

By: West

S.B. No. 694

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of metal recycling entities; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

(10) "Regulated metal" means:

(A) manhole covers;

(B) guardrails;

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

(D) beer kegs made from metal other than aluminum;

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

(F) unused rebar;

(G) street signs;

(H) drain gates;

(I) safes;

(J) communication, transmission, and service wire or cable;

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

(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

by adding Subsections (a-1), (a-2), (f), (g), and (h) to read as follows:

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

(a-2) A county, municipality, or other political subdivision that, as authorized under Subsection (a), requires a metal recycling entity to report to the county, municipality, or political subdivision information relating to a sale of regulated material shall:

(1) include in any contract entered into by the county, municipality, or political subdivision relating to the reporting of the information a provision that:

(A) 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

(B) allows the county, municipality, or political subdivision to terminate the contract of any contractor, subcontractor, or third party that violates the confidentiality provision required by Paragraph (A); and

(2) 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.

1 (f) A county, municipality, or other political subdivision
2 that issues a license or permit authorized under Subsection (b)
3 shall issue a notice to an owner or operator of a metal recycling
4 entity operating without the license or permit informing the owner
5 or operator that the entity is operating without the required
6 license or permit and that the owner or operator may be subject to
7 criminal and civil penalties if the owner or operator does not
8 submit an application for the appropriate license or permit before
9 the 30th day after the 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 30th
13 day after the date of receiving a notice under Subsection (f).

14 (h) An offense under Subsection (g) is a Class C misdemeanor
15 unless it is shown on the trial of the offense that the person has
16 been previously convicted under Subsection (g), in which event the
17 offense is a Class A misdemeanor.

18 SECTION 4. Subchapter A, Chapter 1956, Occupations Code, is
19 amended by adding Section 1956.004 to read as follows:

20 Sec. 1956.004. CIVIL PENALTY. (a) A person who owns or
21 operates a metal recycling entity and does not submit an
22 application for a license or permit required by a county,
23 municipality, or other political subdivision as authorized under
24 Section 1956.003(b) before the 30th day after the date of receiving
25 a notice under Section 1956.003(f) is subject to a civil penalty of
26 not more than \$1,000 for each violation. In determining the amount
27 of the civil penalty, the court shall consider:

1 (1) any other violations by the person;

2 (2) the seriousness of the violation, including the
3 nature, circumstances, extent, and gravity of the violation;

4 (3) whether the health and safety of the public was
5 threatened by the violation;

6 (4) the demonstrated good faith of the person; and

7 (5) the amount necessary to deter future violations.

8 (b) A district attorney, county attorney, or municipal
9 attorney may institute an action to collect the civil penalty
10 provided by this section.

11 (c) Each day a violation occurs or continues to occur is a
12 separate violation.

13 (d) The district attorney, county attorney, or municipal
14 attorney may recover reasonable expenses incurred in obtaining a
15 civil penalty under this section, including court costs, reasonable
16 attorney's fees, investigative costs, witness fees, and deposition
17 expenses.

18 SECTION 5. Section 1956.015, Occupations Code, is amended
19 by amending Subsection (d) and adding Subsections (e) and (f) to
20 read as follows:

21 (d) Information provided under this section is not subject
22 to disclosure under Chapter 552, Government Code. The department
23 shall maintain the confidentiality of information provided under
24 this section [~~that relates to the financial condition or business~~
25 ~~affairs of a metal recycling entity or that is otherwise~~
26 ~~commercially sensitive. The confidential information is not~~
27 ~~subject to disclosure under Chapter 552, Government Code)].~~

1 (e) The department may enter into contracts relating to the
2 operation of the statewide electronic reporting system established
3 by this section. A contract under this subsection must:

4 (1) require that any contractor, subcontractor, or
5 third party that has access to, comes into possession of, or
6 otherwise obtains information provided under this section maintain
7 the confidentiality of the information provided under this section;
8 and

9 (2) provide that the department may terminate the
10 contract of any contractor, subcontractor, or third party that
11 violates the confidentiality provision required by Subdivision
12 (1).

