

BILL ANALYSIS

C.S.S.B. 694
By: West
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Recent legislation was passed with bipartisan support in response to an epidemic rise in theft of metals such as copper, bronze, brass, and aluminum. Currently, there is a statewide electronic database wherein the sales of regulated metals and other regulated materials can be monitored by law enforcement to detect possible purchases of items obtained by unlawful means. While the number of metal recycling locations registering and reporting is increasing, the Department of Public Safety of the State of Texas estimates that there may be over 2,000 unspecified recycling entities operating in Texas.

C.S.S.B. 694 amends current law relating to the regulation of metal recycling entities and provides penalties.

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

C.S.S.B. 694 amends the Occupations Code to authorize a county, municipality, or other political subdivision to require the record of purchase required to be kept by a metal recycling entity for each purchase of regulated material to contain a clear and legible thumbprint of a seller of regulated material. The bill requires a county, municipality, or other political subdivision that requires a metal recycling entity to report to the county, municipality, or political subdivision information relating to a sale of regulated material to include in any contract entered into by the county, municipality, or political subdivision relating to the reporting of 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 county, municipality, or political subdivision to terminate the contract of any contractor, subcontractor, or third party that violates the required confidentiality.

C.S.S.B. 694 creates a Class B misdemeanor offense for a person who operates a metal recycling entity and does not hold a valid license or permit required by a county, municipality, or other political subdivision and enhances the penalty for a subsequent conviction 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 issued a citation for the offense and requires the notice to state that the metal recycling entity must cease operation until the person holds the appropriate license or permit issued by a county, municipality, or other political subdivision.

C.S.S.B. 694 exempts information provided to the Department of Public Safety (DPS) under provisions of law relating to a statewide electronic reporting system for metal recycling entities from disclosure under state open records law, rather than limiting the exemption from disclosure to certain commercially sensitive information provided to DPS. 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 maintain the confidentiality of the information and requires the contract to provide that DPS may terminate the contract of any contractor, subcontractor, or third party who violates the 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.

C.S.S.B. 694 expands the information a person attempting to sell regulated material to a metal recycling entity is required to provide to that entity to include the color of the motor vehicle used to transport the regulated metal, the state of issuance of the motor vehicle's license plate, and a description and any license plate number of any trailer used to transport the regulated material; if the regulated material the person is attempting to sell includes condensing or evaporator coils, tubing, or pipes for central heating or air conditioning units, the person's air conditioning and refrigeration contractor license or technician registration or a receipt, bill of sale, or other documentation showing that the seller purchased the heating or air conditioning unit component or replacement unit; and if the regulated material includes insulated utility, communications, or electrical wire that has been burned wholly or partly to remove the insulation, to display to the metal recycling entity documentation from the fire department of a county, municipality, or political subdivision stating that the material was salvaged from a fire in that county, municipality, or political subdivision.

C.S.S.B. 694 removes the metal recycling entity's agent as an alternative entity authorized to visually verify the accuracy and make a copy of the personal identification document presented by the seller. The bill requires the metal recycling entity to obtain a digital or video photograph that accurately depicts 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 the metal recycling entity's agent as an alternative entity who may obtain a photograph for recordkeeping purposes under these provisions and removes the provision authorizing a photograph to be taken in lieu of obtaining written information indicating that the person is entitled to sell 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 information required from a person attempting to sell regulated material to a metal recycling entity.

C.S.S.B. 694, 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 entity's business, adds the following to the list of required information to be included in that record of purchase: the name and address, rather than place, of the metal recycling entity; a copy of the seller's personal identification document; as applicable, the identifying number of the seller's air conditioning and refrigeration license or registration, a copy of the receipt, bill of sale, or other documentation showing that the seller purchased the heating or air conditioning unit components or a replacement unit the seller is attempting to sell, or a copy of the documentation from the fire department of a local governmental entity stating that any wire burned to remove the insulation was salvaged from a fire; a digital or video photograph that accurately depicts each item of regulated material purchased unless the metal recycling entity is exempt; copies of the photographs of the seller and the seller's motor vehicle or trailer; and a copy of the seller's thumbprint if required by a local governmental entity.

C.S.S.B. 694 exempts a metal recycling entity from provisions that require the entity to obtain a digital video or photograph that accurately depicts the seller's entire face or copies of photographs of the seller's motor vehicle and trailer if the 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.

C.S.S.B. 694 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 to provide a legible hard copy of the record for inspection on request of a peace officer if a record is not maintained in hard copy format. 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 a knowing, unauthorized release or disclosure of information regarding a seller of regulated material that is contained in a record of information provided by the seller or a record of purchase a Class A misdemeanor offense. The bill enhances the penalty for a subsequent conviction for this offense to a state jail felony.

