

By: West

S.B. No. 1203

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. Subdivision (10), Section 1956.001, Occupations  
6 Code, is 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, tubing, or  
23 rods for central heating or 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 not attached to a  
9 vehicle;

10 (P) fire hydrants;

11 (Q) metal bleachers or other seating facilities  
12 used in recreational areas or sporting arenas;

13 (R) any metal item marked with any form of the  
14 name, initials, or logo of a governmental entity, utility,  
15 cemetery, or railroad; and

16 (S) insulated utility, communications, or  
17 electrical wire that has been burned in whole or in part to remove  
18 the insulation.

19 SECTION 2. The heading to Section 1956.003, Occupations  
20 Code, is amended to read as follows:

21 Sec. 1956.003. LOCAL LAW; CRIMINAL PENALTY.

22 SECTION 3. Section 1956.003, Occupations Code, is amended  
23 by adding Subsections (a-1), (f), (g), and (h) to read as follows:

24 (a-1) A county, municipality, or political subdivision may  
25 require the record of purchase described under Section 1956.033 to  
26 contain a clear and legible thumbprint of a seller of regulated  
27 material.

1       (f) A county, municipality, or political subdivision that  
2 issues a license or permit authorized under Subsection (b) shall  
3 issue a notice to an owner or operator of a metal recycling entity  
4 operating without the license or permit informing the owner or  
5 operator that the entity is operating without the required license  
6 or permit and that the owner or operator may be subject to criminal  
7 penalties if the owner or operator does not submit an application  
8 for the appropriate license or permit before the 15th day after the  
9 date the notice is received.

10       (g) A person commits an offense if the person owns or  
11 operates a metal recycling entity and does not submit an  
12 application for the appropriate license or permit before the 15th  
13 day after the date of receiving a notice under Subsection (f).

14       (h) An offense under Subsection (g) is a Class A  
15 misdemeanor.

16       SECTION 4. Subsection (a), Section 1956.032, Occupations  
17 Code, is 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 5. Subsection (b), Section 1956.033, Occupations  
8 Code, is amended to read as follows:

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

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

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

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

15 (4) a description made in accordance with the custom  
16 of the trade of the type and quantity of regulated material  
17 purchased; and

18 (5) the information required by Sections  
19 1956.032(a)(2) and (3) [~~Section 1956.032(a)(3)~~].

20 SECTION 6. Section 1956.034, Occupations Code, is amended  
21 to read as follows:

22 Sec. 1956.034. PRESERVATION OF RECORDS. A metal recycling  
23 entity shall preserve each record required by Sections 1956.032 and  
24 1956.033 until the third anniversary of the date the record was  
25 made. The records must be kept in an easily retrievable format.

26 SECTION 7. Section 1956.036, Occupations Code, is amended  
27 by amending Subsections (a) and (b) and adding Subsection (d) to

1 read as follows:

2 (a) Except as provided by Subsections [~~Subsection~~] (b) and  
3 (d), not later than the fifth [~~seventh~~] day after the date of the  
4 purchase or other acquisition of material for which a record is  
5 required under Section 1956.033, a metal recycling entity shall  
6 send an electronic transaction report to the department via the  
7 department's Internet website. The [~~by facsimile or electronic~~  
8 ~~mail to or file with the department a~~] report must contain  
9 [~~containing~~] the information required to be recorded under Section  
10 1956.033 [~~that section~~].

11 (b) If a metal recycling entity purchases bronze material  
12 that is a cemetery vase, receptacle, memorial, or statuary or a pipe  
13 that can reasonably be identified as aluminum irrigation pipe, the  
14 entity shall:

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

18 (2) not later than the fifth day after the purchase  
19 date, submit to the department electronically via the department's  
20 Internet website [~~mail to~~] or file with the department a report  
21 containing the information required to be recorded under Section  
22 1956.033.

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

25 (1) the entity submits to the department annually:

26 (A) an application requesting an exception to the  
27 electronic reporting requirement; and

1                   (B) an affidavit stating that the entity does not  
2 have an available and reliable means of submitting the transaction  
3 report electronically; and

4                   (2) the department approves the entity's application  
5 under this subsection.

6           SECTION 8. Subsection (a), Section 1956.037, Occupations  
7 Code, is amended to read as follows:

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

10                   (1) the entity acquired the item more than five days  
11 [72 hours], excluding weekends and holidays, before the disposal,  
12 processing, sale, or removal; ~~or~~

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

17                   (3) the entity:

18                               (A) acquired the item more than 72 hours,  
19 excluding weekends and holidays, before the disposal, processing,  
20 sale, or removal; and

21                               (B) obtained a digital or video photograph of the  
22 seller of the regulated material and the regulated material  
23 purchased.

24           SECTION 9. Section 1956.038, Occupations Code, is amended  
25 to read as follows:

26           Sec. 1956.038. PROHIBITED ACTS. A person may not, with the  
27 intent to deceive:

1 (1) display to a metal recycling entity a false or  
2 invalid personal identification document in connection with the  
3 person's attempted sale of regulated material;

4 (2) make a false, material statement or representation  
5 to a metal recycling entity in connection with:

6 (A) that person's execution of a written  
7 statement required by Section 1956.032(a)(3); or

8 (B) the entity's efforts to obtain the  
9 information required under Section 1956.033(b); [~~or~~]

10 (3) display or provide to a metal recycling entity any  
11 information required under Section 1956.032 that the person knows  
12 is false or invalid; or

13 (4) display another individual's personal  
14 identification document in connection with the sale of regulated  
15 material.

16 SECTION 10. Subchapter A-3, Chapter 1956, Occupations Code,  
17 is amended by adding Section 1956.0391 to read as follows:

18 Sec. 1956.0391. FORM OF PAYMENT. (a) This section applies  
19 only to a metal recycling entity located in:

20 (1) a county with a population of one million or more;

21 or

22 (2) a county contiguous to a county with a population  
23 of one million or more.

