

1-1 By: West S.B. No. 1203
1-2 (In the Senate - Filed February 27, 2009; March 13, 2009,
1-3 read first time and referred to Committee on Natural Resources;
1-4 April 14, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 11, Nays 0; April 14, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1203 By: Deuell

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation of metal recycling entities; providing
1-11 penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subdivision (10), Section 1956.001, Occupations
1-14 Code, is amended to read as follows:

1-15 (10) "Regulated metal" means:

1-16 (A) manhole covers;

1-17 (B) guardrails;

1-18 (C) metal cylinders designed to contain
1-19 compressed air, oxygen, gases, or liquids;

1-20 (D) beer kegs made from metal other than
1-21 aluminum;

1-22 (E) historical markers or cemetery vases,
1-23 receptacles, or memorials made from metal other than aluminum;

1-24 (F) unused rebar;

1-25 (G) street signs;

1-26 (H) drain gates;

1-27 (I) safes;

1-28 (J) communication, transmission, and service
1-29 wire or cable;

1-30 (K) condensing or evaporator coils, tubing, or
1-31 rods for central heating or air conditioning units;

1-32 (L) utility structures, including the fixtures
1-33 and hardware;

1-34 (M) aluminum or stainless steel containers
1-35 designed to hold propane for fueling forklifts; ~~and~~

1-36 (N) metal railroad equipment, including tie
1-37 plates, signal houses, control boxes, signs, signals, traffic
1-38 devices, traffic control devices, traffic control signals, switch
1-39 plates, e-clips, and rail tie functions;

1-40 (O) catalytic converters not attached to a
1-41 vehicle;

1-42 (P) fire hydrants;

1-43 (Q) metal bleachers or other seating facilities
1-44 used in recreational areas or sporting arenas;

1-45 (R) any metal item marked with any form of the
1-46 name, initials, or logo of a governmental entity, utility,
1-47 cemetery, or railroad; and

1-48 (S) insulated utility, communications, or
1-49 electrical wire that has been burned in whole or in part to remove
1-50 the insulation.

1-51 SECTION 2. The heading to Section 1956.003, Occupations
1-52 Code, is amended to read as follows:

1-53 Sec. 1956.003. LOCAL LAW; CRIMINAL PENALTY.

1-54 SECTION 3. Section 1956.003, Occupations Code, is amended
1-55 by adding Subsections (f), (g), and (h) to read as follows:

1-56 (f) A county, municipality, or political subdivision that
1-57 issues a license or permit authorized under Subsection (b) shall
1-58 issue a notice to an owner or operator of a metal recycling entity
1-59 operating without the license or permit informing the owner or
1-60 operator that the entity is operating without the required license
1-61 or permit and that the owner or operator may be subject to criminal
1-62 penalties if the owner or operator does not obtain the appropriate
1-63 license or permit before the 31st day after the date the notice is

2-1 received.

2-2 (g) A person commits an offense if the person owns or
2-3 operates a metal recycling entity and does not obtain the
2-4 appropriate license or permit before the 31st day after the date of
2-5 receiving a notice under Subsection (f).

2-6 (h) An offense under Subsection (g) is a Class A
2-7 misdemeanor.

2-8 SECTION 4. Subsection (a), Section 1956.032, Occupations
2-9 Code, is amended to read as follows:

2-10 (a) Except as provided by Subsection (f), a person
2-11 attempting to sell regulated material to a metal recycling entity
2-12 shall:

2-13 (1) display to the metal recycling entity the person's
2-14 personal identification document;

2-15 (2) provide to the metal recycling entity the make,
2-16 model, and license plate number of the motor vehicle used to
2-17 transport the regulated material and the name of the state issuing
2-18 the license plate; and

2-19 (3) either:

2-20 (A) present written documentation evidencing
2-21 that the person is the legal owner or is lawfully entitled to sell
2-22 the regulated material; or

2-23 (B) sign a written statement provided by the
2-24 metal recycling entity that the person is the legal owner of or is
2-25 lawfully entitled to sell the regulated material offered for sale.

