

By: Driver

H.B. No. 4454

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of metal recycling entities; providing penalties.

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

SECTION 1. Section 1956.001, Occupations Code, is amended by adding Subdivision (7-a) and amending Subdivisions (9) and (10) to read as follows:

(7-a) "Nickel alloy material" means any nonferrous metal alloy whose main constituent is nickel, including bars, pipe, rods, tubing, and wire.

(9) "Regulated material" means:

- (A) aluminum material;
- (B) bronze material;
- (C) copper or brass material; ~~[or]~~
- (D) nickel alloy material; or
- (E) regulated metal.

(10) "Regulated metal" means:

- (A) manhole covers;
- (B) guardrails;
- (C) metal cylinders designed to contain compressed air, oxygen, gases, or liquids;
- (D) beer kegs made from metal other than aluminum;
- (E) historical markers or cemetery vases,

receptacles, or memorials made from metal other than aluminum;

(F) unused rebar;

(G) street signs;

(H) drain gates;

(I) safes;

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

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

(L) utility structures, including the fixtures and hardware;

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

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

(O) catalytic converters;

(P) back flow valves; and

(Q) fire hydrant operating nuts.

SECTION 2. Section 1956.002, Occupations Code, is amended to read as follows:

Sec. 1956.002. EXCEPTION; REPORTING REQUIREMENTS. (a)

This chapter does not apply to

~~[(1) a purchase of regulated material from a public utility or a manufacturing, industrial, commercial, retail, or other seller that sells regulated material in the ordinary course~~

1 ~~of the seller's business;~~

2 ~~[(2) a purchase of regulated material by a~~
3 ~~manufacturer whose primary business is the manufacture of iron and~~
4 ~~steel products made from melting scrap iron and scrap steel; or~~

5 ~~[(3)]~~ the transport or hauling of recyclable materials
6 to or from the metal recycling entity.

7 (b) The reporting requirements under Section 1956.036 do
8 not apply to a purchase of regulated material:

9 (1) from a public utility or a manufacturing,
10 industrial, commercial, retail, or other seller that sells
11 regulated material in the ordinary course of the seller's business;
12 or

13 (2) by a manufacturer whose primary business is the
14 manufacture of iron and steel products made from melting scrap iron
15 and scrap steel.

16 SECTION 3. Section 1956.032(a), Occupations Code, is
17 amended to read as follows:

18 (a) Except as provided by Subsection (f), a person
19 attempting to sell regulated material to a metal recycling entity
20 shall:

21 (1) display to the metal recycling entity the person's
22 personal identification document;

23 (2) provide to the metal recycling entity the make,
24 model, and license plate number of the motor vehicle used to
25 transport the regulated material and the name of the state issuing
26 the license plate; and

27 (3) either:

1 (A) present written documentation evidencing
2 that the person is the legal owner or is lawfully entitled to sell
3 the regulated material; or

4 (B) sign a written statement provided by the
5 metal recycling entity that the person is the legal owner of or is
6 lawfully entitled to sell the regulated material offered for sale.

7 SECTION 4. Section 1956.033, Occupations Code, is amended to
8 read as follows:

9 Sec. 1956.033. RECORD OF PURCHASE. (a) Each metal
10 recycling entity in this state shall keep an accurate electronic
11 record or an accurate and legible written record of each purchase
12 made in the course of the entity's business from an individual of:

13 (1) copper or brass material;

14 (2) bronze material;

15 (3) aluminum material; ~~[or]~~

16 (4) nickel alloy material; or

17 (5) regulated metal.

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

19 (1) the place and date of the purchase;

20 (2) the name and address of each individual from whom
21 the regulated material is purchased or obtained;

22 (3) the identifying number of the seller's personal
23 identification document;

24 (4) a description made in accordance with the custom
25 of the trade of the type and quantity of regulated material
26 purchased; and

27 (5) the information required by Sections

1 1956.032(a)(2) and (3) [~~Section 1956.032(a)(3)~~].

2 SECTION 5. Section 1956.034, Occupations Code, is amended
3 to read as follows:

4 Sec. 1956.034. PRESERVATION OF RECORDS. A metal recycling
5 entity shall preserve each record required by Sections 1956.032 and
6 1956.033 until the third anniversary of the date the record was
7 made. The records must be kept:

8 (1) on the premises of the metal recycling entity; and

9 (2) in an easily retrievable format.

10 SECTION 6. Section 1956.036, Occupations Code, is amended
11 to read as follows:

12 Sec. 1956.036. FURNISHING OF REPORT TO DEPARTMENT. (a)
13 Except as provided by Subsection (b), not later than the close of
14 business on the [~~seventh~~] day after the date of the purchase or
15 other acquisition of material for which a record is required under
16 Section 1956.033, a metal recycling entity shall send an electronic
17 transaction report to the department via the department's Internet
18 website. The [~~by facsimile or electronic mail to or file with the~~
19 ~~department a~~] report must contain [~~containing~~] the information
20 required to be recorded under Section 1956.033 [~~that section~~].

21 (b) If a metal recycling entity purchases bronze material
22 that is a cemetery vase, receptacle, memorial, or statuary or a pipe
23 that can reasonably be identified as aluminum irrigation pipe, the
24 entity shall:

25 (1) not later than the close of business on the
26 [~~entity's first working day after the~~] purchase date, notify the
27 department by telephone; and

(2) not later than the close of business on the ~~[fifth]~~ day after the purchase date, submit to the department electronically via the department's Internet website ~~[mail to or file with the department]~~ a report containing the information required to be recorded under Section 1956.033.