24 (b) A metal recycling entity may not:

25 (1) pay more than \$250 in cash for a purchase of  
26 regulated metal; or

27 (2) pay more than \$500 in cash for a purchase of

1 regulated material, other than regulated metal.

2 (c) A county, municipality, or political subdivision may  
3 require a seller of regulated material to register with the county,  
4 municipality, political subdivision, or a metal recycling entity  
5 located in that county, municipality, or political subdivision  
6 before the seller is eligible to receive cash payments for the sale  
7 of regulated material.

8 (d) Notwithstanding Section 1956.003(a) or any other law, a  
9 county, municipality, or political subdivision may not adopt a  
10 rule, charter, or ordinance or issue an order or impose standards  
11 that limit the use of cash by a metal recycling entity in a manner  
12 more restrictive than that provided by this section.

13 SECTION 11. Subsection (a), Section 1956.040, Occupations  
14 Code, is 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 Section  
17 1956.038. An offense under this subsection is a Class A misdemeanor  
18 unless it is shown on trial of the offense that the person has  
19 previously been convicted of a violation of this subchapter, in  
20 which event the offense is a state jail felony.

21 SECTION 12. Subsection (a), Section 1956.103, Occupations  
22 Code, is amended to read as follows:

23 (a) A person may not sell or otherwise transfer to a metal  
24 recycling entity:

25 (1) a lead-acid battery, fuel tank, or PCB-containing  
26 capacitor that is included with another type of scrap, used, or  
27 obsolete metal without first obtaining from the metal recycling



1 entity a written and signed acknowledgment that the scrap, used, or  
2 obsolete metal includes one or more lead-acid batteries, fuel  
3 tanks, or PCB-containing capacitors;

4 (2) any of the following items that contain or enclose  
5 a lead-acid battery, fuel tank, or PCB-containing capacitor or of  
6 which a lead-acid battery, fuel tank, or PCB-containing capacitor  
7 is a part:

8 (A) a motor vehicle;

9 (B) a motor vehicle that has been junked,  
10 flattened, dismantled, or changed so that it has lost its character  
11 as a motor vehicle;

12 (C) an appliance; or

13 (D) any other item of scrap, used, or obsolete  
14 metal; [~~or~~]

15 (3) a motor vehicle or a motor vehicle that has been  
16 junked, flattened, dismantled, or changed so that it has lost its  
17 character as a motor vehicle if the motor vehicle includes,  
18 contains, or encloses a tire or scrap tire; or

19 (4) a metal alcoholic beverage keg, regardless of  
20 condition, unless the seller is the manufacturer of the keg, the  
21 brewer or distiller of the beverage that was contained in the keg,  
22 or an authorized representative of the manufacturer, brewer, or  
23 distiller.

24 SECTION 13. Section 1956.151, Occupations Code, is amended  
25 to read as follows:

26 Sec. 1956.151. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION.  
27 The department shall deny an application for a certificate of

1 registration, suspend or revoke a certificate of registration, or  
2 reprimand a person who is registered under this chapter if the  
3 person:

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

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

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

10 (4) violates Section 1956.021.

11 SECTION 14. Subsection (d), Section 1956.202, Occupations  
12 Code, is amended to read as follows:

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

16 SECTION 15. Subsection (e), Section 31.03, Penal Code, is  
17 amended to read as follows:

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

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

22 (A) \$50; or

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

26 (2) a Class B misdemeanor if:

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

- 1 (i) \$50 or more but less than \$500; or  
2 (ii) \$20 or more but less than \$500 and the  
3 defendant obtained the property by issuing or passing a check or  
4 similar sight order in a manner described by Section 31.06; or  
5 (B) the value of the property stolen is less  
6 than:  
7 (i) \$50 and the defendant has previously  
8 been convicted of any grade of theft; or  
9 (ii) \$20, the defendant has previously been  
10 convicted of any grade of theft, and the defendant obtained the  
11 property by issuing or passing a check or similar sight order in a  
12 manner described by Section 31.06;  
13 (3) a Class A misdemeanor if the value of the property  
14 stolen is \$500 or more but less than \$1,500;  
15 (4) a state jail felony if:  
16 (A) the value of the property stolen is \$1,500 or  
17 more but less than \$20,000, or the property is less than 10 head of  
18 cattle, horses, or exotic livestock or exotic fowl as defined by  
19 Section 142.001, Agriculture Code, or any part thereof under the  
20 value of \$20,000, or less than 100 head of sheep, swine, or goats or  
21 any part thereof under the value of \$20,000;  
22 (B) regardless of value, the property is stolen  
23 from the person of another or from a human corpse or grave;  
24 (C) the property stolen is a firearm, as defined  
25 by Section 46.01;  
26 (D) the value of the property stolen is less than  
27 \$1,500 and the defendant has been previously convicted two or more

1 times of any grade of theft;

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

4 (F) the value of the property stolen is less than  
5 \$20,000 and the property stolen is [~~insulated or noninsulated wire~~  
6 ~~or cable that consists of at least 50 percent~~]:

7 (i) aluminum;

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

9 (iii) copper; or

10 (iv) brass;

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

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

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

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

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

25 SECTION 16. Subsection (d), Section 1956.014, Occupations  
26 Code, is repealed.

27 SECTION 17. (a) The change in law made by this Act applies

1 only to an offense committed on or after the effective date of this  
2 Act. For purposes of this section, an offense is committed before  
3 the effective date of this Act if any element of the offense occurs  
4 before that date.

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

8 SECTION 18. This Act takes effect September 1, 2009.