

BILL ANALYSIS

Senate Research Center
81R3043 BEF-F

S.B. 1095
By: Carona
Transportation & Homeland Security
3/30/2009
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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 (Sunset) 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 Sunset 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 utilize 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.

As proposed, S.B. 1095 provides for the consolidation of laws relating to the automotive recycling industry under the Occupations Code and transfers regulatory authority to the Texas Department of Licensing and Regulation.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to Texas Commission of Licensing and Regulation in SECTION 4 (Sections 2309.102, 2309.106, and 2309.155, Occupations Code) of this bill.

Rulemaking authority of the Texas Commission of Licensing and Regulation is expressly prohibited in SECTION 4 (Section 2309.105, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2302.001(6), Occupations Code, to redefine "salvage vehicle agent."

SECTION 2. Amends Subchapter A, Chapter 2302, Occupations Code, by adding Section 2302.008, as follows:

Sec. 2302.008. **APPLICABILITY OF CHAPTER TO USED AUTOMOTIVE PARTS RECYCLERS.** Provides that this chapter does not apply to a used automotive parts recycler under Chapter 2309.

SECTION 3. Amends Section 2302.103(b), Occupations Code, to delete existing text that authorizes an applicant to apply for a salvage vehicle dealer license with an endorsement in the classification of used vehicle parts dealer. Makes nonsubstantive changes.

SECTION 4. Amends Subtitle A, Title 14, Occupations Code, by adding Chapter 2309, as follows:

CHAPTER 2309. USED AUTOMOTIVE PARTS RECYCLERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2309.001. **SHORT TITLE.** Authorizes this chapter to be cited as the Texas Used Automotive Parts Recycling Act.

Sec. 2309.002. **DEFINITIONS.** Defines "insurance company," "metal recycler," "motor vehicle," "nonrepairable motor vehicle," "nonrepairable vehicle title," "salvage motor vehicle," "salvage vehicle title," "salvage vehicle dealer," "commission," "department," "executive director," "used automotive part," "used automotive parts recycler," and "used automotive parts recycling."

Sec. 2309.003. **APPLICABILITY OF CHAPTER TO METAL RECYCLERS.** (a) Provides that, except as provided by Subsection (b), this chapter does not apply to a transaction to which a metal recycler is a party.

(b) Provides that this chapter applies to 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.

Sec. 2309.004. **APPLICABILITY OF CHAPTER TO SALVAGE VEHICLE DEALERS.** (a) Provides that, except as provided by Subsection (b), this chapter does not apply to a transaction in which a salvage vehicle dealer is a party.

(b) Provides that this chapter applies to a transaction in which a motor vehicle is sold, transferred, released, or delivered to a salvage vehicle dealer as a source of used automotive parts; and is used as a source of used automotive parts.

Sec. 2309.005. **APPLICABILITY OF CHAPTER TO INSURANCE COMPANIES.** Provides that this chapter does not apply to an insurance company.

[Reserves Sections 2309.006-2309.050 for expansion.]

SUBCHAPTER B. ADVISORY BOARD

Sec. 2309.051. **USED AUTOMOTIVE PARTS RECYCLING ADVISORY BOARD.** (a) Provides that the advisory board (board) consists of six members representing the used automotive parts industry in this state appointed by the presiding officer of the Texas Commission of Licensing and Regulation (commission) with the approval of the commission.

(b) Requires the board to include members who represent a used automotive parts businesses owned by domestic entities, as defined by Section 1.002 (Definitions), Business Organizations Code.

(c) Requires the board to include one member who represents a used automotive parts business owned by a foreign entity, as defined by Section 1.002, Business Organizations Code.

(d) Requires that appointments to the board be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Sec. 2309.052. **TERMS; VACANCIES.** (a) Provides that board members serve terms of six years, with the terms of two members expiring on February 1 of each odd-numbered year.

(b) Prohibits a board member from serving more than two full consecutive terms.

