SECTION 12. Amends Section 1956.040(a), Occupations Code, to provide that a person commits an offense if the person knowingly violates Section 1956.021, Section 1956.023(d), Section 1956.036(a) or Section 1956.038.

SECTION 13. Amends Section 1956.103(a), Occupations Code, to prohibit a person from selling or otherwise transferring to a metal recycling entity a metal alcoholic beverage keg, regardless of condition, unless the seller is the manufacturer of the keg, the brewer or distiller of the beverage that was contained in the keg, or an authorized representative of the manufacturer, brewer, or distiller.

SECTION 14. Amends Section 1956.151(3), Occupations Code, to require DPS to deny an application for a certificate of registration, suspend or revoke a certificate of registration, or reprimand a person who is registered under this chapter if the person violates a provision of this chapter or a rule adopted under this chapter.

SECTION 15. Amends Section 1956.202(d), Occupations Code, to prohibit a civil penalty from being assessed under this section for conduct described by Section 1956.021, Section 1956.023(d), Section 1956.036(a) or Section 1956.038.

SECTION 16. Amends Section 31.03(e), Penal Code, to provide that, except as provided by Section 31.03(f), an offense under this section is a state jail felony if the value of the property stolen is less than \$20,000 and the property stolen is aluminum, bronze, copper, or brass. Strikes "insulated or noninsulated wire or cable that consists of at least 50 percent" from the description of the property stolen.

SECTION 17. Repeals Section 1956.014(d), Occupations Code.

SECTION 18. Provides that the change in law made by this Act applies only to an offense committed on or after the effective date of this Act except that the enhancement of the punishment of an offense provided under Section 1956.003(h), Occupations Code, as added by this Act, applies only to an offense committed on or after January 1, 2010.

SECTION 19. Effective date.

### **REPEALER**

Repeals Section 1956.014(d), Occupations Code.

### **EFFECTIVE DATE**

September 1, 2009

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

SECTION 1. C.S.H.B. 4524 differs from the original in the definition of "regulated metal" by adding to 1956.001(10)(K) the words "tubing, or rods" and by adding "central" before heating or air conditioning units"; by listing "catalytic converters not attached to a vehicle" rather than "catalytic converters" as in the original; by listing "fire hydrants" rather than "fire hydrant operating nuts" as in the original; and by adding additional items listed in (Q), (R), (S) and (U) to the definition not contained in the original.

SECTION 2. C.S.H.B. 4524 differs from the original by striking the section in its entirety and by adding provisions not contained in the original. Amends the heading to Section 1956.003, Occupations Code, to read "LOCAL LAW; CRIMINAL PENALTY."

SECTION 3. C.S.H.B. 4524 differs from the original by adding provisions not contained in the original. The language in SECTION 3 of the original is moved to SECTION 6 of the substitute. The substitute amends Section 1956.033, Occupations Code, by adding Subsection (a-1) authorizing a county, municipality or political subdivision to require the record of purchase described under Section 1956.003 to contain a clear and legible thumbprint of a seller of regulated material; by adding Subsection (f) requiring a county, municipality, or political subdivision that issues a license or permit authorized under Subsection (b) to issue a notice to an owner or operator of a metal recycling entity operating without a license or permit informing the owner or operator that the entity is operating without the required license or permit and that the

owner or operator may be subject to criminal penalties if the owner or operator does not obtain the appropriate license or permit before the 15th day after the date the notice is received; by adding Subsection (g) providing that a person commits an offense if the person owns or operates a metal recycling entity and does not submit an application for the appropriate license or permit before the 15th day after the date of receiving a notice under Subsection (f); and by adding Subsection (h) providing that an offense under Subsection (g) is a Class A misdemeanor unless it is shown on the trial of the offense that the person has been previously convicted under Subsection (g), in which event the offense is a state jail felony.

SECTION 4. C.S.H.B. 4524 differs from the original by adding provisions not contained in the original. Language from SECTION 4 of the original moves to SECTION 7 of the substitute. The substitute amends Section 1956.015(d), Occupations Code, to provide that information provided under this section is not subject to disclosure under Chapter 552, Government Code. Requires DPS to maintain the confidentiality of information provided under this section and to require any contractor, subcontractor or third party that has access to, comes into possession of, or otherwise obtains information provided under this section to maintain the confidentiality of the information. Strikes existing language requiring 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 and providing the confidential information is not subject to disclosure under Chapter 552, Government Code.

