

SENATE AMENDMENTS

2nd Printing

By: Geren

H.B. No. 1242

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain metal dealers; providing
criminal penalties.

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

SECTION 1. Section 1956.001(8), Occupations Code, is
amended to read as follows:

(8) "Personal identification document" means:

(A) a valid driver's license issued by a state in
the United States;

(B) a United States military identification
card; ~~or~~

(C) a personal identification certificate issued
by the department under Section 521.101, Transportation Code, or a
corresponding card or certificate issued by another state;

(D) a passport; or

(E) documentation issued by the United States
agency responsible for citizenship and immigration that authorizes
the person to be in the United States.

SECTION 2. Section 1956.060, Occupations Code, is amended
to read as follows:

Sec. 1956.060. EXCEPTION: CRAFTED PRECIOUS METAL ACQUIRED
BY PERSON LICENSED UNDER TEXAS PAWNSHOP ACT. This subchapter does
not apply to crafted precious metal acquired by a person or an
employee of a person licensed under Chapter 371, Finance Code.

1 SECTION 3. Section 1956.062, Occupations Code, is amended
2 by amending Subsection (c) and adding Subsection (c-1) to read as
3 follows:

4 (c) The dealer shall:

5 (1) record the identification [~~proposed seller's~~
6 ~~driver's license~~] number [~~or department personal identification~~
7 ~~certificate number on physical presentation~~] of the seller's
8 personal identification document;

9 (2) visually verify the accuracy of the seller's
10 personal identification document and make a copy of the document;
11 and

12 (3) obtain a digital or video photograph that
13 accurately depicts each item of crafted precious metal purchased
14 [~~license or personal identification certificate by the seller~~].

15 (c-1) The copy of the document and photograph described by
16 Subsection (c) [~~record~~] must accompany the list.

17 SECTION 4. Subchapter B, Chapter 1956, Occupations Code, is
18 amended by adding Section 1956.0631 to read as follows:

19 Sec. 1956.0631. PAYMENT FOR CRAFTED PRECIOUS METAL
20 PURCHASED. A dealer may pay for a purchase of crafted precious
21 metal only by check or prepaid debit card. If payment is by check,
22 the names of the dealer and seller must be printed on the check. If
23 payment is by prepaid debit card, the seller may not be liable for
24 any fees charged by the issuer of the card.

25 SECTION 5. Section 1956.064, Occupations Code, is amended
26 to read as follows:

27 Sec. 1956.064. REQUIRED RETENTION OF CRAFTED PRECIOUS

1 METAL. (a) A dealer may not melt, deface, alter, or dispose of
2 crafted precious metal that is the subject of a report required by
3 this subchapter before the 21st [~~11th~~] day after the date the report
4 is filed unless:

5 (1) the peace officer to whom the report is submitted,
6 for good cause, authorizes disposition of the metal; or

7 (2) [~~the dealer obtains the name, address, and~~
8 ~~description of the buyer and retains a record of that information,~~
9 ~~or~~

10 [~~3~~] the dealer is a pawnbroker and the disposition
11 is the redemption of pledged property by the pledgor.

12 (b) A peace officer who has reasonable suspicion to believe
13 that an item of crafted precious metal in the possession of a dealer
14 is stolen may place the item on hold by issuing to the dealer a
15 written notice that:

16 (1) specifically identifies the item alleged to be
17 stolen and subject to the hold; and

18 (2) informs the dealer of the requirements of
19 Subsection (c).

20 (c) On receiving the notice, the dealer may not melt,
21 deface, alter, or dispose of the identified crafted precious metal
22 until the hold is released in writing by a peace officer of this
23 state or a court order. [~~A dealer who retains information under~~
24 ~~Subsection (a)(2) shall make that information available for~~
25 ~~inspection by any peace officer.]~~

26 SECTION 6. Section 1956.069(a), Occupations Code, is
27 amended to read as follows:

1 (a) A dealer commits an offense if the dealer:

2 (1) fails to make or permit inspection of a report as
3 required by Section 1956.062 or 1956.063;

4 (2) violates [~~disposes of crafted precious metal or~~
5 ~~fails to make a record available for inspection by a peace officer~~
6 ~~as required by~~] Section 1956.0631 or 1956.064;

7 (3) fails to obtain or retain a statement as required
8 by Section 1956.066;

9 (4) fails to file a registration statement as required
10 by Section 1956.067; or

11 (5) purchases an object in violation of Section
12 1956.068.