(c) Requires the presiding officer of the commission, if a vacancy occurs during a term, to appoint a replacement who meets the qualifications of the vacated position to serve for the remainder of the term.

Sec. 2309.053. **PRESIDING OFFICER.** Requires the presiding officer of the commission to appoint one of the board members to serve as presiding officer of the board for a term of one year. Authorizes the presiding officer of the board to vote on any matter before the board.

Sec. 2309.054. **POWERS AND DUTIES OF ADVISORY BOARD.** 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 this chapter, including licensing standards, continuing education requirements, and examination content, if applicable.

Sec. 2309.055. **COMPENSATION; REIMBURSEMENT OF EXPENSES.** Prohibits board members from receiving compensation but entitles them to reimbursement for actual and necessary expenses incurred in performing the functions of the board, subject to the General Appropriations Act.

Sec. 2309.056. **MEETINGS.** Requires the board to meet twice annually and authorizes the board to meet at other times at the call of the presiding officer of the commission or the executive director.

[Reserves Sections 2309.057-2309.100 for expansion.]

SUBCHAPTER C. POWERS AND DUTIES OF COMMISSION AND DEPARTMENT

Sec. 2309.101. **GENERAL POWERS AND DUTIES.** Authorizes the executive director or commission, as appropriate, to take action as necessary to administer and enforce this chapter.

Sec. 2309.102. **RULES.** (a) Requires the commission to adopt rules for licensing used automotive parts recyclers.

(b) Requires the commission by rule to adopt standards of conduct for license holders under this chapter.

Sec. 2309.103. **EXAMINATION OF CRIMINAL CONVICTION.** Authorizes TDLR to conduct an examination of any criminal conviction of an applicant, including by obtaining any criminal history record information permitted by law.

Sec. 2309.104. **FEES.** Requires the commission to establish and collect reasonable and necessary fees in amounts sufficient to cover the costs of administering this chapter.

Sec. 2309.105. **RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING.** (a) Prohibits the commission from adopting a rule restricting advertising or competitive bidding by a person who holds a license issued under this chapter except to prohibit false, misleading, or deceptive practices by the person.

(b) Prohibits the commission from including in its rules to prohibit false, misleading, or deceptive practices a rule that restricts the use of any advertising medium, restricts the person's personal appearance or use of the person's voice in an advertisement, relates to the size or duration of an advertisement by the person, or restricts the use of a trade name in advertising by the person.

Sec. 2309.106. **PERIODIC AND RISK-BASED INSPECTIONS.** (a) Authorizes TDLR to enter and inspect at any time during business hours the place of business of any person regulated under this chapter or any place in which TDLR has reasonable cause to believe that a license holder is in violation of this chapter or in violation of a rule or order of the commission or executive director.

(b) Requires TDLR to conduct additional inspections based on a schedule of risk-based inspections using the following criteria: the type and nature of the used automotive parts recycler, the inspection history, any history of complaints involving a used automotive parts recycler, and any other factor determined by the commission by rule.

(c) Requires a used automotive parts recycler to pay a fee for each risk-based inspection performed under this section. Requires the commission by rule to set the amount of the fee.

(d) Authorizes TDLR, in conducting an inspection under this section, to inspect a facility, a used automotive part, a business record, or any other place or thing reasonably required to enforce this chapter or a rule or order adopted under this chapter.

Sec. 2309.107. PERSONNEL. Authorizes TDLR to employ personnel necessary to administer and enforce this chapter.

[Reserves Sections 2309.108-2309.150 for expansion.]

SUBCHAPTER D. LICENSE REQUIREMENTS

Sec. 2309.151. LICENSE REQUIRED. Prohibits a person, unless the person holds an appropriate license issued under this chapter, from owning or operating a used automotive parts recycling business or selling used automotive parts.

Sec. 2309.152. GENERAL LICENSE APPLICATION REQUIREMENTS. Requires an applicant for a license under this chapter to submit to TDLR a completed application on a form prescribed by the executive director, the required fees, and any other information required by commission rule.

