

## **BILL ANALYSIS**

C.S.S.B. 1095  
By: Carona  
Licensing & Administrative Procedures  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The primary mission of the Texas Department of Transportation (TxDOT) is planning, designing, building, operating, and maintaining the state's transportation system, not the regulation of businesses and occupations. However, under current law, the Texas automotive recycling industry is under the purview of TxDOT.

As noted in the Sunset Advisory Commission report to the 81st Texas Legislature on TxDOT, the automotive recycling regulatory program is lost within TxDOT's largest division, which is also charged with titling and registering all vehicles in Texas. The commission report states that it is the only occupational regulatory function handled by the division and one of the few such programs in TxDOT. TxDOT does not use the administrative enforcement tools provided in statute for the regulation of the industry.

Criminal activities associated with unlicensed and unregulated salvage operations include auto theft, dealing in stolen and damaged auto parts, money laundering, and drug trafficking. In addition, illegitimate salvage yards do not comply with local, state, and federal environmental laws, health and safety codes, or zoning and visual blight ordinances. Unlicensed and unregulated salvage operations harm the legitimate industry as well as the public.

C.S.S.B. 1095 consolidates laws relating to the automotive parts recycling industry under the Occupations Code and transfers regulatory authority to the Texas Department of Licensing and Regulation.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTIONS 7 and 13 and to the executive director of the Texas Department of Licensing and Regulation in SECTION 7 of this bill.

### **ANALYSIS**

C.S.S.B. 1095 amends the Occupations Code to enact the Texas Used Automotive Parts Recycling Act, which sets forth provisions for the licensing and regulation of used automotive parts recyclers. The bill specifies that its provisions are not applicable to a transaction to which a metal recycler is a party, except a transaction in which a motor vehicle is sold, transferred, released, or delivered to a metal recycler as a source of used automotive parts and is used as a source of used automotive parts, or to a transaction in which a salvage vehicle dealer is a party unless the dealer deals in used automotive parts as more than an incidental part of its primary business. The bill makes its provisions inapplicable to an insurance company.

C.S.S.B. 1095 establishes a used automotive parts recycling advisory board that consists of five members representing the used automotive parts industry in Texas who are appointed by the presiding officer of the Texas Commission of Licensing and Regulation with the approval of the commission. The bill prohibits the board from including more than one member from any one

used automotive parts business entity. The bill establishes requirements for the composition of the board, including requirements that the board include members who represent used automotive parts businesses owned by domestic entities and one member who represents a used automotive parts business owned by a foreign entity. The bill establishes the terms of the board members, requirements for filling a vacancy on the board and appointing a presiding officer, and the presiding officer's term and authority. The bill requires the board to provide advice and recommendations to the Texas Department of Licensing and Regulation (TDLR) on technical matters relevant to the administration and enforcement of provisions of the bill and establishes meeting requirements. The bill prohibits members from receiving compensation but entitles members to reimbursement for certain expenses, subject to the General Appropriations Act.

C.S.S.B. 1095 authorizes the executive director or the commission, as appropriate, to take action as necessary to administer and enforce provisions of the bill and requires the commission not later than January 1, 2010, to adopt rules for the licensing of used automotive parts recyclers and used automotive parts employees and to adopt rules for licensing applicants and standards of conduct for license holders. The bill requires the commission to establish and collect reasonable and necessary fees in amounts sufficient to cover the costs of administering the bill's provisions. The bill prohibits the commission from adopting a rule restricting advertising or competitive bidding by a license holder except to prohibit false, misleading, or deceptive practices, and prohibits the commission from including certain restrictions in its rules that prohibit such practices.

C.S.S.B. 1095 requires TDLR to inspect each used automotive parts recycling facility at least once every two years and authorizes TDLR to enter and inspect at any time during business hours the place of business of any person regulated by these provisions or any place in which TDLR has reasonable cause to believe that a license holder is in violation of an applicable provision or of a rule or order of the commission or executive director. The bill requires TDLR to conduct additional inspections based on a schedule of risk-based inspections that includes certain criteria. The bill requires a used automotive parts recycler to pay a fee for each inspection and requires the commission by rule to set the amount of the fee. The bill authorizes TDLR, in conducting an inspection, to inspect a facility, a used automotive part, a business record, or any other place or thing reasonably required to enforce these provisions or a rule or order adopted under them. The bill authorizes TDLR to employ personnel necessary to administer and enforce these provisions.