13 (f) The department shall investigate a complaint alleging
14 that a contractor, subcontractor, or third party has failed to
15 maintain the confidentiality of information relating to a sale of
16 regulated material.

17 SECTION 6. Subchapter A-1, Chapter 1956, Occupations Code,
18 is amended by adding Sections 1956.016 and 1956.017 to read as
19 follows:

20 Sec. 1956.016. REGISTRATION DATABASE. The department shall
21 make available on its Internet website a publicly accessible list
22 of all registered metal recycling entities. The list must contain
23 the following for each registered metal recycling entity:

24 (1) the entity's name;
25 (2) the entity's physical address; and
26 (3) the name of and contact information for a
27 representative of the entity.

1 Sec. 1956.017. ADVISORY COMMITTEE. The department shall
2 appoint an advisory committee to advise the department on matters
3 related to the department's regulation of metal recycling entities
4 under this chapter.

5 SECTION 7. The heading to Section 1956.032, Occupations
6 Code, is amended to read as follows:

7 Sec. 1956.032. INFORMATION REGARDING [~~PROVIDED BY~~] SELLER.

8 SECTION 8. Section 1956.032, Occupations Code, is amended
9 by amending Subsection (a) and adding Subsection (g) to read as
10 follows:

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

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

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

20 (3) either:

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

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

27 (g) Notwithstanding Section 1956.002, the metal recycling

1 entity shall verify the registration of a person attempting to sell
2 regulated material who represents that the person is a metal
3 recycling entity by use of the database described by Section
4 1956.016.

5 SECTION 9. Section 1956.033, Occupations Code, is amended
6 to read as follows:

7 Sec. 1956.033. RECORD OF PURCHASE. (a) Each metal
8 recycling entity in this state shall keep an accurate electronic
9 record or an accurate and legible written record of each purchase of
10 regulated material made in the course of the entity's business from
11 an individual ~~[of:~~

12 ~~[(1) copper or brass material,~~

13 ~~[(2) bronze material,~~

14 ~~[(3) aluminum material, or~~

15 ~~[(4) regulated metal].~~

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

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

18 (2) the name and address of the seller in possession of
19 ~~[each individual from whom]~~ the regulated material ~~[is]~~ purchased
20 ~~[or obtained];~~

21 (3) the identifying number of the seller's personal
22 identification document;

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

26 (5) the information required by Sections
27 1956.032(a)(2) and (3) ~~[Section 1956.032(a)(3)]~~.

SECTION 10. Section 1956.034, Occupations Code, is amended to read as follows:

Sec. 1956.034. PRESERVATION OF RECORDS. A metal recycling entity shall preserve each record required by Sections 1956.032 and 1956.033 until the second ~~[third]~~ anniversary of the date the record was made. The records must be kept in an easily retrievable format and must be available for inspection by a peace officer under Section 1956.035 not later than 72 hours after the time of purchase.

SECTION 11. Section 1956.036, Occupations Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

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

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

(1) not later than the close of business on the entity's first working day after the purchase date, notify the

department by telephone or e-mail; and

(2) not later than the close of business on the entity's second working ~~[fifth]~~ day after the purchase date, submit to the department electronically via the department's Internet website ~~[mail to]~~ or file with the department a report containing the information required to be recorded under Section 1956.033.

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

(1) the entity submits to the department annually:

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

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

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

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

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

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

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

1 (3) the entity:

2 (A) acquired the item more than 72 hours,
3 excluding weekends and holidays, before the disposal, processing,
4 sale, or removal; and

5 (B) obtained a digital or video photograph of the
6 seller of the regulated material and the regulated material
7 purchased.

8 SECTION 13. Section 1956.038, Occupations Code, is amended
9 to read as follows:

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

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

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

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

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

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

24 (4) display another individual's personal
25 identification document in connection with the sale of regulated
26 material.