13 SECTION 7. The change in law made by this Act applies only
14 to an offense committed on or after the effective date of this Act.
15 An offense committed before the effective date of this Act is
16 governed by the law in effect on the date the offense was committed,
17 and the former law is continued in effect for that purpose. For
18 purposes of this section, an offense was committed before the
19 effective date of this Act if any element of the offense occurred
20 before that date.

21 SECTION 8. This Act takes effect September 1, 2011.

ADOPTED

MAY 21 2011

Atty. Gen.
Secretary of the Senate

By: Gerard

H.B. No. 1242

Substitute the following for H.B. No. 1242:

By: Harris

C.S. ___ .B. No. _____

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3 criminal penalties.

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

5 SECTION 1. Section 1956.001(8), Occupations Code, is
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9 the United States;

10 (B) a United States military identification
11 card; [~~or~~]

12 (C) a personal identification certificate issued
13 by the department under Section 521.101, Transportation Code, or a
14 corresponding card or certificate issued by another state;

15 (D) a passport; or

16 (E) documentation issued by the United States
17 agency responsible for citizenship and immigration that authorizes
18 the person to be in the United States.

19 SECTION 2. Section 1956.060, Occupations Code, is amended
20 to read as follows:

21 Sec. 1956.060. EXCEPTION: CRAFTED PRECIOUS METAL ACQUIRED
22 BY PERSON LICENSED UNDER TEXAS PAWNSHOP ACT. This subchapter does
23 not apply to crafted precious metal acquired by:

24 (1) a person licensed under Chapter 371, Finance Code;

1 or

2 (2) an entity affiliated with a person licensed under
3 Chapter 371, Finance Code, if the entity's recordkeeping practices
4 satisfy the requirements of that chapter.

5 SECTION 3. Section 1956.062, Occupations Code, is amended
6 by amending Subsection (c) and adding Subsection (c-1) to read as
7 follows:

8 (c) The dealer shall:

9 (1) record the identification [~~proposed seller's~~
10 ~~driver's license~~] number [~~or department personal identification~~
11 ~~certificate number on physical presentation~~] of the seller's
12 personal identification document;

13 (2) visually verify the accuracy of the seller's
14 personal identification document and make a copy of the document;
15 and

16 (3) obtain a digital or video photograph that
17 accurately depicts each item of crafted precious metal purchased
18 [~~license or personal identification certificate by the seller~~].

19 (c-1) The copy of the document and photograph described by
20 Subsection (c) [~~record~~] must accompany the list.

21 SECTION 4. Subchapter B, Chapter 1956, Occupations Code, is
22 amended by adding Section 1956.0631 to read as follows:

23 Sec. 1956.0631. PAYMENT FOR CRAFTED PRECIOUS METAL
24 PURCHASED. A dealer may pay for a purchase of crafted precious
25 metal only by check or prepaid debit card. If payment is by check,
26 the names of the dealer and seller must be printed on the check. If
27 payment is by prepaid debit card, the seller may not be liable for

1 any fees charged by the issuer of the card.

2 SECTION 5. Section 1956.064, Occupations Code, is amended
3 to read as follows:

4 Sec. 1956.064. REQUIRED RETENTION OF CRAFTED PRECIOUS
5 METAL. (a) A dealer may not melt, deface, alter, or dispose of
6 crafted precious metal that is the subject of a report required by
7 this subchapter before the 21st [~~11th~~] day after the date the report
8 is filed unless:

9 (1) the peace officer to whom the report is submitted,
10 for good cause, authorizes disposition of the metal; or

11 (2) [~~the dealer obtains the name, address, and~~
12 ~~description of the buyer and retains a record of that information,~~
13 ~~or~~

14 [~~3~~] the dealer is a pawnbroker and the disposition
15 is the redemption of pledged property by the pledgor.

16 (b) A peace officer who has reasonable suspicion to believe
17 that an item of crafted precious metal in the possession of a dealer
18 is stolen may place the item on hold by issuing to the dealer a
19 written notice that:

20 (1) specifically identifies the item alleged to be
21 stolen and subject to the hold; and

22 (2) informs the dealer of the requirements of
23 Subsection (c).