2-26 SECTION 5. Section 1956.033, Occupations Code, is amended
2-27 by amending Subsection (b) and adding Subsection (c) to read as
2-28 follows:

2-29 (b) The record must be in English and include:

2-30 (1) the place and date of the purchase;

2-31 (2) the name and address of each individual from whom
2-32 the regulated material is purchased or obtained;

2-33 (3) the identifying number of the seller's personal
2-34 identification document;

2-35 (4) a description made in accordance with the custom
2-36 of the trade of the type and quantity of regulated material
2-37 purchased; and

2-38 (5) the information required by Sections
2-39 1956.032(a)(2) and (3) [Section 1956.032(a)(3)].

2-40 (c) The record may include a clear and legible thumbprint of
2-41 a seller of regulated material.

2-42 SECTION 6. Section 1956.034, Occupations Code, is amended
2-43 to read as follows:

2-44 Sec. 1956.034. PRESERVATION OF RECORDS. A metal recycling
2-45 entity shall preserve each record required by Sections 1956.032 and
2-46 1956.033 until the third anniversary of the date the record was
2-47 made. The records must be kept in an easily retrievable format.

2-48 SECTION 7. Section 1956.036, Occupations Code, is amended
2-49 by amending Subsections (a) and (b) and adding Subsection (d) to
2-50 read as follows:

2-51 (a) Except as provided by Subsections [Subsection] (b) and
2-52 (d), not later than the fifth [seventh] day after the date of the
2-53 purchase or other acquisition of material for which a record is
2-54 required under Section 1956.033, a metal recycling entity shall
2-55 send an electronic transaction report to the department via the
2-56 department's Internet website. The [by facsimile or electronic
2-57 mail to or file with the department a] report must contain
2-58 [containing] the information required to be recorded under Section
2-59 1956.033 [that section].

2-60 (b) If a metal recycling entity purchases bronze material
2-61 that is a cemetery vase, receptacle, memorial, or statuary or a pipe
2-62 that can reasonably be identified as aluminum irrigation pipe, the
2-63 entity shall:

2-64 (1) not later than the close of business on the
2-65 entity's first working day after the purchase date, notify the
2-66 department by telephone; and

2-67 (2) not later than the fifth day after the purchase
2-68 date, submit to the department electronically via the department's
2-69 Internet website [mail to] or file with the department a report

3-1 containing the information required to be recorded under Section
3-2 1956.033.

3-3 (d) A metal recycling entity may submit the transaction
3-4 report required under Subsection (a) by facsimile if:

3-5 (1) the entity submits to the department annually:

3-6 (A) an application requesting an exception to the
3-7 electronic reporting requirement; and

3-8 (B) an affidavit stating that the entity does not
3-9 have an available and reliable means of submitting the transaction
3-10 report electronically; and

3-11 (2) the department approves the entity's application
3-12 under this subsection.

3-13 SECTION 8. Subsection (a), Section 1956.037, Occupations
3-14 Code, is amended to read as follows:

3-15 (a) A metal recycling entity may not dispose of, process,
3-16 sell, or remove from the premises an item of regulated metal unless:

3-17 (1) the entity acquired the item more than five days
3-18 [72 hours], excluding weekends and holidays, before the disposal,
3-19 processing, sale, or removal; [~~or~~]

3-20 (2) the entity purchased the item from a
3-21 manufacturing, industrial, commercial, retail, or other seller
3-22 that sells regulated material in the ordinary course of its
3-23 business; or

3-24 (3) the entity:

3-25 (A) acquired the item more than 72 hours,
3-26 excluding weekends and holidays, before the disposal, processing,
3-27 sale, or removal; and

3-28 (B) obtained a digital or video photograph of the
3-29 seller of the regulated material and the regulated material
3-30 purchased.