Sec. 2309.153. LICENSE REQUIREMENTS. Requires an applicant for a license under this chapter to establish proof of financial responsibility in the manner prescribed by the executive director, provide proof of ownership or lease of the property where the applicant will operate a used automotive parts recycling facility, and provide a storm water permit if the applicant is required by the Texas Commission on Environmental Quality (TCEQ) to obtain a permit.

Sec. 2309.154. NONTRANSFERABILITY OF LICENSE. Provides that a license issued by the executive director is valid throughout this state and is not transferable.

Sec. 2309.155. CONTINUING EDUCATION. (a) Requires the commission by rule to recognize or prepare and administer continuing education programs for license holders. Requires each license holder to complete a continuing education program before the license holder is authorized to renew the license holder's license.

(b) Requires a person recognized by the commission to offer a continuing education program to register with TDLR and comply with rules adopted by the commission relating to continuing education.

Sec. 2309.156. LICENSE RENEWAL. (a) Provides that a license issued under this chapter is valid for one year. Authorizes TDLR to adopt a system under which licenses expire at different times during the year.

(b) Requires TDLR to notify the license holder at least 30 days before the date a license expires. Requires that the notice be in writing and sent to the license holder's last known address according to the records of TDLR.

(c) Authorizes a license holder to renew a license issued under this chapter by paying a renewal fee, providing to TDLR evidence of financial responsibility,

providing proof of ownership or lease of the property where the license holder operates a used automotive parts recycling facility, providing a storm water permit if the license holder is required by TCEQ to obtain a permit, and completing continuing education as required by Section 2309.155.

[Reserves Sections 2309.157-2309.200 for expansion.]

SUBCHAPTER E. LOCAL REGULATION

Sec. 2309.201. APPLICABILITY OF CERTAIN MUNICIPAL ORDINANCES, LICENSES, AND PERMITS. (a) Provides that the requirements of this chapter 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 or used automotive parts.

(b) Provides that this chapter does not prohibit the enforcement of an applicable municipal license or permit requirement that is related to an activity regulated under this chapter.

[Reserves Sections 2309.202-2309.250 for expansion.]

SUBCHAPTER F. ENFORCEMENT

Sec. 2309.251. ADMINISTRATIVE PENALTY. (a) Authorizes the commission to impose an administrative penalty on a person under Subchapter F (Administrative Penalty), Chapter 51 (Texas Department of Licensing and Regulation), regardless of whether the person holds a license under this chapter, if the person violates this chapter or a rule adopted under this chapter, or a rule or order of the executive director or commission.

(b) Prohibits an administrative penalty from being imposed unless the person charged with a violation is provided the opportunity for a hearing.

Sec. 2309.252. CEASE AND DESIST ORDER; INJUNCTION; CIVIL PENALTY. (a) Authorizes the executive director to issue a cease and desist order as necessary to enforce this chapter if the executive director determines that the action is necessary to prevent a violation of this chapter and to protect public health and safety.

(b) Authorizes the attorney general or executive director to institute an action for an injunction or a civil penalty under this chapter as provided by Section 51.352 (Injunctive Relief; Civil Penalty).

Sec. 2309.253. SANCTIONS. Authorizes TDLR to impose sanctions as provided by Section 51.353 (Administrative Sanctions).

Sec. 2309.254. CRIMINAL PENALTY; LICENSING. (a) Provides that a person commits an offense if the person violates the licensing requirements of this chapter, deals in used parts without a license, or employs an individual who does not hold the appropriate license required by this chapter.

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

[Reserves Sections 2309.255-2309.300 for expansion.]

SUBCHAPTER G. CONDUCTING BUSINESS

Sec. 2309.301. DUTIES ON ACQUISITION OF SALVAGE MOTOR VEHICLE. (a) 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.