C.S.S.B. 1095 creates a used automotive parts recycler license, which authorizes its holder to own or operate a used automotive parts recycling business or sell used automotive parts. The bill provides that such a license is valid only with respect to the person who applied for the license and authorizes its holder to operate a used automotive parts recycling business only at the one facility listed on the license. The bill sets out the license application requirements. The bill creates a used automotive parts employee license, which authorizes its holder, in the scope of the person's employment by a used automotive parts recycler, to acquire a vehicle or used automotive parts or sell used automotive parts. The bill requires the commission by rule to adopt requirements for the application for and issuance of such a license. The bill provides that a license issued by the executive director is valid throughout Texas and is not transferable. The bill establishes that a license issued under these provisions is valid for one year and sets out procedures for its renewal. The bill makes these license requirements effective January 1, 2010.

C.S.S.B. 1095 makes its requirements applicable in addition to the requirements of any applicable municipal ordinance relating to the regulation of a person who deals in used automotive parts and specifies that the bill's provisions do not prohibit the enforcement of an applicable municipal license or permit requirement that is related to an activity regulated under these provisions.

C.S.S.B. 1095 authorizes the commission to impose an administrative penalty on a person, regardless of whether the person holds a license under these provisions, if the person violates the

provisions or a related rule or a rule or order of the executive director or commission. The bill prohibits such a penalty from being imposed unless the person charged with a violation is provided the opportunity for a hearing. The bill authorizes the executive director to issue a cease and desist order as necessary to enforce provisions of the bill if the executive director determines that the action is necessary to prevent a violation of such provisions and to protect public health and safety. The bill authorizes the attorney general or executive director to institute an action for an injunction or a civil penalty relating to provisions of the bill and authorizes TDLR to impose administrative sanctions. The bill makes it a Class C misdemeanor to violate the licensing requirements, deal in used parts without a license, or employ an individual who does not hold the appropriate license. The bill makes these provisions effective January 1, 2010.

C.S.S.B. 1095 specifies that provisions relating to salvage vehicle dealers do not apply to a licensed used automotive parts recycler and makes conforming changes.

C.S.S.B. 1095 requires a used automotive parts recycler who acquires ownership of a salvage motor vehicle to obtain a properly assigned title from the previous owner of the vehicle and requires a used automotive parts recycler who acquires ownership of a motor vehicle, nonrepairable motor vehicle, or salvage motor vehicle for the purpose of dismantling, scrapping, or destroying the motor vehicle to submit to the Texas Department of Transportation (TxDOT), before the 31st day after the date of acquiring the motor vehicle, a properly assigned manufacturer's certificate of origin, regular certificate of title, nonrepairable vehicle title, salvage vehicle title, other ownership document, or comparable out-of-state ownership document for the motor vehicle. The bill requires TxDOT, after receiving the report and title or document, to issue the used automotive parts recycler a receipt for the document. The bill requires the recycler to comply with Transportation Code provisions relating to nonrepairable and salvage motor vehicles. The bill requires a used automotive parts recycler to maintain a record of or sales receipt for each motor vehicle, salvage motor vehicle, nonrepairable motor vehicle, and used automotive part purchased and requires a recycler, before moving a place of business, to notify TDLR of the new location. The bill requires a used automotive parts recycler to provide a storm water permit for the location if a permit is required by the Texas Commission on Environmental Quality.

C.S.S.B. 1095 requires a used automotive parts recycler, immediately on receipt of a motor vehicle, to remove any unexpired license plates from the vehicle and place the license plates in a secure place until destroyed by the recycler. The bill prohibits a used automotive parts recycler from dismantling or disposing of a motor vehicle unless the recycler first obtains a certificate of authority to dispose of the vehicle, a sales receipt, or an abandoned motor vehicle transfer document for the vehicle or a certificate of title showing that there are no liens on the vehicle or that all recorded liens have been released. The bill requires a used automotive parts recycler to keep an accurate and legible record of each used component part purchased by or delivered to the recycler. The bill authorizes a used automotive parts recycler, as an alternative to the required information, to record the name of the person who sold the part or the motor vehicle from which the part was obtained and the Texas certificate of inventory number or the federal taxpayer identification number of the person. The bill requires TDLR to prescribe the form of the record and to make the form available to used automotive parts recyclers. The bill specifies that these record requirements do not apply to an interior component part or special accessory part from a motor vehicle more than 10 years old or a part delivered to a used automotive parts recycler by a commercial freight line, commercial carrier, or licensed used automotive parts recycler.