3-31 SECTION 9. Section 1956.038, Occupations Code, is amended
3-32 to read as follows:

3-33 Sec. 1956.038. PROHIBITED ACTS. (a) A person may not,
3-34 with the intent to deceive:

3-35 (1) display to a metal recycling entity a false or
3-36 invalid personal identification document in connection with the
3-37 person's attempted sale of regulated material;

3-38 (2) make a false, material statement or representation
3-39 to a metal recycling entity in connection with:

3-40 (A) that person's execution of a written
3-41 statement required by Section 1956.032(a)(3); or

3-42 (B) the entity's efforts to obtain the
3-43 information required under Section 1956.033(b); [~~or~~]

3-44 (3) display or provide to a metal recycling entity any
3-45 information required under Section 1956.032 that the person knows
3-46 is false or invalid; or

3-47 (4) display another individual's personal
3-48 identification document in connection with the sale of regulated
3-49 material.

3-50 (b) A metal recycling entity may not:

3-51 (1) pay more than \$250 in cash for a purchase of
3-52 regulated metal; or

3-53 (2) pay more than \$500 in cash for a purchase of
3-54 regulated material, other than regulated metal.

3-55 (c) Notwithstanding Section 1956.003(a) or any other law, a
3-56 county, municipality, or political subdivision may not adopt a
3-57 rule, charter, or ordinance or issue an order or impose standards
3-58 that limit the use of cash by a metal recycling entity in a manner
3-59 more restrictive than that provided by Subsection (b).

3-60 SECTION 10. Subsection (a), Section 1956.040, Occupations
3-61 Code, is amended to read as follows:

3-62 (a) A person commits an offense if the person knowingly
3-63 violates Section 1956.021, Section 1956.023(d), or Section
3-64 1956.038. An offense under this subsection is a Class A misdemeanor
3-65 unless it is shown on trial of the offense that the person has
3-66 previously been convicted of a violation of this subchapter, in
3-67 which event the offense is a state jail felony.

3-68 SECTION 11. Subsection (a), Section 1956.103, Occupations
3-69 Code, is amended to read as follows:

4-1 (a) A person may not sell or otherwise transfer to a metal
4-2 recycling entity:

4-3 (1) a lead-acid battery, fuel tank, or PCB-containing
4-4 capacitor that is included with another type of scrap, used, or
4-5 obsolete metal without first obtaining from the metal recycling
4-6 entity a written and signed acknowledgment that the scrap, used, or
4-7 obsolete metal includes one or more lead-acid batteries, fuel
4-8 tanks, or PCB-containing capacitors;

4-9 (2) any of the following items that contain or enclose
4-10 a lead-acid battery, fuel tank, or PCB-containing capacitor or of
4-11 which a lead-acid battery, fuel tank, or PCB-containing capacitor
4-12 is a part:

4-13 (A) a motor vehicle;

4-14 (B) a motor vehicle that has been junked,
4-15 flattened, dismantled, or changed so that it has lost its character
4-16 as a motor vehicle;

4-17 (C) an appliance; or

4-18 (D) any other item of scrap, used, or obsolete
4-19 metal; [~~or~~]

4-20 (3) a motor vehicle or a motor vehicle that has been
4-21 junked, flattened, dismantled, or changed so that it has lost its
4-22 character as a motor vehicle if the motor vehicle includes,
4-23 contains, or encloses a tire or scrap tire; or

4-24 (4) a metal alcoholic beverage keg, regardless of
4-25 condition, unless the seller is the manufacturer of the keg, the
4-26 brewer or distiller of the beverage that was contained in the keg,
4-27 or an authorized representative of the manufacturer, brewer, or
4-28 distiller.

4-29 SECTION 12. Section 1956.151, Occupations Code, is amended
4-30 to read as follows:

4-31 Sec. 1956.151. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION.
4-32 The department shall deny an application for a certificate of
4-33 registration, suspend or revoke a certificate of registration, or
4-34 reprimand a person who is registered under this chapter if the
4-35 person:

4-36 (1) obtains a certificate of registration by means of
4-37 fraud, misrepresentation, or concealment of a material fact;

4-38 (2) sells, barter, or offers to sell or barter a
4-39 certificate of registration;

4-40 (3) violates a provision of this chapter or a rule
4-41 adopted under this chapter; or

4-42 (4) violates Section 1956.021.

