

BILL ANALYSIS

H.B. 1933
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Environmental Regulation
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Prior legislation sought to address the rampant theft of certain metals through the development of a database and increased penalties for knowingly buying or selling stolen regulated metals and materials. After that legislation was implemented, it became evident that some provisions of the bill were unenforceable. Additionally, the industry voiced concerns about the patchwork of local ordinances regarding the regulation of recycling facilities. H.B. 1933 addresses these issues by revising provisions of law relating to the regulation of metal recycling entities, including the imposition of a penalty for violations.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Public Safety Commission in SECTION 17 of this bill.

ANALYSIS

H.B. 1933 amends the Occupations Code to authorize a county, municipality, or other political subdivision to require the record of purchase of regulated material by a recycling entity to contain a clear and legible thumbprint of the seller of such material. The bill requires a county, municipality, or other political subdivision that requires a metal recycling entity to report information relating to a sale of regulated material to include in any contract entered into by the political subdivision relating to the reporting of the information a provision that requires any contractor, subcontractor, or third party that has access to, comes into possession of, or otherwise obtains information relating to a sale of regulated material to maintain the confidentiality of the information received; and that allows the political subdivision to terminate the contract of any contractor, subcontractor, or third party that violates this confidentiality. The bill makes it a Class C misdemeanor offense to operate a metal recycling entity and not hold a valid license or permit required by a county, municipality, or other political subdivision. The bill enhances the penalty for a subsequent conviction of operating a recycling entity without the required license or permit to a Class A misdemeanor. The bill requires a county, municipality, or other political subdivision to provide a written notice to a metal recycling entity that has been issued a citation for an offense and requires the notice to state that the metal recycling entity must cease operation until the person holds the appropriate license or permit.

H.B. 1933 makes information provided under provisions of law relating to a statewide electronic reporting system for metal recycling entities not subject to disclosure under state public information law, and removes a provision that limits the information the Texas Department of Public Safety (DPS) is required to keep confidential to information that relates to the financial condition or business affairs of a metal recycling entity or that is otherwise sensitive. The bill authorizes DPS to enter into contracts relating to the operation of the statewide electronic reporting system. The bill requires such a contract to require that any contractor, subcontractor, or third party that has access to, comes into possession of, or otherwise obtains information provided under the statewide electronic reporting system to maintain the confidentiality of the information, and requires the contract to provide that the DPS may terminate the contract of any

contractor, subcontractor, or third party who violates a confidentiality provision in the contract. The bill requires DPS to make available on its Internet website a publicly accessible list of all registered metal recycling entities.

H.B. 1933, in provisions of law relating to the information a person attempting to sell regulated material to a metal recycling entity is required to provide, expands the list to require the person to provide to the entity the color of the motor vehicle used to transport the regulated material and the state of issuance of the vehicle's license plate, in addition to other information about the motor vehicle and a description and license plate number of any trailer used to transport the regulated material; if the regulated material includes material relating to central heating or air conditioning units, display to the entity specified license, registration, or related purchase documentation; and, if the regulated material includes certain wire burned to remove the insulation, display documentation from the fire department of a political subdivision stating that the wire was salvaged from a fire. The bill removes the metal recycling entity's agent as an alternative entity who is authorized to visually verify the accuracy and make a copy of the personal identification document presented by the seller. The bill provides for the meaning of "air conditioning and refrigeration contracting company" by reference and redefines "copper or brass material" and "regulated metal."

H.B. 1933 requires the metal recycling entity to obtain digital or video photographs that accurately depict the seller's entire face, the color of the seller's motor vehicle, in addition to other features; and the model and any license plate number of any trailer attached to the seller's motor vehicle. The bill removes language that authorized the entity or the entity's agent for recordkeeping purposes to photograph such items. The bill removes the provision that authorized a photograph of the seller's motor vehicle to be taken in lieu of information indicating that the person is entitled to sell the regulated material. The bill requires a person attempting to sell regulated material who represents that the person is a metal recycling entity to provide a copy of the person's metal recycling entity certificate of registration in addition to the other information required from a person attempting to sell regulated material to a metal recycling entity.