24 (c) On receiving the notice, the dealer may not melt,
25 deface, alter, or dispose of the identified crafted precious metal
26 until the hold is released in writing by a peace officer of this
27 state or a court order. [~~A dealer who retains information under~~

1 ~~Subsection (a)(2) shall make that information available for~~
2 ~~inspection by any peace officer.]~~

3 SECTION 6. Section 1956.069(a), Occupations Code, is
4 amended to read as follows:

5 (a) A dealer commits an offense if the dealer:

6 (1) fails to make or permit inspection of a report as
7 required by Section 1956.062 or 1956.063;

8 (2) violates ~~[disposes of crafted precious metal or~~
9 ~~fails to make a record available for inspection by a peace officer~~
10 ~~as required by]~~ Section 1956.0631 or 1956.064;

11 (3) fails to obtain or retain a statement as required
12 by Section 1956.066;

13 (4) fails to file a registration statement as required
14 by Section 1956.067; or

15 (5) purchases an object in violation of Section
16 1956.068.

17 SECTION 7. The change in law made by this Act applies only
18 to an offense committed on or after the effective date of this Act.
19 An offense committed before the effective date of this Act is
20 governed by the law in effect on the date the offense was committed,
21 and the former law is continued in effect for that purpose. For
22 purposes of this section, an offense was committed before the
23 effective date of this Act if any element of the offense occurred
24 before that date.

25 SECTION 8. This Act takes effect September 1, 2011.

ADOPTED

FLOOR AMENDMENT NO. _____

MAY 21 2011

BY: _____

Roger W. N.

Amend C.S.H.B. No. 1242 (Senate committee printing) as

Lately Spaul
Secretary of the Senate

follows:

(1) In the recital to SECTION 1 of the bill (page 1, line 13, strike "Section 1956.001(8), Occupations Code, is" and substitute "Sections 1956.001(8) and (10), Occupations Code, are".

(2) In SECTION 1 of the bill, in amended Section 1956.001, Occupations Code (page 1, between lines 26 and 27), insert the following:

(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 for central heating or air conditioning units;

(L) utility structures, including the fixtures and hardware;

(M) aluminum or stainless steel containers

1 designed to hold propane for fueling forklifts; ~~and~~

2 (N) metal railroad equipment, including tie
3 plates, signal houses, control boxes, signs, signals, traffic
4 devices, traffic control devices, traffic control signals,
5 switch plates, e-clips, and rail tie functions;

6 (O) catalytic converters not attached to a
7 vehicle;

8 (P) fire hydrants;

9 (Q) metal bleachers or other seating facilities
10 used in recreational areas or sporting arenas;

11 (R) any metal item clearly and conspicuously
12 marked with any form of the name, initials, or logo of a
13 governmental entity, utility, cemetery, or railroad;

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

17 (T) backflow valves; and

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

22 (3) Strike SECTION 8 of the bill (page 2, line 48) and
23 substitute the following:

24 SECTION 8. (a) Except as provided by Subsection (b) of
25 this section, this Act takes effect September 1, 2011.

26 (b) Subsection (f), Section 1956.003, Section 1956.004,
27 and Subsections (b) and (e), Section 1956.038, Occupations Code,
28 as added by this Act, take effect March 1, 2012.

29 (4) Add the following appropriately numbered SECTIONS to
30 the bill and renumber the remaining SECTIONS of the bill
31 accordingly:

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

3 Sec. 1956.003. LOCAL LAW; CRIMINAL PENALTY.

4 SECTION ___. Section 1956.003, Occupations Code, is amended
5 by adding Subsections (a-1), (a-2), (f), (g), and (h) to read as
6 follows:

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

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

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

19 (A) requires any contractor, subcontractor, or
20 third party that has access to, comes into possession of, or
21 otherwise obtains information relating to a sale of regulated
22 material to maintain the confidentiality of all information
23 received, including the name of the seller, the price paid for a
24 purchase of regulated material, and the quantity of regulated
25 material purchased; and

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

30 (2) investigate a complaint alleging that a
31 contractor, subcontractor, or third party has failed to maintain

1 the confidentiality of information relating to a sale of
2 regulated material.

3 (f) A person commits an offense if the person owns or
4 operates a metal recycling entity and does not hold a license or
5 permit required by a county, municipality, or other political
6 subdivision as authorized under Subsection (b). An offense
7 under this subsection is a Class B misdemeanor unless it is
8 shown on the trial of the offense that the person has been
9 previously convicted under this subsection, in which event the
10 offense is a Class A misdemeanor.

11 (g) It is an exception to the application of Subsection
12 (f) that:

13 (1) the person held a license or permit issued by the
14 appropriate county, municipality, or other political subdivision
15 at one point during the 12-month period preceding the date of
16 the alleged offense; and

17 (2) the person obtains or submits an application for
18 the appropriate license or permit not later than the 15th day
19 after the date the person receives notice from the appropriate
20 county, municipality, or other political subdivision informing
21 the person that the metal recycling entity is operating without
22 the required license or permit.