4-43 SECTION 13. Subsection (d), Section 1956.202, Occupations
4-44 Code, is amended to read as follows:

4-45 (d) A civil penalty may not be assessed under this section
4-46 for conduct described by Section 1956.021, Section 1956.023(d), or
4-47 Section 1956.038.

4-48 SECTION 14. Subsection (e), Section 31.03, Penal Code, is
4-49 amended to read as follows:

4-50 (e) Except as provided by Subsection (f), an offense under
4-51 this section is:

4-52 (1) a Class C misdemeanor if the value of the property
4-53 stolen is less than:

4-54 (A) \$50; or

4-55 (B) \$20 and the defendant obtained the property
4-56 by issuing or passing a check or similar sight order in a manner
4-57 described by Section 31.06;

4-58 (2) a Class B misdemeanor if:

4-59 (A) the value of the property stolen is:

4-60 (i) \$50 or more but less than \$500; or

4-61 (ii) \$20 or more but less than \$500 and the
4-62 defendant obtained the property by issuing or passing a check or
4-63 similar sight order in a manner described by Section 31.06; or

4-64 (B) the value of the property stolen is less
4-65 than:

4-66 (i) \$50 and the defendant has previously
4-67 been convicted of any grade of theft; or

4-68 (ii) \$20, the defendant has previously been
4-69 convicted of any grade of theft, and the defendant obtained the

5-1 property by issuing or passing a check or similar sight order in a
5-2 manner described by Section 31.06;

5-3 (3) a Class A misdemeanor if the value of the property
5-4 stolen is \$500 or more but less than \$1,500;

5-5 (4) a state jail felony if:
5-6 (A) the value of the property stolen is \$1,500 or
5-7 more but less than \$20,000, or the property is less than 10 head of
5-8 cattle, horses, or exotic livestock or exotic fowl as defined by
5-9 Section 142.001, Agriculture Code, or any part thereof under the
5-10 value of \$20,000, or less than 100 head of sheep, swine, or goats or
5-11 any part thereof under the value of \$20,000;

5-12 (B) regardless of value, the property is stolen
5-13 from the person of another or from a human corpse or grave;

5-14 (C) the property stolen is a firearm, as defined
5-15 by Section 46.01;

5-16 (D) the value of the property stolen is less than
5-17 \$1,500 and the defendant has been previously convicted two or more
5-18 times of any grade of theft;

5-19 (E) the property stolen is an official ballot or
5-20 official carrier envelope for an election; or

5-21 (F) the value of the property stolen is less than
5-22 \$20,000 and the property stolen [~~is insulated or noninsulated wire~~
5-23 ~~or cable that~~] consists of at least 50 percent:

- 5-24 (i) aluminum;
- 5-25 (ii) bronze; [~~or~~]
- 5-26 (iii) copper; or
- 5-27 (iv) brass;

5-28 (5) a felony of the third degree if the value of the
5-29 property stolen is \$20,000 or more but less than \$100,000, or the
5-30 property is:

5-31 (A) 10 or more head of cattle, horses, or exotic
5-32 livestock or exotic fowl as defined by Section 142.001, Agriculture
5-33 Code, stolen during a single transaction and having an aggregate
5-34 value of less than \$100,000; or

5-35 (B) 100 or more head of sheep, swine, or goats
5-36 stolen during a single transaction and having an aggregate value of
5-37 less than \$100,000;

5-38 (6) a felony of the second degree if the value of the
5-39 property stolen is \$100,000 or more but less than \$200,000; or

5-40 (7) a felony of the first degree if the value of the
5-41 property stolen is \$200,000 or more.

5-42 SECTION 15. Subsection (d), Section 1956.014, Occupations
5-43 Code, is repealed.

5-44 SECTION 16. (a) The change in law made by this Act applies
5-45 only to an offense committed on or after the effective date of this
5-46 Act. For purposes of this section, an offense is committed before
5-47 the effective date of this Act if any element of the offense occurs
5-48 before that date.

5-49 (b) An offense committed before the effective date of this
5-50 Act is covered by the law in effect when the offense was committed,
5-51 and the former law is continued in effect for that purpose.

5-52 SECTION 17. This Act takes effect September 1, 2009.

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