H.B. 1933, in provisions relating to the requirement that a metal recycling entity keep an accurate electronic record or an accurate and legible written record of each purchase of regulated material from an individual made in the course of the metal recycling entity's business, expands the list of required information to include additional information about the metal recycling entity and the seller and copies of applicable documentation required by the bill's provisions; a digital or video photograph that accurately depicts each item of regulated material purchased unless the metal recycling entity is exempt from such requirements; copies of the photographs of the seller and the seller's motor vehicle or trailer required by the bill's provisions unless the metal recycling entity is exempt from such requirements; and a copy of the seller's thumbprint if required by a county, municipality, or other political subdivision.

H.B. 1933 exempts a metal recycling entity from the photograph requirements if the metal recycling entity annually submits to DPS an application requesting an exception to the requirements and an affidavit stating that the entity does not have an available means of obtaining a digital or video photograph, and the department approves the entity's application.

H.B. 1933 authorizes the records of information provided by the seller and records of purchase to be maintained in an electronic medium or through other recordkeeping technology. The bill requires the metal recycling entity, if a record is not maintained in hard copy format, to provide a legible hard copy of the record for inspection on request of a peace officer. The bill requires the records to be kept in the office or place of business where the purchase was made until the first anniversary of the date of purchase. The bill makes it a Class A misdemeanor offense to knowingly release or disclose information regarding a seller of regulated material that is contained in a record of information provided by the seller or a record of purchase, and enhances the penalty for a subsequent conviction for this offense to a state jail felony.

H.B. 1933, in provisions relating to a report furnished by a metal recycling entity to DPS on a record of purchase, changes the date by which a metal recycling entity is required to send the report to DPS from not later than the seventh day after the date of purchase or other acquisition of material to not later than 48 hours after the acquisition. The bill requires the metal recycling entity to send an electronic transaction report to DPS via its Internet website, removing reference to facsimile or electronic mail or file, and requires the report to contain all required information relating to a record of purchase, other than the photographs. The bill, in provisions relating to a metal recycling entity's purchase of bronze material that is a cemetery vase, receptacle, memorial, or statuary or a pipe that can reasonably be identified as aluminum irrigation pipe, requires the metal recycling entity to notify DPS of such a purchase by telephone, or to submit to DPS electronically via DPS's Internet website or file with DPS a report containing the information required in a record of purchase, other than the photographs. The bill changes the date from not later than the fifth day after such a purchase to not later than 48 hours after the purchase by which the metal recycling entity is required to submit or file the report, if not already submitted or filed, and removes the option to mail the report to DPS. The bill authorizes a metal recycling entity to submit the electronic transaction report by facsimile if the entity annually submits to the department an application requesting an exception to the electronic reporting requirement and an affidavit stating that the entity does not have an available and reliable means of submitting the transaction report electronically, and the department approves the entity's application.

H.B. 1933 changes from 72 hours to five days the amount of time, excluding weekends and holidays, a metal recycling entity must hold an item of regulated metal after acquisition and before processing, selling, removing, or disposing of the item from the premises. The bill prohibits a person from displaying, with the intent to deceive, another individual's personal identification document in connection with the sale of regulated material. The bill authorizes a metal recycling entity to pay for a purchase of regulated metal only by check issued to the seller not earlier than the fifth day after the date of the purchase or by cash not earlier than the 10th day after the date of the purchase. The bill prohibits a metal recycling entity from paying cash for a purchase of regulated material unless the entity is registered as a metal recycling entity. The bill prohibits a county, municipality, or other political subdivision from adopting a rule, charter, or ordinance or from issuing an order or imposing standards that limit the use of cash by a metal recycling entity in a manner more restrictive than that provided by the bill's provisions. The bill prohibits a metal recycling entity that purchases regulated material with cash while it is an unregistered entity from paying cash for a purchase of regulated material before the second anniversary of the date the entity registers.