C.S.S.B. 694, in provisions relating to furnishing a report to DPS on a record of purchase, changes the deadline by which a metal recycling entity is required to send the report to DPS from not later than the seventh day after the purchase or other acquisition of material to not later than 48 hours after the purchase or other acquisition. The bill requires the metal recycling entity to send an electronic transaction report to DPS via DPS's Internet website, rather than authorizing multiple methods of sending the report. The bill requires the report to contain the information required to be recorded for a record of purchase, other than the photographs that accurately depict each item of regulated metal purchased or copies of photographs of the seller's entire face and the seller's motor vehicle and trailer.

C.S.S.B. 694, 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 this purchase by telephone or to submit to DPS electronically via the DPS Internet website or file with DPS a report containing the information required to be included in the record of the purchase, other than the required photographs; changes the deadline for such electronic submission or filing of the record of purchase from not later than the fifth day after the date of such a purchase to not later than 48 hours after the purchase; and makes conforming changes. The bill authorizes a metal recycling entity to submit the transaction report by facsimile if the entity annually submits to DPS 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.

C.S.S.B. 694 prohibits a metal recycling entity from disposing of, processing, selling, or removing from the premises an item of regulated metal unless the entity acquired the item more than 30 days, excluding weekends and holidays, before the disposal, processing, sale, or removal, if the item is a cemetery vase, receptacle, or memorial made from a regulated material other than aluminum material. The bill 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, if the item is not a cemetery vase, receptacle, or memorial made from a regulated material other than aluminum material.

C.S.S.B. 694 prohibits a person, with the intent to deceive, from displaying 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 purchase or by cash not earlier than the 10th day after the date of 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 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 in violation of registration requirements from paying cash for a purchase of regulated material before the second anniversary of the date the entity registers.

C.S.S.B. 694 makes it a misdemeanor punishable by a fine not to exceed \$10,000 to knowingly violate provisions of law relating to metal recycling entity registration, furnishing a report on a record of purchase to DPS, or the hours established by a local government 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 of registration at the time of the violation.

C.S.S.B. 694 authorizes a municipality or county to retain 10 percent of the money collected from a fine for a conviction of such an offense as a service fee for that collection and requires the clerk of the court to remit the remainder of the fine collected for conviction of an offense to the comptroller of public accounts in the manner provided for the remission of fees to the comptroller under provisions of the Local Government Code relating to the reporting, collection, and remittance of fees. The bill requires the comptroller to deposit the proceeds to the credit of an account in the general revenue fund and authorizes 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.

C.S.S.B. 694 creates a Class A misdemeanor offense for a person who knowingly buys insulated utility, communications, or electrical wire that has been burned wholly or partly to remove the insulation, unless the wire is accompanied by documentation from the fire department of a county, municipality, or other political subdivision stating that the material was salvaged from a fire in that county, municipality, or political subdivision; or 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 such an offense to a state jail felony.

C.S.S.B. 694 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.

C.S.S.B. 694 requires DPS 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 that may not be assessed a civil penalty, adds conduct relating to the required registration as a metal recycling entity, conduct relating to furnishing a report on a record of purchase to DPS, and conduct relating to established hours for purchasing regulated material.

C.S.S.B. 694 defines "air conditioning and refrigeration contracting company" and redefines "copper or brass material" and "regulated metal."

C.S.S.B. 694 amends the Government Code to require the Public Safety Commission by rule to establish and implement a grant program, funded from fines collected and distributed to DPS for the violation of provisions relating to required registration as a metal recycling entity, 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, to be eligible for 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 grant 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 provides for the definition of "regulated material" by reference to the Occupations Code.

C.S.S.B. 694 amends the Penal Code, in provisions 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 that consists of at least 50 percent of certain metals and to add brass to the list of covered metals.

C.S.S.B. 694 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 entity 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.

C.S.S.B. 694 repeals Sections 1956.015(b) and (c), Occupations Code, requiring DPS to post a summary of the electronic transaction reports on its Internet website, setting out requirements for the contents of the summary, and exempting from the requirements regulated material sold by certain entities. The bill makes conforming and nonsubstantive changes.

EFFECTIVE DATE

September 1, 2011

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 694 contains a provision not included in the original providing for the meaning of "air conditioning and refrigeration contracting company" and redefining "copper or brass material." The substitute contains the following items in its redefinition of "regulated metal" not included in the original's redefinition: copper pipe or tubing and any metal item readily identifiable as being used in an aircraft engine.