23 (h) This subsection and Subsection (g) expire March 1,
24 2013.

25 SECTION __. Subchapter A, Chapter 1956, Occupations Code,
26 is amended by adding Section 1956.004 to read as follows:

27 Sec. 1956.004. CIVIL PENALTY. (a) A person who owns or
28 operates a metal recycling entity and does not hold a license or
29 permit required by a county, municipality, or other political
30 subdivision as authorized under Section 1956.003(b) is subject
31 to a civil penalty of not more than \$1,000 for each violation.

1 In determining the amount of the civil penalty, the court shall
2 consider:

3 (1) any other violations by the person; and

4 (2) the amount necessary to deter future violations.

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

8 (c) Each day a violation occurs or continues to occur is a
9 separate violation.

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

15 (e) It is an exception to the application of this section
16 that:

17 (1) the person held a license or permit issued by the
18 appropriate county, municipality, or other political subdivision
19 at one point during the 12-month period preceding the date of
20 the alleged violation; and

21 (2) the person obtains or submits an application for
22 the appropriate license or permit not later than the 15th day
23 after the date the person receives notice from the appropriate
24 county, municipality, or other political subdivision informing
25 the person that the metal recycling entity is operating without
26 the required license or permit.

27 (f) This subsection and Subsection (e) expire March 1,
28 2013.

29 SECTION ___. Section 1956.015, Occupations Code, is amended
30 by amending Subsection (d) and adding Subsections (e) and (f) to
31 read as follows:

1 (d) Information provided under this section is not subject
2 to disclosure under Chapter 552, Government Code. The
3 department may use information provided under this section for
4 law enforcement purposes. Except as provided by this
5 subsection, the department shall maintain the confidentiality of
6 all information provided under this section, including the name
7 of the seller, the price paid for a purchase of regulated
8 material, and the quantity of regulated material purchased [~~that~~
9 ~~relates to the financial condition or business affairs of a~~
10 ~~metal recycling entity or that is otherwise commercially~~
11 ~~sensitive.~~ ~~The confidential information is not subject to~~
12 ~~disclosure under Chapter 552, Government Code~~].

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

17 (1) require that any contractor, subcontractor, or
18 third party that has access to, comes into possession of, or
19 otherwise obtains information provided under this section
20 maintain the confidentiality of all information provided under
21 this section, including the name of the seller, the price paid
22 for a purchase of regulated material, and the quantity of
23 regulated material purchased; and

24 (2) provide that the department may terminate the
25 contract of any contractor, subcontractor, or third party that
26 violates the confidentiality provision required by Subdivision
27 (1).

28 (f) The department shall investigate a complaint alleging
29 that a contractor, subcontractor, or third party has failed to
30 maintain the confidentiality of information relating to a sale
31 of regulated material.

1 SECTION __. Subchapter A-1, Chapter 1956, Occupations
2 Code, is amended by adding Sections 1956.016 and 1956.017 to
3 read as follows:

4 Sec. 1956.016. REGISTRATION DATABASE. The department
5 shall make available on its Internet website a publicly
6 accessible list of all registered metal recycling entities. The
7 list must contain the following for each registered metal
8 recycling entity:

9 (1) the entity's name;

10 (2) the entity's physical address; and

11 (3) the name of and contact information for a
12 representative of the entity.

13 Sec. 1956.017. ADVISORY COMMITTEE. (a) The department
14 shall establish an advisory committee to advise the department
15 on matters related to the department's regulation of metal
16 recycling entities under this chapter.

17 (b) The advisory committee consists of 12 members
18 appointed by the director as follows:

19 (1) one representative of the department;

20 (2) two representatives of local law enforcement
21 agencies located in different municipalities, each with a
22 population of 500,000 or more;

23 (3) two representatives of local law enforcement
24 agencies located in different municipalities, each with a
25 population of 200,000 or more but less than 500,000;

26 (4) one representative of a local law enforcement
27 agency located in a municipality with a population of less than
28 200,000;

29 (5) four representatives of metal recycling entities;

30 and

31 (6) two members who represent industries that are

1 impacted by theft of regulated material.

2 (c) The director shall ensure that the members of the
3 advisory committee reflect the diverse geographic regions of
4 this state.

5 (d) The advisory committee shall elect a presiding officer
6 from among its members to serve a two-year term. A member may
7 serve more than one term as presiding officer.