(b) 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, before the 61st day after the date of acquiring the motor vehicle, to submit to the Texas Department of Transportation (TxDOT) a report stating that the motor vehicle will be dismantled, scrapped, or destroyed. Requires the recycler to submit the report on a form prescribed by TxDOT and submit with the report a properly assigned manufacturer's certificate of origin, regular certificate of title, nonrepairable vehicle title, salvage vehicle title, or comparable out-of-state ownership document for the motor vehicle.

(c) Requires TxDOT, after receiving the report and title or document, to issue the used automotive parts recycler a receipt for the manufacturer's certificate of origin, regular certificate of title, nonrepairable vehicle title, salvage vehicle title, or comparable out-of-state ownership document.

(d) Requires the recycler to comply with Subchapter E (Nonrepairable and Salvage Motor Vehicles), Chapter 501 (Certificate of Title Act), Transportation Code.

Sec. 2309.302. RECORDS OF PURCHASES. Requires a used automotive parts recycler to maintain a record of each motor vehicle, salvage motor vehicle, nonrepairable motor vehicle, and used automotive part purchased.

Sec. 2309.303. REGISTRATION OF NEW BUSINESS LOCATION. Requires a used automotive parts recycler, before moving a place of business or opening an additional place of business, to notify TDLR of the new location. Requires the used automotive parts recycler to provide a storm water permit for the location if a permit is required by TCEQ.

[Reserves Sections 2309.304-2309.350 for expansion.]

SUBCHAPTER H. ADDITIONAL DUTIES OF USED AUTOMOTIVE PARTS RECYCLER IN CONNECTION WITH MOTOR VEHICLE COMPONENT PARTS

Sec. 2309.351. DEFINITIONS. Defines "component part," "interior component part," "minor component part," and "special accessory part."

Sec. 2309.352. REMOVAL OF LICENSE PLATES. 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 used automotive parts recycler.

Sec. 2309.353. RECEIPT OF MOTOR VEHICLE. Prohibits a used automotive parts recycler from taking delivery of a motor vehicle unless the recycler first obtains a certificate of authority to dispose of the vehicle, a sales receipt, or a transfer document for the vehicle issued under Chapter 683 (Abandoned Motor Vehicles), Transportation Code; or a certificate of title showing that there are no liens of the vehicle or that all recorded liens have been released.

Sec. 2309.354. RECORD OF PURCHASE; INVENTORY OF PARTS. (a) Requires a used automotive parts recycler to keep an accurate and legible inventory of each used component part purchased by or delivered to the recycler. Requires that the inventory contain a record of each part that includes the date of purchase or delivery; the driver's license number of the seller and a legible photocopy of the seller's driver's license; the license plate number of the motor vehicle in which the part was delivered; a complete description of the part and, if applicable, the make, model, color, and size of the part; and the vehicle identification of the motor vehicle from which the part was removed.

(b) Authorizes a used automotive parts recycler, as an alternative to the information required by Subsection (a), 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.

(c) Requires TDLR to prescribe the form of the record required by Subsection (a) and to make the form available to used automotive parts recyclers.

(d) Provides that this section does 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.

Sec. 2309.355. ASSIGNMENT OF INVENTORY NUMBER. (a) Requires 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; attach that inventory number to each component part the recycler obtains in the transaction; and 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.

(b) Prohibits an inventory number attached to a component part under Subsection (a) from being removed while the part remains in the inventory of the used automotive parts recycler.

(c) Provides that this section does 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.

Sec. 2309.356. MAINTENANCE OF RECORDS. Requires a used automotive parts recycler to keep a record required under this subchapter on a form prescribed by TDLR or TxDOT. Requires the recycler to maintain copies of each record required under this subchapter until the first anniversary of the purchase date of the item for which the record is maintained.

Sec. 2309.357. SURRENDER OF CERTAIN DOCUMENTS OR LICENSE PLATES. (a) Requires a used automotive parts recycler, on demand, to surrender to TxDOT for cancellation a certificate of title or authority, sales receipt or transfer document, license plate, or inventory list that the recycler is required to possess or maintain.

