

By: West

S.B. No. 1203

Substitute the following for S.B. No. 1203:

By: Hancock

C.S.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. 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, 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 clearly and conspicuously  
14 marked with any form of the name, initials, or logo of a  
15 governmental entity, utility, cemetery, or railroad;

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

19 (T) backflow valves; and

20 (U) metal in the form of commonly recognized  
21 products of the industrial metals recycling process, including  
22 bales, briquettes, billets, sows, ingots, pucks, and chopped or  
23 shredded metals.

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

26 Sec. 1956.003. LOCAL LAW; CRIMINAL PENALTY.

27 SECTION 3. Section 1956.003, Occupations Code, is amended

1 by adding Subsections (a-1), (f), (g), and (h) to read as follows:

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

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

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

19 (h) An offense under Subsection (g) is a Class A misdemeanor  
20 unless it is shown on the trial of the offense that the person has  
21 been previously convicted under Subsection (g), in which event the  
22 offense is a state jail felony.

23 SECTION 4. Section 1956.015(d), Occupations Code, is  
24 amended to read as follows:

25 (d) Information provided under this section is not subject  
26 to disclosure under Chapter 552, Government Code. Except as  
27 provided by Subsection (b), the [The] department shall:

1           (1) maintain the confidentiality of information  
2 provided under this section; and

3           (2) require that any contractor, subcontractor, or  
4 third party that has access to, comes into possession of, or  
5 otherwise obtains information provided under this section shall  
6 maintain the confidentiality of the information provided under this  
7 section [~~that relates to the financial condition or business~~  
8 ~~affairs of a metal recycling entity or that is otherwise~~  
9 ~~commercially sensitive. The confidential information is not~~  
10 ~~subject to disclosure under Chapter 552, Government Code].~~

11           SECTION 5. Subchapter A-1, Chapter 1956, Occupations Code,  
12 is amended by adding Section 1956.016 to read as follows:

13           Sec. 1956.016. REGISTRATION DATABASE. The department shall  
14 make available on its Internet website a publicly accessible list  
15 of all registered metal recycling entities.

16           SECTION 6. Section 1956.032, Occupations Code, is amended  
17 by amending Subsection (a) and adding Subsection (g) to read as  
18 follows:

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

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

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

1 (3) either:

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

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

8 (g) Notwithstanding Section 1956.002, a person attempting  
9 to sell regulated material who represents that they are a metal  
10 recycling entity shall provide a copy of the certificate of  
11 registration issued under Section 1956.022 in addition to the  
12 information required under Subsection (a).

13 SECTION 7. Section 1956.033(b), Occupations Code, is  
14 amended to read as follows:

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

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

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

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

21 (4) a description made in accordance with the custom  
22 of the trade of the type and quantity of regulated material  
23 purchased; and

24 (5) the information required by Sections  
25 1956.032(a)(2) and (3) [~~Section 1956.032(a)(3)~~].

26 SECTION 8. Section 1956.034, Occupations Code, is amended  
27 to read as follows:

1           Sec. 1956.034. PRESERVATION OF RECORDS. A metal recycling  
2 entity shall preserve each record required by Sections 1956.032 and  
3 1956.033 until the third anniversary of the date the record was  
4 made. The records must be kept in an easily retrievable format.

5           SECTION 9. Section 1956.036, Occupations Code, is amended  
6 by amending Subsections (a) and (b) and adding Subsection (d) to  
7 read as follows:

8           (a) Except as provided by Subsections [~~Subsection~~] (b) and  
9 (d), not later than 48 hours [~~the seventh day~~] after the [~~date of~~  
10 ~~the~~] purchase or other acquisition of material for which a record is  
11 required under Section 1956.033, a metal recycling entity shall  
12 send an electronic transaction report to the department via the  
13 department's Internet website. The [~~by facsimile or electronic~~  
14 ~~mail to or file with the department a~~] report must contain  
15 [~~containing~~] the information required to be recorded under Section  
16 1956.033 [~~that section~~].

17           (b) If a metal recycling entity purchases bronze material  
18 that is a cemetery vase, receptacle, memorial, or statuary or a pipe  
19 that can reasonably be identified as aluminum irrigation pipe, the  
20 entity shall:

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

24           (2) not later than 48 hours [~~the fifth day~~] after the  
25 purchase [~~date~~], submit to the department electronically via the  
26 department's Internet website [~~mail to~~] or file with the department  
27 a report containing the information required to be recorded under

1 Section 1956.033.

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

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

5 (A) an application requesting an exception to the  
6 electronic reporting requirement; and

7 (B) an affidavit stating that the entity does not  
8 have an available and reliable means of submitting the transaction  
9 report electronically; and

10 (2) the department approves the entity's application  
11 under this subsection.