C.S.S.B. 1095 requires a used automotive parts recycler to retain each component part in its original condition on the business premises of the recycler for at least three calendar days, excluding Sundays, after the date the recycler obtains the part. The bill specifies that provisions relating to the assignment of an inventory number do not apply to the purchase by a used automotive parts recycler of a nonoperational engine, transmission, or rear axle assembly from another used automotive parts recycler or an automotive-related business. The bill requires a

used automotive parts recycler to maintain copies until the first anniversary of the purchase date of the item for which the record is maintained.

C.S.S.B. 1095 requires a used automotive parts recycler, as required by TDLR, to surrender to TxDOT for cancellation a certificate of title or authority, sales receipt or transfer document and requires TxDOT to provide a signed receipt for a surrendered certificate of title. The bill authorizes a peace officer at any reasonable time to inspect a record required to be maintained, including an inventory record, and requires a used automotive parts recycler, on demand by a peace officer, to provide a copy of such a record. The bill authorizes a peace officer to inspect the inventory on the premises of a used automotive parts recycler at any reasonable time to verify, check, or audit such records. The bill requires a used automotive parts recycler or an employee of the recycler to allow and not interfere with a peace officer's inspection of the recycler's inventory, premises, or required inventory records. The bill prohibits a used automotive parts recycler located in a county with a population of 2.8 million or more from operating heavy machinery in a used automotive parts recycling facility between the hours of 7 p.m. of one day and 7 a.m. of the following day, except for operation necessary to a sale or purchase by the recycler. The bill defines the terms "insurance company," "metal recycler," "motor vehicle," "nonrepairable motor vehicle," "nonrepairable vehicle title," "salvage motor vehicle," "salvage vehicle agent," "salvage vehicle title," "salvage vehicle dealer," "commission," "department," "executive director," "used automotive part," "used automotive parts recycler," "used automotive parts recycling," "component part," "interior component part," "minor component part," "special accessory part," and "used parts dealer."

C.S.S.B. 1095 amends the Transportation Code to add to the definition of "salvage vehicle dealer" a used automotive parts recycler if the sale of repaired, rebuilt, reconstructed, or nonrepairable motor vehicles or salvage motor vehicles is more than an incidental part of the used automotive parts recycler's business. The bill removes from the definition a person engaged in Texas in the business of dismantling nonrepairable or salvage motor vehicles and amends the definition to specify that the term includes a person engaged in the business of acquiring, selling, repairing, rebuilding, reconstructing, or otherwise dealing in used automotive parts if incidental to a salvage motor vehicle dealer's primary business. The bill excludes from the definition a person who casually repairs, rebuilds, or reconstructs fewer than five, rather than three, salvage motor vehicles in the same calendar year or a used automotive parts recycler, except as allowed under these provisions. The bill removes language specifying that the inclusion in the definition of a person in the business of dealing in nonrepairable motor vehicles or salvage motor vehicles applies regardless of whether the person deals in used parts and removes a person in the business of dealing in used parts regardless of whether the person deals in nonrepairable motor vehicles or salvage motor vehicles.

C.S.S.B. 1095 amends provisions authorizing the sale or assignment of title of certain salvage or nonrepairable motor vehicles by an insurance company or the sale, transfer, or release of such vehicles by certain businesses or governmental entities to include a used automotive parts recycler as a buyer. The bill makes applicable to a used automotive parts recycler the requirement that certain sellers of nonrepairable or salvage motor vehicles at a casual sale retain records relating to such sales.

C.S.S.B. 1095 establishes that, in a conflict between a provision of this bill and a provision of another Act of the 81st Legislature, Regular Session, 2009, that becomes law concerning the licensing or regulation of used automotive parts recyclers, this bill's provisions prevail.

C.S.S.B. 1095 repeals Section 2302.253, Occupations Code, which relates to the receipt of a motor vehicle by a salvage vehicle dealer who holds an endorsement as a used vehicle parts dealer.

## **EFFECTIVE DATE**

Except as otherwise provided, September 1, 2009.

## **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.S.B. 1095 adds a provision not in the original prohibiting the used automotive parts recycling advisory board from including more than one member from any one used automotive parts business entity. The substitute removes language in the original that includes continuing education requirements and examination content, if applicable, in the technical matters relevant to the administration and enforcement of the bill's provisions on which the advisory board is required to provide advice and recommendations to the Texas Department of Licensing and Regulation (TDLR).