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

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

(2) a seller bearing a bill of sale for the material or pipe ~~[, or~~

~~[(3) the owner of the material or pipe]~~.

SECTION 7. Section 1956.037(a), Occupations Code, is amended to read as follows:

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

(1) the entity acquired the item more than five days ~~[72 hours]~~, excluding weekends and holidays, before the disposal, processing, sale, or removal; or

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

SECTION 8. Subchapter A-3, Chapter 1956, Occupations Code, is amended by adding Sections 1956.0391 and 1956.0392 to read as follows:

Sec. 1956.0391. PURCHASE FROM MINOR. (a) A dealer may not

1 purchase regulated material from a person younger than 18 years of
2 age unless the seller delivers to the dealer before the purchase a
3 written statement from the seller's parent or legal guardian
4 consenting to the transaction.

5 (b) The dealer shall retain the statement with the records
6 required to be kept under this subchapter.

7 Sec. 1956.0392. INSULATED WIRE. (a) A metal recycling
8 entity may not purchase or otherwise receive wire that has been
9 burned in whole or in part to remove the insulation.

10 (b) A metal recycling entity may not remove the insulation
11 from wire unless the entity acquired the wire more than five days,
12 excluding weekends and holidays, before the removal.

13 SECTION 9. Section 1956.040(a), Occupations Code, is
14 amended to read as follows:

15 (a) A person commits an offense if the person knowingly
16 violates Section 1956.021, Section 1956.023(d), or this subchapter
17 [1956.038]. An offense under this subsection is a Class A
18 misdemeanor unless it is shown on trial of the offense that the
19 person has previously been convicted of a violation of this
20 subchapter, in which event the offense is a state jail felony.

21 SECTION 10. Section 1956.151, Occupations Code, is amended
22 to read as follows:

23 Sec. 1956.151. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION.
24 The department shall deny an application for a certificate of
25 registration, suspend or revoke a certificate of registration, or
26 reprimand a person who is registered under this chapter if the
27 person:

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

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

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

(4) violates Section 1956.021.

SECTION 11. Section 1956.202(d), Occupations Code, is amended to read as follows:

(d) A civil penalty may not be assessed under this section for conduct described by Section 1956.021, Section 1956.023(d), or Subchapter A-3 [1956.038].

SECTION 12. Section 31.03(e), Penal Code, is amended to read as follows:

(e) Except as provided by Subsection (f), an offense under this section is:

(1) a Class C misdemeanor if the value of the property stolen is less than:

(A) \$50; or

(B) \$20 and the defendant obtained the property by issuing or passing a check or similar sight order in a manner described by Section 31.06;

(2) a Class B misdemeanor if:

(A) the value of the property stolen is:

(i) \$50 or more but less than \$500; or

(ii) \$20 or more but less than \$500 and the defendant obtained the property by issuing or passing a check or

1 similar sight order in a manner described by Section 31.06; or

2 (B) the value of the property stolen is less
3 than:

4 (i) \$50 and the defendant has previously
5 been convicted of any grade of theft; or

6 (ii) \$20, the defendant has previously been
7 convicted of any grade of theft, and the defendant obtained the
8 property by issuing or passing a check or similar sight order in a
9 manner described by Section 31.06;

10 (3) a Class A misdemeanor if the value of the property
11 stolen is \$500 or more but less than \$1,500;

12 (4) a state jail felony if:

13 (A) the value of the property stolen is \$1,500 or
14 more but less than \$20,000, or the property is less than 10 head of
15 cattle, horses, or exotic livestock or exotic fowl as defined by
16 Section 142.001, Agriculture Code, or any part thereof under the
17 value of \$20,000, or less than 100 head of sheep, swine, or goats or
18 any part thereof under the value of \$20,000;

19 (B) regardless of value, the property is stolen
20 from the person of another or from a human corpse or grave;

21 (C) the property stolen is a firearm, as defined
22 by Section 46.01;

23 (D) the value of the property stolen is less than
24 \$1,500 and the defendant has been previously convicted two or more
25 times of any grade of theft;

26 (E) the property stolen is an official ballot or
27 official carrier envelope for an election; or

1 (F) the value of the property stolen is less than
2 \$20,000 and the property stolen [~~is insulated or noninsulated wire~~
3 ~~or cable that~~] consists of at least 50 percent:

4 (i) aluminum;

5 (ii) bronze; [~~or~~]

6 (iii) copper;

7 (iv) brass; or

8 (v) nickel alloy;

9 (5) a felony of the third degree if the value of the
10 property stolen is \$20,000 or more but less than \$100,000, or the
11 property is:

12 (A) 10 or more head of cattle, horses, or exotic
13 livestock or exotic fowl as defined by Section 142.001, Agriculture
14 Code, stolen during a single transaction and having an aggregate
15 value of less than \$100,000; or

16 (B) 100 or more head of sheep, swine, or goats
17 stolen during a single transaction and having an aggregate value of
18 less than \$100,000;

19 (6) a felony of the second degree if the value of the
20 property stolen is \$100,000 or more but less than \$200,000; or

21 (7) a felony of the first degree if the value of the
22 property stolen is \$200,000 or more.

23 SECTION 13. Section 1956.014(d), Occupations Code, is
24 repealed.

25 SECTION 14. (a) The change in law made by this Act applies
26 only to an offense committed on or after the effective date of this
27 Act. For purposes of this section, an offense is committed before

1 the effective date of this Act if any element of the offense occurs
2 before that date.

3 (b) An offense committed before the effective date of this
4 Act is covered by the law in effect when the offense was committed,
5 and the former law is continued in effect for that purpose.

6 SECTION 15. This Act takes effect September 1, 2009.