8 (e) The advisory committee shall meet annually and at the
9 call of the presiding officer or the director.

10 (f) An advisory committee member is not entitled to
11 compensation or reimbursement of expenses.

12 (g) Chapter 2110, Government Code, does not apply to the
13 size, composition, or duration of the advisory committee or to
14 the appointment of the committee's presiding officer.

15 SECTION __. The heading to Section 1956.032, Occupations
16 Code, is amended to read as follows:

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

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

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

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

26 (2) provide to the metal recycling entity the make,
27 model, color, and license plate number of the motor vehicle used
28 to transport the regulated material and the name of the state
29 issuing the license plate; [~~and~~]

30 (3) either:

31 (A) present written documentation evidencing

1 that the person is the legal owner or is lawfully entitled to
2 sell the regulated material; or

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

7 (4) if the regulated material includes condensing or
8 evaporator coils for central heating or air conditioning units,
9 display to the metal recycling entity:

10 (A) the person's air conditioning and
11 refrigeration contractor license issued under Subchapter F or G,
12 Chapter 1302;

13 (B) the person's air conditioning and
14 refrigeration technician registration issued under Subchapter K,
15 Chapter 1302;

16 (C) a receipt, bill of sale, or other
17 documentation showing that the seller purchased the coils the
18 seller is attempting to sell; or

19 (D) a receipt, bill of sale, or other
20 documentation showing that the seller has purchased a
21 replacement central heating or air conditioning unit.

22 (g) Notwithstanding Section 1956.002, the metal recycling
23 entity shall verify the registration of a person attempting to
24 sell regulated material who represents that the person is a
25 metal recycling entity as follows:

26 (1) by using the database described by Section
27 1956.016; or

28 (2) by obtaining from the person a copy of the
29 person's certificate of registration issued under Section
30 1956.022 in addition to the information required under
31 Subsection (a).

1 SECTION __. Section 1956.033, Occupations Code, is amended
2 to read as follows:

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

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

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

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

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

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

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

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

17 (3) the identifying number of the seller's personal
18 identification document;

19 (4) a description made in accordance with the custom
20 of the trade of the commodity type and quantity of regulated
21 material purchased; [~~and~~]

22 (5) the information required by Sections
23 1956.032(a)(2) and (3);

24 (6) as applicable:

25 (A) the identifying number of the seller's air
26 conditioning and refrigeration contractor license displayed
27 under Section 1956.032(a)(4)(A);

28 (B) a copy of the seller's air conditioning and
29 refrigeration technician registration displayed under Section
30 1956.032(a)(4)(B);

31 (C) a copy of the documentation described by

1 Section 1956.032(a)(4)(C); or
2 (D) a copy of the documentation described by
3 Section 1956.032(a)(4)(D); and
4 (7) a copy of the documentation described by Section
5 1956.032(g) [~~Section 1956.032(a)(3)~~].

6 SECTION __. Subchapter A-3, Chapter 1956, Occupations
7 Code, is amended by adding Section 1956.0331 to read as follows:

8 Sec. 1956.0331. PHOTOGRAPH OR RECORDING REQUIREMENT FOR
9 REGULATED METAL TRANSACTION. (a) In addition to the
10 requirements of Sections 1956.032 and 1956.033, for each
11 purchase by a metal recycling entity of an item of regulated
12 metal, the entity shall obtain a digital photograph or video
13 recording that accurately depicts the seller's entire face and
14 each type of regulated metal purchased.

15 (b) A metal recycling entity shall preserve a photograph
16 or recording required under Subsection (a) as follows:

17 (1) for a video recording, until the 91st day after
18 the date of the transaction; and

19 (2) for a digital photograph, until the 181st day
20 after the date of the transaction.

21 (c) The photograph or recording must be made available for
22 inspection as provided by Section 1956.035 not later than 72
23 hours after the time of purchase.

24 SECTION __. Section 1956.034, Occupations Code, is amended
25 to read as follows:

26 Sec. 1956.034. PRESERVATION OF RECORDS. A metal recycling
27 entity shall preserve each record required by Sections 1956.032
28 and 1956.033 until the second [~~third~~] anniversary of the date
29 the record was made. The records must be kept in an easily
30 retrievable format and must be available for inspection as
31 provided by Section 1956.035 not later than 72 hours after the

1 time of purchase.