(b) Requires TxDOT to provide a signed receipt for a surrendered certificate of title.

Sec. 2309.358. RESALE OF SALVAGE MOTOR VEHICLES OR NONREPAIRABLE MOTOR VEHICLES. (a) Authorizes a used automotive parts recycler to sell salvage or nonrepairable vehicles only at the recycler's business location.

(b) Requires a used automotive parts recycler, before reselling a salvage motor vehicle or nonrepairable motor vehicle, to post notice on the vehicle of the type of title appropriate to the vehicle.

Sec. 2309.359. INSPECTION OF RECORDS. (a) Authorizes a peace officer at any reasonable time to inspect a record required to be maintained under this subchapter, including an inventory record.

(b) Requires a used automotive parts recycler, on demand by a peace officer, to provide to the officer a copy of a record required to be maintained under this subchapter.

(c) 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 the records required to be maintained under this subchapter.

(d) Requires a used automotive parts recycler or an employee of the recycler to allow and prohibits a used automotive parts recycler or an employee from interfering with a peace officer's inspection of the recycler's inventory, premises, or required inventory records.

[Reserves Sections 2309.360-2309.400 for expansion.]

SUBCHAPTER I. MOTOR VEHICLE SALVAGE YARDS IN CERTAIN COUNTIES

Sec. 2309.401. **APPLICABILITY OF SUBCHAPTER.** Provides that this subchapter applies only to a used automotive parts facility located in a county with a population of 2.8 million or more.

Sec. 2309.402. **LIMITS ON OPERATION OF HEAVY MACHINERY.** (a) Prohibits a used automotive parts recycler 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.

(b) Provides that this section does not apply to conduct necessary to a sale or purchase by the recycler.

SECTION 5. Amends Section 501.091, Transportation Code, by amending Subdivision (17) and adding Subdivision (20), as follows:

(17) Redefines "salvage vehicle dealer."

(20) Defines "used parts dealer" and "used automotive parts recycler."

SECTION 6. Amends Section 501.092(d), Transportation Code, to include a used automotive parts recycler among those that an insurance company is only authorized to sell a motor vehicle to which this section applies, or assign a salvage vehicle title or a nonrepairable vehicle title for the motor vehicle. Makes a nonsubstantive change.

SECTION 7. Amends Sections 501.095(a) and (b), Transportation Code, as follows:

(a) Includes a used automotive parts recycler under Chapter 2309, Occupations Code, among the persons that a business or governmental entity described by Subdivisions (1)-(3), is authorized to sell, transfer, or release a nonrepairable motor vehicle or salvage motor vehicle to, if TDLR has not issued a nonrepairable vehicle title or salvage vehicle title for the motor vehicle and an out-of-state ownership document for the motor vehicle has not been issued by another state or jurisdiction.

(b) Includes a used automotive parts recycler licensed to do business in this state, who acquired ownership of a nonrepairable or salvage motor vehicle that has been issued a nonrepairable vehicle title, salvage vehicle title, or a comparable ownership document issued by another state or jurisdiction among the entities required to, before selling the motor vehicle, surrender the properly assigned certificate of title for the motor vehicle to TxDOT and apply to TxDOT for a certain title.

SECTION 8. Amends Section 501.105, Transportation Code, as follows:

Sec. 501.105. **RETENTION OF RECORDS RELATING TO CERTAIN CASUAL SALES.** Makes a conforming change.

SECTION 9. Repealer: Section 2302.253 (Receipt of Motor Vehicle by Holder of Endorsement as Used Vehicle Parts Dealer), Occupations Code.

SECTION 10. Requires the commission, not later than January 1, 2010, to adopt rules under Section 2309.102, Occupations Code, as added by this Act.

SECTION 11. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2009.

(b) Effective date, Section 2309.151, Occupations Code, as added by this Act, and Subchapter F, Chapter 2309, Occupations Code, as added by this Act: September 1, 2010.