12 SECTION 10. Section 1956.037(a), Occupations Code, is  
13 amended to read as follows:

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

16 (1) the entity acquired the item more than five days  
17 [~~72 hours~~], excluding weekends and holidays, before the disposal,  
18 processing, sale, or removal; [~~or~~]

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

23 (3) the entity:

24 (A) acquired the item more than 72 hours,  
25 excluding weekends and holidays, before the disposal, processing,  
26 sale, or removal; and

27 (B) obtained a digital or video photograph of the

1 seller of the regulated material and the regulated material  
2 purchased.

3 SECTION 11. Section 1956.038, Occupations Code, is amended  
4 to read as follows:

5 Sec. 1956.038. PROHIBITED ACTS. (a) A person may not,  
6 with the intent to deceive:

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

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

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

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

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

19 (4) display another individual's personal  
20 identification document in connection with the sale of regulated  
21 material.

22 (b) A metal recycling entity may not:

23 (1) pay for a purchase of regulated material in cash  
24 unless:

25 (A) the entity is registered under Subchapter A-2  
26 not later than January 1, 2010; or

27 (B) the entity begins operations after January 1,



1 2010 and is registered under Subchapter A-2; or

2 (2) pay more than:

3 (A) \$150 in cash for a purchase of regulated  
4 metal; or

5 (B) \$1,000 in cash for a purchase of regulated  
6 material, other than regulated metal.

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

12 (d) A metal recycling entity that purchases regulated  
13 material with cash in violation of Subsection (b)(1)(A) may not pay  
14 for a purchase of regulated material in cash before the second  
15 anniversary of the date the entity registers under Subchapter A-2.

16 SECTION 12. Section 1956.040(a), Occupations Code, is  
17 amended to read as follows:

18 (a) A person commits an offense if the person knowingly  
19 violates Section 1956.021, Section 1956.023(d), Section  
20 1956.036(a), or Section 1956.038. An offense under this subsection  
21 is a Class A misdemeanor unless it is shown on trial of the offense  
22 that the person has previously been convicted of a violation of this  
23 subchapter, in which event the offense is a state jail felony.

24 SECTION 13. Section 1956.103(a), Occupations Code, is  
25 amended to read as follows:

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

1           (1) a lead-acid battery, fuel tank, or PCB-containing  
2 capacitor that is included with another type of scrap, used, or  
3 obsolete metal without first obtaining from the metal recycling  
4 entity a written and signed acknowledgment that the scrap, used, or  
5 obsolete metal includes one or more lead-acid batteries, fuel  
6 tanks, or PCB-containing capacitors;

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

11                   (A) a motor vehicle;

12                   (B) a motor vehicle that has been junked,  
13 flattened, dismantled, or changed so that it has lost its character  
14 as a motor vehicle;

15                   (C) an appliance; or

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

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

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

27           SECTION 14. Section 1956.151, Occupations Code, is amended

1 to read as follows:

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

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

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

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

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

13           (4) violates Section 1956.021.

14           SECTION 15. Section 1956.202(d), Occupations Code, is  
15 amended to read as follows:

16           (d) A civil penalty may not be assessed under this section  
17 for conduct described by Section 1956.021, Section 1956.023(d),  
18 Section 1956.036(a), or Section 1956.038.

19           SECTION 16. Section 31.03(e), Penal Code, is amended to  
20 read as follows:

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

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

25                   (A) \$50; or

26                   (B) \$20 and the defendant obtained the property  
27 by issuing or passing a check or similar sight order in a manner

1 described by Section 31.06;

2 (2) a Class B misdemeanor if:

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

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

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

8 (B) the value of the property stolen is less  
9 than:

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

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

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

18 (4) a state jail felony if:

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

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

27 (C) the property stolen is a firearm, as defined

1 by Section 46.01;

2 (D) the value of the property stolen is less than  
3 \$1,500 and the defendant has been previously convicted two or more  
4 times of any grade of theft;

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

7 (F) the value of the property stolen is less than  
8 \$20,000 and the property stolen is [~~insulated or noninsulated wire~~  
9 ~~or cable that consists of at least 50 percent~~]:

10 (i) aluminum;

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

12 (iii) copper; or

13 (iv) brass;

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

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

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

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

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

1 SECTION 17. Section 1956.014(d), Occupations Code, is  
2 repealed.

3 SECTION 18. (a) Notwithstanding Subsection (c) of this  
4 section, the change in law made by this Act applies only to an  
5 offense committed on or after the effective date of this Act. For  
6 purposes of this section, an offense is committed before the  
7 effective date of this Act if any element of the offense occurs  
8 before that date.

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

12 (c) The enhancement of the punishment of an offense provided  
13 under Section 1956.003(h), Occupations Code, as added by this Act,  
14 applies only to an offense committed on or after January 1, 2010.  
15 For purposes of this subsection, an offense is committed before  
16 January 1, 2010, if any element of the offense occurs before that  
17 date. An offense committed before January 1, 2010, is covered by  
18 the law in effect when the offense was committed, and the former law  
19 is continued in effect for that purpose.

20 SECTION 19. This Act takes effect September 1, 2009.