C.S.S.B. 694 omits a provision included in the original requiring a county, municipality, or other political subdivision that requires a metal recycling entity to report information relating to a sale of regulated material to investigate a complaint alleging that a contractor, subcontractor, or third party has failed to maintain the confidentiality of information relating to a sale of regulated material.

C.S.S.B. 694 omits temporary provisions included in the original establishing an exception to the offense of not holding a license or permit if the person meets certain conditions.

C.S.S.B. 694 contains provisions not included in the original requiring a county, municipality, or other political subdivision to provide a written notice to a metal recycling entity issued a citation for the offense of operating a metal recycling entity without a valid license or permit and setting out the content of the notice.

C.S.S.B. 694 omits provisions included in the original relating to a civil penalty for a person who owns or operates a metal recycling entity without a license or permit and to an exception to these provisions.

C.S.S.B. 694 omits a provision included in the original authorizing the Department of Public Safety (DPS) to use information provided by the statewide electronic reporting system relating to the sale of regulated metal for law enforcement purposes.

C.S.S.B. 694 omits a provision included in the original requiring DPS to investigate a complaint alleging that a contractor, subcontractor, or third party has failed to maintain the confidentiality of information relating to a sale of regulated material.

C.S.S.B. 694 omits a provision included in the original requiring the list of all registered recycling entities required to be made available on DPS's Internet website to contain certain information.

C.S.S.B. 694 omits provisions included in the original establishing an advisory committee to advise DPS on matters related to DPS's regulation of metal recycling entities and setting out provisions relating the advisory committee.

C.S.S.B. 694 differs from the original by adding a description and any license plate number of any trailer used to transport the regulated material to the information a person attempting to sell regulated material to a metal recycling entity is required to provide.

C.S.S.B. 694 differs from the original, in a bill provision requiring the metal recycling entity to verify the registration of a person attempting to sell regulated material who represents that the person is a metal recycling entity, by omitting the option contained in the original allowing a seller to verify the registration by using the DPS database of registered metal recycling entities.

C.S.S.B. 694 contains a provision not included in the original requiring a person who is attempting to sell material that includes insulated utility, communications, or electrical wire that has been burned wholly or partly to remove the insulation to display to the metal recycling entity documentation from the fire department of a county, municipality, or political subdivision stating that the material was salvaged from a fire.

C.S.S.B. 694 contains provisions not included in the original removing 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 information presented by the seller and who may obtain a photograph for recordkeeping purposes; requiring 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, and the model and any license plate number of any trailer attached to the seller's motor vehicle; and removing the provision that authorizes a photograph to be taken in lieu of obtaining written information indicating that the person is entitled to sell regulated material.

C.S.S.B. 694 differs from the original 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 by revising the list of required information in this record of purchase to include the following information:

- the name and address of the metal recycling entity;
- a copy of the seller's personal identification document;
- a copy of the documentation from the fire department of a local governmental entity stating that any wire burned to remove the insulation was salvaged from a fire;
- a digital or video photograph that accurately depicts each item of regulated material purchased unless the metal recycling entity is exempt as provided by the bill's provisions;
- copies of the photographs of the seller and the seller's motor vehicle and trailer unless the metal recycling entity is exempt as provided by the bill's provisions; and
- a copy of the seller's thumbprint if required by a county, municipality, or other political subdivision.

C.S.S.B. 694 omits provisions included in the original relating to the length of time a metal

recycling entity is required to preserve a digital photograph or video recording that accurately depicts the seller's face and each type of regulated metal purchased and relating to when such items must be made available for a certain inspection.

C.S.S.B. 694 contains provisions not included in the original exempting a metal recycling entity from provisions that require the metal recycling entity to obtain a digital or video photograph that accurately depicts the seller's entire face or copies of photographs of the seller's motor vehicle and trailer if the 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.

C.S.S.B. 694 differs from the original by requiring a metal recycling entity to preserve each record of information regarding a seller of regulated material and each record of purchase until the third anniversary of the date the record was made, rather than second such anniversary as in the original. The substitute differs from the original by authorizing the records to be maintained in an electronic medium or through other recordkeeping technology and, if not maintained in a hard copy format, requiring the entity to provide a legible hard copy on request of a peace officer under certain circumstances and requiring such records be kept in the office or place where purchased until the first anniversary of the date of purchase, whereas the original requires the records to be kept in an easily retrievable format and available for inspection, not later than 72 hours after the time of purchase, by a peace officer, representative of DPS, or a representative of a county, municipality, or political subdivision that issues a license or permit under certain conditions. The substitute contains a provision not included in the original making it a Class A misdemeanor offense or state jail felony, as applicable, to knowingly release or disclose certain information regarding a seller,