C.S.S.B. 1095 removes a provision in the original authorizing TDLR to conduct an examination of any criminal conviction or deferred adjudication of an applicant for a used automotive parts recycler license or a used automotive parts employee license, including by obtaining any criminal history record information permitted by law. The substitute adds a provision not in the original requiring the Texas Commission of Licensing and Regulation to adopt rules for applicants for a used automotive parts recycler license or a used automotive parts employee license, including rules for denial of an application if an applicant, a partner, principal, officer, or general manager of the applicant, or another license or permit holder with a connection to the applicant has before the application date been convicted of, pleaded guilty or nolo contendere to, or been placed on deferred adjudication for, a felony or a misdemeanor punishable by confinement in jail or by a fine exceeding \$500; has violated an order of the commission or the executive director of TDLR, including an order for sanctions or administrative penalties; or has knowingly submitted false information on the application.

C.S.S.B. 1095 removes language in the original that includes the type and nature of a used automotive parts recycler in the criteria for the schedule of risk-based inspections TDLR is required to use to conduct additional inspections of each used automotive parts recycling facility.

C.S.S.B. 1095 differs from the original by requiring an applicant for a license to provide proof of general liability insurance in an amount not less than \$250,000, whereas the original requires proof of insurance in the amount prescribed by the executive director. The substitute removes a provision in the original requiring an applicant to provide proof of ownership or lease of the property where the applicant will operate a used automotive parts recycling facility.

C.S.S.B. 1095 removes language in the original establishing that the bill's requirements apply in addition to the requirements of any applicable municipal ordinance relating to the regulation of a person who deals in nonrepairable or salvage motor vehicles.

C.S.S.B. 1095 differs from the original by requiring a used automotive parts recycler who acquires ownership of a motor vehicle, nonrepairable motor vehicle, or salvage motor vehicle for the purpose of dismantling, scrapping, or destroying the motor vehicle to submit a document of title to the Texas Department of Transportation (TxDOT) before the 31st day after the date of acquiring the vehicle, rather than the 61st day after such receipt as in the original. The substitute removes a provision in the original requiring a recycler receiving a motor vehicle for such purpose to submit a report to TxDOT on a form prescribed by TxDOT stating that the vehicle will be dismantled, scrapped, or destroyed.

C.S.S.B. 1095 adds language not in the original requiring a used automotive parts recycler, as an alternative to maintaining a record of each motor vehicle, salvage motor vehicle, nonrepairable motor vehicle, and used automotive part purchased, to maintain a sales receipt for such items.

C.S.S.B. 1095 differs from the original by prohibiting a used automotive parts recycler from dismantling or disposing of a motor vehicle, rather than from taking delivery of a vehicle as in the original, without first obtaining certain documentation.

C.S.S.B. 1095 differs from the original by requiring a used automotive parts recycler to keep an accurate and legible record of each used component part purchased by or delivered to the recycler, rather than inventory of such parts as in the original. The substitute removes language in the original requiring such a record to include the license plate number of the motor vehicle in which the part was delivered, the color and size of the part, and the vehicle identification number of the motor vehicle from which the part was removed. The substitute removes a provision in the original requiring a used automotive parts recycler to keep such a record on a form prescribed by TDLR or TxDOT.

C.S.S.B. 1095 removes provisions in the original requiring a used automotive parts recycler to assign a unique inventory number to each transaction in which the recycler purchases or takes delivery of a component part and to attach the inventory number to each component part the recycler obtains in the transaction.

C.S.S.B. 1095 removes a provision in the original requiring a used automotive parts recycler to surrender to TxDOT for cancellation a license plate or inventory list that the recycler is required to possess or maintain, and differs from the original by requiring a recycler to surrender to TxDOT for cancellation a certificate of title or authority, sales receipt, or transfer document as required by TDLR, rather than on demand by TxDOT as in the original.

C.S.S.B. 1095 removes provisions in the original authorizing a used automotive parts recycler to sell salvage nonrepairable vehicles only at a used automotive parts recycling facility, a salvage pool operator's facility, or a metal recycling facility, and requiring a used automotive parts recycler, before reselling a salvage motor vehicle or nonrepairable motor vehicle at a used automotive recycling facility, to post notice on the vehicle of the type of title appropriate to the vehicle.

C.S.S.B. 1095 adds a provision not in the original establishing that, in a conflict between a provision of this bill and a provision of another Act of the 81st Legislature, Regular Session, 2009, that becomes law concerning the licensing or regulation of used automotive parts recyclers, this bill's provisions prevail.