

By: Phillips

H.B. No. 4524

A BILL TO BE ENTITLED

1 AN ACT

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

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

5 SECTION 1. Section 1956.001(10), Occupations Code, is
6 amended to read as follows:

7 (10) "Regulated metal" means:

8 (A) manhole covers;

9 (B) guardrails;

10 (C) metal cylinders designed to contain
11 compressed air, oxygen, gases, or liquids;

12 (D) beer kegs made from metal other than
13 aluminum;

14 (E) historical markers or cemetery vases,
15 receptacles, or memorials made from metal other than aluminum;

16 (F) unused rebar;

17 (G) street signs;

18 (H) drain gates;

19 (I) safes;

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

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

24 (L) utility structures, including the fixtures

1 and hardware;

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

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

8 (O) catalytic converters;

9 (P) back flow valves; and

10 (Q) fire hydrant operating nuts.

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

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

14 This chapter does not apply to [+

15 ~~[(1) a purchase of regulated material from a public~~
16 ~~utility or a manufacturing, industrial, commercial, retail, or~~
17 ~~other seller that sells regulated material in the ordinary course~~
18 ~~of the seller's business;~~

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

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

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

26 (1) from a public utility or a manufacturing,
27 industrial, commercial, retail, or other seller that sells

1 regulated material in the ordinary course of the seller's business;
2 or
3 (2) by a manufacturer whose primary business is the
4 manufacture of iron and steel products made from melting scrap iron
5 and scrap steel.

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

8 (a) Except as provided by Subsection (f), a person
9 attempting to sell regulated material to a metal recycling entity
10 shall:

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

13 (2) provide to the metal recycling entity the make,
14 model, and license plate number of the motor vehicle used to
15 transport the regulated material and the name of the state issuing
16 the license plate; and

17 (3) either:

18 (A) present written documentation evidencing
19 that the person is the legal owner or is lawfully entitled to sell
20 the regulated material; or

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

24 SECTION 4. Section 1956.033(b), Occupations Code, is
25 amended to read as follows:

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

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

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

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

5 (4) a description made in accordance with the custom
6 of the trade of the type and quantity of regulated material
7 purchased; and

8 (5) the information required by Sections
9 1956.032(a)(2) and (3) [~~Section 1956.032(a)(3)~~].

10 SECTION 5. Section 1956.034, Occupations Code, is amended
11 to read as follows:

12 Sec. 1956.034. PRESERVATION OF RECORDS. A metal recycling
13 entity shall preserve each record required by Sections 1956.032 and
14 1956.033 until the third anniversary of the date the record was
15 made. The records must be kept in an easily retrievable format.

16 SECTION 6. Section 1956.036, Occupations Code, is amended
17 to read as follows:

18 Sec. 1956.036. FURNISHING OF REPORT TO DEPARTMENT. (a)
19 Except as provided by Subsections [~~Subsection~~] (b) and (d), not
20 later than the fifth [~~seventh~~] day after the date of the purchase or
21 other acquisition of material for which a record is required under
22 Section 1956.033, a metal recycling entity shall send an electronic
23 transaction report to the department via the department's Internet
24 website. [~~by facsimile or electronic mail to or file with the~~
25 ~~department a~~] The report must contain [~~containing~~] the information
26 required to be recorded under Section 1956.033 [~~that section~~].

27 (b) If a metal recycling entity purchases bronze material

1 that is a cemetery vase, receptacle, memorial, or statuary or a pipe
2 that can reasonably be identified as aluminum irrigation pipe, the
3 entity shall:

4 (1) not later than the close of business on the
5 entity's first working day after the purchase date, notify the
6 department by telephone; and

7 (2) not later than the fifth day after the purchase
8 date, submit to the department electronically via the department's
9 Internet website [~~mail to~~] or file with the department a report
10 containing the information required to be recorded under Section
11 1956.033.

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

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

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

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

18 (d) A metal recycling entity may submit the transaction
19 report required under Subsection (a) by facsimile if:

20 (1) the entity submits to the department:

21 (A) an application requesting an exception to the
22 electronic reporting requirement; and

23 (B) an affidavit stating that the entity does not
24 have an available and reliable means of submitting the transaction
25 report electronically; and

26 (2) the department approves the entity's application
27 under this subsection.

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

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

6 (1) the entity acquired the item more than five days
7 [~~72 hours~~], excluding weekends and holidays, before the disposal,
8 processing, sale, or removal; or

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

13 SECTION 8. Subchapter A-3, Chapter 1956, Occupations Code,
14 is amended by adding Section 1956.0391 to read as follows:

15 Sec. 1956.0391. INSULATED WIRE. (a) A metal recycling
16 entity may not purchase or otherwise receive wire that has been
17 burned in whole or in part to remove the insulation.

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

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

23 (a) A person commits an offense if the person knowingly
24 violates Section 1956.021, Section 1956.023(d), or Section
25 1956.038. An offense under this subsection is a Class A misdemeanor
26 unless it is shown on trial of the offense that the person has
27 previously been convicted of a violation of this subchapter, in

1 which event the offense is a state jail felony.

2 SECTION 10. Section 1956.151, Occupations Code, is amended
3 to read as follows:

4 Sec. 1956.151. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION.

5 The department shall deny an application for a certificate of
6 registration, suspend or revoke a certificate of registration, or
7 reprimand a person who is registered under this chapter if the
8 person:

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

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

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

15 (4) violates Section 1956.021.

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

18 (d) A civil penalty may not be assessed under this section
19 for conduct described by Section 1956.021, Section 1956.023(d), or
20 Section 1956.038.

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

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

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

27 (A) \$50; or

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

4 (2) a Class B misdemeanor if:

5 (A) the value of the property stolen is:

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

7 (ii) \$20 or more but less than \$500 and the
8 defendant obtained the property by issuing or passing a check or
9 similar sight order in a manner described by Section 31.06; or

10 (B) the value of the property stolen is less
11 than:

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

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

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

20 (4) a state jail felony if:

21 (A) the value of the property stolen is \$1,500 or
22 more but less than \$20,000, or the property is less than 10 head of
23 cattle, horses, or exotic livestock or exotic fowl as defined by
24 Section 142.001, Agriculture Code, or any part thereof under the
25 value of \$20,000, or less than 100 head of sheep, swine, or goats or
26 any part thereof under the value of \$20,000;

27 (B) regardless of value, the property is stolen

1 from the person of another or from a human corpse or grave;

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

4 (D) the value of the property stolen is less than
5 \$1,500 and the defendant has been previously convicted two or more
6 times of any grade of theft;

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

9 (F) the value of the property stolen is less than
10 \$20,000 and the property stolen [~~is insulated or noninsulated wire~~
11 ~~or cable that~~] consists of at least 50 percent:

12 (i) aluminum;

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

14 (iii) copper; or

15 (iv) brass;

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

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

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

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

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

3 SECTION 13. Section 1956.014(d), Occupations Code, is
4 repealed.

5 SECTION 14. (a) The change in law made by this Act applies
6 only to an offense committed on or after the effective date of this
7 Act. For purposes of this section, an offense is committed before
8 the effective date of this Act if any element of the offense occurs
9 before that date.

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

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