2 SECTION __. Section 1956.035, Occupations Code, is amended
3 to read as follows:

4 Sec. 1956.035. INSPECTION OF RECORDS [~~BY PEACE OFFICER~~].

5 (a) On request, a metal recycling entity shall permit a peace
6 officer of this state, a representative of the department, or a
7 representative of a county, municipality, or other political
8 subdivision that issues a license or permit under Section
9 1956.003(b) to inspect, during the entity's usual business
10 hours:

11 (1) a record required by Section 1956.033; [~~or~~]

12 (2) a digital photograph or video recording required
13 by Section 1956.0331; or

14 (3) regulated material in the entity's possession.

15 (b) The person seeking to inspect a record or material
16 [~~inspecting officer~~] shall:

17 (1) inform the entity of the officer's status as a
18 peace officer; or

19 (2) if the person is a representative of the
20 department or a representative of a county, municipality, or
21 other political subdivision, inform the entity of the person's
22 status and display to the entity an identification document or
23 other appropriate documentation establishing the person's status
24 as a representative of the department or of the appropriate
25 county, municipality, or political subdivision.

26 SECTION __. Section 1956.036, Occupations Code, is amended
27 by amending Subsections (a) and (b) and adding Subsections (d)
28 and (e) to read as follows:

29 (a) Except as provided by Subsections [~~Subsection~~] (b) and
30 (d), not later than the close of business on a metal recycling
31 entity's second working [~~seventh~~] day after the date of the

1 purchase or other acquisition of material for which a record is
2 required under Section 1956.033, the [~~a metal recycling~~] entity
3 shall send an electronic transaction report to the department
4 via the department's Internet website. The [~~by facsimile or~~
5 ~~electronic mail to or file with the department a~~] report must
6 contain [~~containing~~] the information required to be recorded
7 under Section 1956.033 [~~that section~~].

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

12 (1) not later than the close of business on the
13 entity's first working day after the purchase date, notify the
14 department by telephone, by e-mail, or via the department's
15 Internet website; and

16 (2) not later than the close of business on the
17 entity's second working [~~fifth~~] day after the purchase date,
18 submit to the department electronically via the department's
19 Internet website [~~mail to~~] or file with the department a report
20 containing the information required to be recorded under Section
21 1956.033.

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

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

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

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

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

1 (e) The department, after notice and an opportunity for a
2 hearing, may prohibit a metal recycling entity from paying cash
3 for a purchase of regulated material for a period determined by
4 the department if the department finds that the entity has
5 failed to comply with this section.

6 SECTION __. Section 1956.038, Occupations Code, is amended
7 to read as follows:

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

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

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

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

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

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

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

25 (b) A metal recycling entity may not pay for a purchase of
26 regulated material in cash if:

27 (1) the entity does not hold a certificate of
28 registration under Subchapter A-2 and, if applicable, a license
29 or permit required by a county, municipality, or other political
30 subdivision as authorized under Section 1956.003(b); or

31 (2) the entity has been prohibited by the department

1 from paying cash under Section 1956.036(e).

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

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

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

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

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

25 (d-2) This subsection and Subsection (d-1) expire March 1,
26 2012.

27 (e) The department or a county, municipality, or other
28 political subdivision may bring an action in the county in which
29 a metal recycling entity is located to enjoin the business
30 operations of the owner or operator of the metal recycling
31 entity for a period of not less than 30 days and not more than

1 90 days if the owner or operator has not submitted an
2 application for a certificate of registration or the appropriate
3 license or permit required by a county, municipality, or other
4 political subdivision.

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

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

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

14 SECTION __. Section 1956.040, Occupations Code, is amended
15 by adding Subsections (a-1), (a-2), (a-3), and (a-4) to read as
16 follows:

17 (a-1) A person commits an offense if the person knowingly
18 violates Section 1956.021, 1956.023(d), 1956.036(a), or
19 1956.039.

20 (a-2) An offense under Subsection (a-1) is a misdemeanor
21 punishable by a fine not to exceed \$10,000, unless it is shown
22 on trial of the offense that the person has previously been
23 convicted of a violation of Subsection (a-1), in which event the
24 offense is a state jail felony.

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

29 (a-4) A municipality or county may retain 10 percent of
30 the money collected from a fine for a conviction of an offense
31 under Subsection (a-1) as a service fee for that collection and

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

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

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

14 SECTION __. Subsection (a), Section 1956.103, Occupations
15 Code, is amended to read as follows:

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

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

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

28 (A) a motor vehicle;

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

1 (C) an appliance; or

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

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

8 (4) a metal alcoholic beverage keg, regardless of
9 condition, unless the seller is the manufacturer of the keg, the
10 brewer or distiller of the beverage that was contained in the
11 keg, or an authorized representative of the manufacturer,
12 brewer, or distiller.