SECTION 5. C.S.H.B. 4524 differs from the original by adding provisions not contained in the original. Language from SECTION 5 of the original moves to SECTION 8 of the substitute. The substitute amends Subchapter A-1, Chapter 1956, Occupations Code, by adding Section 1956.016 requiring DPS to make a publicly accessible list of all registered metal recycling entities available on its Internet website.

SECTION 6. C.S.H.B. 4524 contains language that was in SECTION 3 of the original. The substitute differs from the original by adding Section 1956.032(g), Occupations Code, not contained in the original, to provide that, notwithstanding Section 1956.002, a person attempting to sell regulated material who represents that they are a metal recycling entity is required to provide a copy of the certificate of registration issued under Section 1956.022 in addition to the information required in Subsection (a). Language from SECTION 6 of the original can be found in part in SECTION 9 of the substitute.

SECTION 7. C.S.H.B. 4524 contains identical language from SECTION 4 of the original.

SECTION 8. C.S.H.B. 4524 contains identical language from SECTION 5 of the original.

SECTION 9. C.S.H.B. 4524 differs from the original in Section 1956.036(a), Occupations Code, by requiring a metal recycling entity, except as provided by Subsections (b) and (d), to send the required electronic transaction report to DPS not later than 48 hours after the date of purchase or other acquisition of material for which a record is required under Section 1956.033. The original required the report to be submitted not later than the fifth day after such purchase or acquisition. The substitute differs from the original by striking language in the original that amended (c). The substitute also differs from the original in Subsection (d) by requiring annual submission to DPS of the documents required for approval of a request for exception to the electronic reporting requirement. The original did not require annual submissions of the documents.

SECTION 10. C.S.H.B. 4524 differs from the original by adding Section 1956.037(a)(3), not contained in the original, to prohibit 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 and the entity obtained a digital or video photograph of the seller.

SECTION 11. C.S.H.B. 4524 differs from the original by striking the section its entirety and by adding provisions not contained in the original. The substitute amends Section 1956.038, Occupations Code, by creating Subsection (a) from existing text and naming the subsequent subsections accordingly. Adds Section 1956.038(a)(4) to prohibit a person, with the intent to deceive, from displaying another individual's personal identification document in connection with the sale of regulated material. The substitute differs from the original by adding Subsection

(b) to prohibit a metal recycling entity, unless otherwise prohibited under this section, from paying more than \$150 in cash for a purchase of regulated metal or more than \$1,000 in cash for a purchase of regulated material other than regulated metal. The substitute differs from the original by adding Subsection (c) to prohibit a county, municipality, or political subdivision, notwithstanding Section 1956.003(a) or any other law, from adopting a rule, charter or ordinance or issuing an order or impose standards that limit the use of cash by a metal recycling entity in a manner more restrictive than that provided by Subsection (b).

SECTION 12. C.S.H.B. 4524 contains identical language from SECTION 9 of the original.

SECTION 13. C.S.H.B. 4524 differs from the original by adding provisions not contained in the original to amend Section 1956.103(a), Occupations Code, to prohibit a person from selling or otherwise transferring to a metal recycling entity a metal alcoholic beverage keg, regardless of condition, unless the seller is the manufacturer of the keg, the brewer or distiller of the beverage that was contained in the keg, or an authorized representative of the manufacturer, brewer, or distiller.

SECTION 14. C.S.H.B. 4524 contains identical language from SECTION 10 of the original.

SECTION 15. C.S.H.B. 4524 contains identical language from SECTION 11 of the original.

SECTION 16. C.S.H.B. 4524 contains identical language from SECTION 12 of the original except that the substitute differs from the original in Section 31.03(e) by striking "insulated or noninsulated wire or cable that consists of at least 50 percent" from the description of the property stolen. The original struck only the words "is insulated wire or cable that" from the description.

SECTION 17. C.S.H.B. 4524 contains identical language from SECTION 13 of the original.

SECTION 18. C.S.H.B. 4524 contains identical language from SECTION 12 of the original except that the substitute differs from the original by providing that the enhancement of the punishment of an offense provided under Section 1956.003(h), Occupations Code, as added by this Act, applies only to an offense committed on or after January 1, 2010. The original provided that the change in law made by this Act applies only to an offense committed on or after the effective date of this Act.

SECTION 19. The effective date remains unchanged from the original.