C.S.S.B. 694 differs from the original, in provisions relating to furnishing a report to DPS on a record of purchase, by setting the deadline by which a metal recycling entity is required to send the report to DPS at not later than 48 hours after the purchase or other acquisition, whereas the original sets the deadline at not later than the close of business on a metal recycling entity's second working day after the date of the purchase or other acquisition. The substitute differs from the original by adding an exception to the required information that the report must contain for the photographs that accurately depict each item of regulated metal purchased or copies of photographs of the seller and the seller's motor vehicle and trailer.

C.S.S.B. 694 differs from the original, 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, by requiring the metal recycling entity to notify DPS of such purchase by telephone or requiring the metal recycling entity to submit a report on the record of purchase, other than the photographs that accurately depict each item of regulated metal purchased or copies of photographs of the seller or the seller's motor vehicle and trailer, to DPS electronically via DPS's Internet website not later than 48 hours after the purchase, whereas the original requires the metal recycling entity to notify DPS of such purchase by telephone, e-mail, or via DPS's Internet website and requires the metal recycling entity to submit a report on the record of purchase to DPS electronically via DPS's Internet website not later than the close of business on the entity's second working day after the purchase date.

C.S.S.B. 694 contains provisions not included in the original prohibiting a metal recycling entity from disposing of, processing, selling, or removing from the premises an item of regulated metal unless the entity acquired the item more than 30 days, excluding weekends and holidays, before the disposal, processing, sale, or removal, if the item is a cemetery vase, receptacle, or memorial made from a regulated material other than aluminum material, and changing from 72 hours to five days, excluding weekends and holidays, the amount of time a metal recycling entity must hold an item of regulated metal after acquisition and before disposing, processing, selling, or removing the item from the premises, if the item is not a cemetery vase, receptacle, or memorial

made from a regulated material other than aluminum material.

C.S.S.B. 694 omits a provision included in the original authorizing DPS, after notice and an opportunity for a hearing, to prohibit a metal recycling entity from paying cash for a purchase of regulated metal.

C.S.S.B. 694 omits a specification contained in the original prohibiting a metal recycling entity from paying cash for a purchase of regulated material if the entity has been prohibited by DPS from paying cash. The substitute contains provisions not in the original authorizing 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 purchase or by cash not earlier than the 10th day after the date of purchase and prohibiting a metal recycling entity that purchases regulated material with cash in violation of certain registration requirements from paying cash for a purchase of regulated material before the second anniversary of the date the entity registers.

C.S.S.B. 694 differs from the original by prohibiting a county, municipality, or other political subdivision from adopting, rather than adopting or enforcing as in the original, a rule, charter, or ordinance or issuing an order or imposing standards that limit the use of cash by a metal recycling entity.

C.S.S.B. 694 omits provisions included in the original making the prohibition on the adoption or enforcement of a rule, charter, or ordinance or 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 inapplicable to a rule, charter, ordinance, or order of a county, municipality, or other political subdivision in effect on January 1, 2011; requiring, in a temporary provision, DPS not later than January 1, 2012, to issue a notice relating to the requirement to obtain a certificate of registration, and, if applicable, to obtain a license or permit required by a county, municipality, or other political subdivision and requiring the notice to also state certain information; and relating to an enforcement action for specified certification, licensing, and permit violations brought by DPS or a county, municipality, or other political subdivision in the county in which the metal recycling entity is located to enjoin the business operations of the owner or operator of the metal recycling entity for a certain period.

C.S.S.B. 694 contains a provision not included in the original creating a Class A misdemeanor offense or state jail felony, as applicable, for a person who knowingly buys insulated utility, communications, or electrical wire that has been burned wholly or partly to remove the insulation, unless the wire is accompanied by documentation from a certain fire department stating that the material was salvaged from a fire; or knowingly buys certain components of a central air conditioning unit.

C.S.S.B. 694 omits a provision included in the original requiring the public safety director of DPS, not later than January 1, 2012, to appoint the members of the advisory committee and to designate the time and place of the committee's first meeting.

C.S.S.B. 694 contains a provision not included in the original repealing Sections 1956.015(b) and (c), Occupations Code.

C.S.S.B. 694 differs from the original by making its provisions take effect September 1, 2011, whereas the original makes its provisions take effect September 1, 2011, except as otherwise provided. The substitute differs from the original in nonsubstantive and conforming ways.