13 SECTION __. Section 1956.151, Occupations Code, is amended
14 to read as follows:

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

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

22 (2) sells, barter, or offers to sell or barter a
23 certificate of registration;

24 (3) violates a provision of this chapter or a rule
25 adopted under this chapter; or

26 (4) violates Section 1956.021.

27 SECTION __. Subsection (d), Section 1956.202, Occupations
28 Code, is amended to read as follows:

29 (d) A civil penalty may not be assessed under this section
30 for conduct described by Section 1956.021, 1956.023(d),
31 1956.036(a), 1956.038, or 1956.039.

1 SECTION __. Chapter 411, Government Code, is amended by
2 adding Subchapter N to read as follows:

3 SUBCHAPTER N. PREVENTION OF SCRAP METAL THEFT GRANT PROGRAM

4 Sec. 411.421. DEFINITION. In this subchapter, "regulated
5 material" has the meaning assigned by Section 1956.001,
6 Occupations Code.

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

8 (a) From fines collected and distributed to the department
9 under Sections 1956.040(a-2) and (a-4), Occupations Code, the
10 commission by rule shall establish and implement a grant program
11 to provide funding to assist local law enforcement agencies in
12 preventing the theft of regulated material.

13 (b) To be eligible for a grant, a recipient must be a
14 local law enforcement agency that has established a program
15 designed to prevent the theft of regulated material.

16 (c) Rules adopted under this section must:

17 (1) include accountability measures for grant
18 recipients and provisions for loss of eligibility for grant
19 recipients that fail to comply with the measures; and

20 (2) require grant recipients to provide to the
21 department information on program outcomes.

22 SECTION __. Subsection (e), Section 31.03, Penal Code, is
23 amended to read as follows:

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

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

28 (A) \$50; or

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

1 (2) a Class B misdemeanor if:

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

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

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

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

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

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

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

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

20 (4) a state jail felony if:

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

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

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

30 (D) the value of the property stolen is less
31 than \$1,500 and the defendant has been previously convicted two

1 or more times of any grade of theft;

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

4 (F) the value of the property stolen is less
5 than \$20,000 and the property stolen is [~~insulated or~~
6 ~~noninsulated tubing, rods, water gate stems, wire, or cable that~~
7 ~~consists of at least 50 percent~~]:

8 (i) aluminum;

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

10 (iii) copper; or

11 (iv) brass;

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

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

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

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

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

26 SECTION __. The enhancement of the punishment of an
27 offense provided under Subsection (a-2), Section 1956.040,
28 Occupations Code, as added by this Act, applies only to an
29 offense committed on or after January 1, 2012. For purposes of
30 this subsection, an offense is committed before January 1, 2012,
31 if any element of the offense occurs before that date. An

1 offense committed before January 1, 2012, is covered by the law
2 in effect when the offense was committed, and the former law is
3 continued in effect for that purpose.

4 SECTION __. Not later than January 1, 2012, the public
5 safety director of the Department of Public Safety of the State
6 of Texas shall appoint the members of the advisory committee
7 established under Section 1956.017, Occupations Code, as added
8 by this Act, and designate the time and place of the committee's
9 first meeting.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 23, 2011

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1242 by Geren (Relating to the regulation of certain metal dealers; providing criminal penalties.), **As Passed 2nd House**

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| <p>No significant fiscal implication to the State is anticipated.</p> |
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The bill would expand the list of regulated metals. The bill would authorize additional documentation, confidentiality, and record keeping provisions for metal recycling entities and provide penalties for non-compliance. The bill would modify a metal recycling entities practices for verifying, maintaining, and processing a seller's documentation. The bill would require a seller to provide additional documentation to the metal recycling entity when attempting to sell a regulated material. The bill would require dealers who purchase and sell crafted precious metal to retain certain crafted precious metal items subject to reporting requirements for 21 days after the report is filed unless authorized to dispose of the item. The bill provides that a crafted precious metals dealer may pay for a purchase of crafted precious metal by check or prepaid debit card.

The bill would authorize the Department of Public Safety (DPS) to contract for services to manage the statewide electronic reporting system used to track the sales of regulated metal and provides for the confidentiality of the information maintained in the system. The bill would require DPS to post on its website a publicly accessible list of all registered metal recycling entities. The bill would require DPS to appoint an advisory committee to direct DPS on the regulation of metal recycling entities, and provides for the structure and duties of committee. The bill would require DPS to issue a notice to each owner or operator of a metal recycling entity informing the owner or operator of the requirement to obtain a certificate of registration, license, or permit.