27 (b) A metal recycling entity may not pay for a purchase of

1 regulated material in cash unless:

2 (1) the entity has obtained a certificate of
3 registration under Subchapter A-2; and

4 (2) if applicable, the entity holds a license or
5 permit required by a county, municipality, or other political
6 subdivision as authorized under Section 1956.003(b).

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

12 (d) Subsection (c) does not apply to a rule, charter,
13 ordinance, or order of a county, municipality, or other political
14 subdivision in effect on January 1, 2011.

15 (d-1) Not later than January 1, 2012, the department shall
16 issue a notice to each owner or operator of a metal recycling entity
17 in this state informing the owner or operator of the requirement to
18 obtain a certificate of registration under Subchapter A-2 and, if
19 applicable, to obtain a license or permit required by a county,
20 municipality, or other political subdivision under Section
21 1956.003. The notice must also state:

22 (1) that the owner or operator shall submit an
23 application for a certificate of registration and the appropriate
24 license or permit required by a county, municipality, or other
25 political subdivision on or before March 1, 2012; and

26 (2) the penalties under this chapter for failure to
27 comply with Subdivision (1).

1 (d-2) This subsection and Subsection (d-1) expire January
2 1, 2012.

3 (e) The department or a county, municipality, or other
4 political subdivision may bring an action in the county in which a
5 metal recycling entity is located to enjoin the business operations
6 of the owner or operator of the metal recycling entity for a period
7 of not less than 30 days and not more than 90 days if the owner or
8 operator has not submitted an application for a certificate of
9 registration or the appropriate license or permit required by a
10 county, municipality, or other political subdivision.

11 (f) An action under Subsection (e) must be brought in the
12 name of the state. If judgment is in favor of the state, the court
13 shall:

14 (1) enjoin the owner or operator from maintaining or
15 participating in the business of a metal recycling entity for a
16 definite period of not less than 30 days and not more than 90 days,
17 as determined by the court; and

18 (2) order that the place of business of the owner or
19 operator be closed for the same period.

20 SECTION 14. Section 1956.040, Occupations Code, is amended
21 by adding Subsections (a-1), (a-2), and (a-3) to read as follows:

22 (a-1) A person commits an offense if the person knowingly
23 violates Section 1956.021, 1956.023(d), 1956.036(a), or 1956.039.
24 An offense under this subsection is a misdemeanor punishable by a
25 fine not to exceed \$10,000, unless it is shown on trial of the
26 offense that the person has previously been convicted of a
27 violation of this subsection, in which event the offense is a state

1 jail felony.

2 (a-2) It is an affirmative defense to prosecution of a
3 violation of Section 1956.021 or 1956.023(d) that the person made a
4 diligent effort to obtain or renew a certificate of registration at
5 the time of the violation.

6 (a-3) The clerk of the court shall remit a fine collected
7 for conviction of an offense under Subsection (a-1) to the
8 comptroller in the manner provided for the remission of fees to the
9 comptroller under Subchapter B, Chapter 133, Local Government Code.
10 The comptroller shall deposit proceeds received under this
11 subsection to the credit of an account in the general revenue fund,
12 and those proceeds may be appropriated only to the department and
13 used to:

14 (1) finance the department's administration of
15 Subchapters A, A-1, A-2, and A-3; and

16 (2) fund grants distributed under the prevention of
17 scrap metal theft grant program established under Subchapter N,
18 Chapter 411, Government Code.

19 SECTION 15. Section 1956.103(a), Occupations Code, is
20 amended to read as follows:

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

23 (1) a lead-acid battery, fuel tank, or PCB-containing
24 capacitor that is included with another type of scrap, used, or
25 obsolete metal without first obtaining from the metal recycling
26 entity a written and signed acknowledgment that the scrap, used, or
27 obsolete metal includes one or more lead-acid batteries, fuel

tanks, or PCB-containing capacitors;

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

(A) a motor vehicle;

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

(C) an appliance; or

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

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

(4) 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.