H.B. 1933 makes it a misdemeanor punishable by a fine not to exceed \$10,000 to knowingly violate provisions of law relating to recycling entity registration, furnishing a report on a record of purchase to DPS, or the hours established by a political subdivision during which a metal recycling entity may purchase regulated material. The bill enhances the penalty for a subsequent conviction of this offense to a state jail felony. The bill establishes an affirmative defense to prosecution of a violation of provisions relating to metal recycling entity registration if the person made a diligent effort to obtain or renew a certificate or registration at the time of the violation. The bill requires the clerk of the court to remit a fine collected for a conviction of an offense to the comptroller of public accounts in a specified manner and requires the comptroller to deposit the proceeds to the credit of an account in the general revenue fund. The bill requires those proceeds to be appropriated only to DPS and used to finance DPS's administration of provisions relating to metal recycling entities and to fund grants distributed under the prevention of scrap metal theft grant program established under the Government Code.

H.B. 1933 makes it a Class A misdemeanor to knowingly buy wire that has been burned to remove the insulation, unless the wire is accompanied by documentation from the fire department of a political subdivision stating that the material was salvaged from a fire in that political subdivision. The bill makes it a Class A misdemeanor to knowingly buy condensing or evaporator coils, tubing rods, or other components of a central air conditioning unit that have

been altered to resemble components of a portable or self-contained ductless air conditioning product that has a cooling capacity of three tons or less. The bill enhances the penalty for a subsequent conviction of either offense to a state jail felony.

H.B. 1933 prohibits a person from selling or otherwise transferring to a metal recycling entity a metal alcoholic beverage keg, regardless of condition, unless the seller is the manufacturer of the keg, the brewer or distiller of the beverage that was contained in the keg, or an authorized representative of the manufacturer, brewer, or distiller.

H.B. 1933 requires the department to deny an application for a certificate of registration, suspend or revoke a certificate of registration, or reprimand a person who is registered under provisions relating to metal recycling entities if the person violates those provisions. The bill, in provisions relating to conduct for which a civil penalty may not be assessed, adds conduct relating to the registration of a metal recycling entity, conduct relating to an expired certificate of registration, conduct relating to furnishing a report on a record of purchase to DPS, and conduct relating to established hours for purchasing regulated material.

H.B. 1933 amends the Government Code to require the Public Safety Commission by rule to establish and implement a grant program, from fines collected and distributed to DPS for the violation of provisions relating to the certificate of registration, furnishing a report on a record of purchase to DPS, or the established hours for purchasing regulated material, to provide funding to assist local law enforcement agencies in preventing the theft of regulated material. The bill requires a recipient of such a grant to be a local law enforcement agency that has established a program designed to prevent the theft of regulated material. The bill requires the rules adopted under these provisions to include accountability measures for grant recipients and provisions for loss of eligibility for grant recipients that fail to comply with the measures and to require grant recipients to provide to DPS information on program outcomes. The bill defines "regulated material."

H.B. 1933 amends a Penal Code provision relating to the punishment for theft, in a list of property whose theft enhances the penalty to a state jail felony, to remove the condition that stolen metal property worth less than \$20,000 be in the form of insulated or noninsulated tubing, rods, water gate stems, wire, or cable, and consist of at least 50 percent of certain metals, and to add brass to the list of covered metals.

H.B. 1933 makes the enhancement of the punishment of an offense under provisions of the bill relating to operating a metal recycling entity without a license or permit, metal recycling registration, the furnishing of a report on a record of purchase to DPS, or the established hours for purchasing regulated material applicable January 1, 2012.

H.B. 1933 repeals Sections 1956.015(b) and (c), Occupations Code, requiring DPS to post a summary of the reports on records of purchase on DPS's Internet website.

H.B. 1933 makes conforming and nonsubstantive changes.

EFFECTIVE DATE

September 1, 2011.