

## **BILL ANALYSIS**

C.S.S.B. 1203  
By: West  
Environmental Regulation  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Last session, the legislature passed S.B. 1154, which sought to address the rampant theft of certain metals through the development of a database and increased penalties for knowingly buying or selling stolen regulated metals and materials. During the interim, it became evident that some provisions of S.B. 1154 were unenforceable. Additionally, the industry voiced concerns about the patchwork of local ordinances regarding the regulation of recycling facilities.

C.S.S.B. 1203 addresses some of the continued problems regarding the theft of regulated materials and metals. It makes it an offense to violate Sections 1956.021; 1956.023(d); 1956.036(a); 1956.037 and 1956.038; it adds several specific items to the list of regulated metals; and restricts the use of cash for certain purchases; and enhances the electronic reporting requirements for the metal recycling industry.

### **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. REGISTRATION DATABASE. Requires 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 just 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 telephone before the close of business on the entity's first working 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. Strikes existing language requiring the report to be mailed to DPS not later than the fifth day after the purchase date. 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 Subsection (a)(4) prohibiting a person from displaying another individual's personal identification in connection with the sale of regulated material with the intent to deceive. Adds Subsection (b) prohibiting a metal recycling entity from paying for a purchase of regulated material in cash unless: the entity is registered under Subchapter A-2 not later than January 1, 2010; or the entity begins operations after January 1, 2010 and is registered under Subchapter A-2; or 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 imposing standards that limit the use of cash by a metal recycling entity in a manner more restrictive than that provided by Subsection (b). Adds

Subsection (d) prohibiting a metal recycling entity that purchases regulated material with cash in violation of Subsection (b)(1)(A) from paying for a purchase of regulated material in cash before the second anniversary of the date the entity registers under Subchapter A-2.

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 Chapter 1956.

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 stolen property.

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.S.B. 1203 differs from the original in the definition of "regulated metal" by providing that any metal item clearly and conspicuously marked, rather than just marked, with any form of the name, initials, or logo of a government entity, utility, cemetery, or railroad is a regulated metal and by adding to Section 1956.001(10) additional items listed in (T) and (U) not contained in the original.

SECTION 2. No change from the original.

SECTION 3. C.S.S.B. 1203 differs from the original in Subsection (h) by adding a provision not contained in the original providing that an offense under Subsection (g) is a state jail felony if it is shown on the trial of the offense that the person has been previously convicted under Subsection (g). The original provided that an offense under Subsection (g) is a Class A misdemeanor.

SECTION 4. C.S.S.B. 1203 differs from the original by adding provisions not contained in the original. Language from SECTION 4 of the original moves to SECTION 6 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.S.B. 1203 differs from the original by adding provisions not contained in the original. Language from SECTION 5 of the original moves to SECTION 7 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.S.B. 1203 contains language from SECTION 4 of the original except that the substitute differs from the original by adding Section 1956.032(g), Occupations Code, 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 8 of the substitute.

SECTION 7. C.S.S.B. 1203 contains language from SECTION 5 of the original. Language from SECTION 7 of the original moves to SECTION 9 of the substitute.

SECTION 8. C.S.S.B. 1203 contains language from SECTION 6 of the original. Language from SECTION 8 of the original moves to SECTION 10 of the substitute.

SECTION 9. C.S.S.B. 1203 contains language from SECTION 7 of the original except that the substitute differs from the original by changing the reporting deadline in Section 1956.036(a) to 48 hours, rather than the fifth day as in the original, after the date of purchase of a material for which a record is required and changes the reporting deadline in Section 1956.036(b) to 48 hours, rather than the fifth day as in the original, after the date of purchase of a material for which a record is required. Language from SECTION 9 of the original moves to SECTION 11 of the substitute.

SECTION 10. C.S.S.B. 1203 contains language from SECTION 8 of the original. The substitute differs from the original by striking language from SECTION 10 of the original in its entirety.

SECTION 11. C.S.S.B. 1203 contains language from SECTION 9 of the original except that the substitute differs from the original by amending Section 1956.038, Occupations Code, by creating Subsection (a) from existing text and naming the subsequent subsections accordingly and by adding Subsections (b), (c) and (d) not contained in the original. Subsection (b) prohibits a metal recycling entity: from paying for a purchase of regulated material in cash unless the entity is registered under Subchapter A-2 not later than January 1, 2010 or the entity begins operations after January 1, 2010 and is registered under Subchapter A-2; or 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. Subsection (c) prohibits 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). Subsection (d) prohibits a metal recycling entity that purchases regulated material with cash in violation of Subsection (b)(1)(A) from paying for a purchase of regulated material in cash before the second anniversary of the date the entity registers under Subchapter A-2.

SECTION 12. C.S.S.B. 1203 contains language from SECTION 11 of the original except that the substitute differs from the original in Section 1956.040(a), Occupations Code, by adding Section 1956.036(a) to the sections listed in Subsection (a). The original did not include Section 1956.036(a) in the list. Language from SECTION 12 of the original moves to SECTION 13 of the substitute.

SECTION 13. C.S.S.B. 1203 contains language from SECTION 12 of the original. Language from SECTION 13 of the original moves to SECTION 14 of the substitute.

SECTION 14. C.S.S.B. 1203 contains language from SECTION 13 of the original. Language from SECTION 14 of the original moves to SECTION 15 of the substitute.

SECTION 15. C.S.S.B. 1203 contains language from SECTION 14 of the original except that the substitute differs from the original in Section 1956.202(d), Occupations Code, by adding Section 1956.036(a) to the sections listed in Subsection (d). The original did not include Section 1956.036(a) in the list. Language from SECTION 15 of the original moves to SECTION 16 of the substitute.

SECTION 16. C.S.S.B. 1203 contains language from SECTION 15 of the original. Language from SECTION 16 of the original moves to SECTION 17 of the substitute.

SECTION 17. C.S.S.B. 1203 contains language from SECTION 16 of the original. Language from SECTION 17 of the original moves to SECTION 18 of the substitute.

SECTION 18. C.S.S.B. 1203 contains language from SECTION 17 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 substitute provides that notwithstanding Subsection (c) of this section, the change in law made by this Act applies only to an offense committed on or after the effective date of this Act. The original does not include "notwithstanding Subsection (c)." Language from SECTION 18 of the original moves to SECTION 19 of the substitute.

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