SECTION 16. Section 1956.151, Occupations Code, is amended to read as follows:

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

1 person:

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

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

6 (3) violates a provision of this chapter or a rule
7 adopted under this chapter; or

8 (4) violates Section 1956.021.

9 SECTION 17. Section 1956.202(d), Occupations Code, is
10 amended to read as follows:

11 (d) A civil penalty may not be assessed under this section
12 for conduct described by Section 1956.021, 1956.023(d),
13 1956.036(a), 1956.038, or 1956.039.

14 SECTION 18. Chapter 411, Government Code, is amended by
15 adding Subchapter N to read as follows:

16 SUBCHAPTER N. PREVENTION OF SCRAP METAL THEFT GRANT PROGRAM

17 Sec. 411.421. DEFINITION. In this subchapter, "regulated
18 material" has the meaning assigned by Section 1956.001, Occupations
19 Code.

20 Sec. 411.422. GRANTS TO FUND SCRAP METAL THEFT PREVENTION.

21 (a) From fines collected and distributed to the department under
22 Sections 1956.040(a-1) and (a-3), Occupations Code, the commission
23 by rule shall establish and implement a grant program to provide
24 funding to assist local law enforcement agencies in preventing the
25 theft of regulated material.

26 (b) To be eligible for a grant, a recipient must be a local
27 law enforcement agency that has established a program designed to

1 prevent the theft of regulated material.

2 (c) Rules adopted under this section must:

3 (1) include accountability measures for grant
4 recipients and provisions for loss of eligibility for grant
5 recipients that fail to comply with the measures; and

6 (2) require grant recipients to provide to the
7 department information on program outcomes.

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

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

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

14 (A) \$50; or

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

18 (2) a Class B misdemeanor if:

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

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

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

24 (B) the value of the property stolen is less
25 than:

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

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

(C) the property stolen is a driver's license, commercial driver's license, or personal identification certificate issued by this state or another state;

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

(4) a state jail felony if:

(A) the value of the property stolen is \$1,500 or more but less than \$20,000, or the property is less than 10 head of sheep, swine, or goats or any part thereof under the value of \$20,000;

(B) regardless of value, the property is stolen from the person of another or from a human corpse or grave, including property that is a military grave marker;

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

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

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

(F) the value of the property stolen is less than \$20,000 and the property stolen is ~~[insulated or noninsulated tubing, rods, water gate stems, wire, or cable that consists of at~~

1 ~~least 50 percent~~]:

2 (i) aluminum;

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

4 (iii) copper; or

5 (iv) brass;

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

9 (A) cattle, horses, or exotic livestock or exotic
10 fowl as defined by Section 142.001, Agriculture Code, stolen during
11 a single transaction and having an aggregate value of less than
12 \$100,000; or

13 (B) 10 or more head of sheep, swine, or goats
14 stolen during a single transaction and having an aggregate value of
15 less than \$100,000;

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

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

20 SECTION 20. (a) The change in law made by this Act applies
21 only to an offense committed on or after the effective date of this
22 Act. For purposes of this section, an offense is committed before
23 the effective date of this Act if any element of the offense occurs
24 before that date.

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

1 (c) The enhancement of the punishment of an offense provided
2 under Section 1956.003(h) or 1956.040(a-1), Occupations Code, as
3 added by this Act, applies only to an offense committed on or after
4 January 1, 2012. For purposes of this subsection, an offense is
5 committed before January 1, 2012, if any element of the offense
6 occurs before that date. An offense committed before January 1,
7 2012, is covered by the law in effect when the offense was
8 committed, and the former law is continued in effect for that
9 purpose.

10 SECTION 21. (a) Except as provided by Subsection (b) of
11 this section, this Act takes effect September 1, 2011.

12 (b) Sections 1956.038(b) and (e), Occupations Code, as
13 added by this Act, take effect March 1, 2012.