The bill would expand the list of prohibited acts relating to the regulation of metal recycling entities; providing criminal penalties. The bill would make the unlicensed operation of a metal recycling entity, or failing to properly purchase or report the purchase of regulated material, or buying certain wire material, an offense punishable as a state jail felony if it is shown that the person has previously been convicted; otherwise the offense would be punishable as a misdemeanor by a fine not to exceed \$10,000. The bill would amend the Penal Code as it relates to the offense of theft to provide state jail felony punishment if the value of the property stolen is less than \$20,000 and the property stolen is aluminum, bronze, copper, or brass; rather than if the value of the property stolen is less than \$20,000 and the property stolen involves certain materials that consists of at least 50 percent aluminum, bronze, or copper. The bill would authorize DPS to limit the manner in which a metal recycling entity may pay for the purchase of a regulated metal if the entity is in violation of the provisions of the bill.

The bill would require certain fines be remitted to the comptroller. The comptroller would be required to deposit proceeds to the credit of an account in the general revenue fund, and those proceeds would be appropriated only to DPS to finance its administration of metal recycling entities or fund a grant program intended to prevent the theft of scrap metal. The Public Safety Commission would be required to adopt rules to establish and implement a grant program. Grants would fund local law enforcement efforts to prevent the theft of regulated material.

It is anticipated that the additional costs associated with the bill could be absorbed within the existing resources of the Department of Public Safety. It is assumed implementing the provisions of the bill would not result in a significant impact on the programs and workload of state corrections agencies or

on the demand for resources of those agencies.

The bill would take effect September 1, 2011. The enhancement of the punishment of an offense under the provisions of the bill would apply only to an offense committed on or after March 1, 2012.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 405 Department of Public Safety

LBB Staff: JOB, AG, GG, DH, SZ, KKR

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 18, 2011

TO: Honorable John Carona, Chair, Senate Committee on Business & Commerce

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1242 by Geren (Relating to the regulation of certain metal dealers; providing criminal penalties.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would require metal recycling entities to collect additional information from an individual selling valuable metal material to the entity. The bill would require dealers who engage in the business of purchasing and selling crafted precious metal to retain certain crafted precious metal items subject to reporting requirements for 21 days after the report is filed unless authorized to dispose of the item. The bill provides that a crafted precious metals dealer may pay for a purchase of crafted precious metal by check or prepaid debit card. It is assumed that the bill would not result in a significant fiscal impact on the programs and workload of state agencies.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 405 Department of Public Safety

LBB Staff: JOB, AG, SZ, GG, DH

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 13, 2011

TO: Honorable John Carona, Chair, Senate Committee on Business & Commerce

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1242 by Geren (Relating to the regulation of certain metal dealers; providing criminal penalties.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would require metal recycling entities to collect additional information from an individual selling valuable metal material to the entity. The bill would require dealers who engage in the business of purchasing and selling crafted precious metal to retain certain crafted precious metal items subject to reporting requirements for 21 days after the report is filed unless authorized to dispose of the item. The bill provides that a crafted precious metals dealer may pay for a purchase of crafted precious metal by check or prepaid debit card. It is assumed that the bill would not result in a significant fiscal impact on the programs and workload of state agencies.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 405 Department of Public Safety

LBB Staff: JOB, AG, SZ, GG, DH

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

March 25, 2011

TO: Honorable Wayne Smith, Chair, House Committee on Environmental Regulation

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1242 by Geren (Relating to the regulation of certain metal dealers; providing criminal penalties.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would require metal recycling entities to collect additional information from an individual selling valuable metal material to the entity. The bill would require dealers who engage in the business of purchasing and selling crafted precious metal to retain certain crafted precious metal items subject to reporting requirements for 21 days after the report is filed unless authorized to dispose of the item. The bill provides that a crafted precious metals dealer may pay for a purchase of crafted precious metal by check or prepaid debit card. It is assumed that the bill would not result in a significant fiscal impact on the programs and workload of state agencies.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 405 Department of Public Safety

LBB Staff: JOB, SZ, GG, DH

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

March 7, 2011

TO: Honorable Wayne Smith, Chair, House Committee on Environmental Regulation

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1242 by Geren (Relating to the regulation of certain metal dealers; providing criminal penalties.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would require metal recycling entities to collect additional information from an individual selling valuable metal material to the entity. The bill would require dealers who engage in the business of purchasing and selling crafted precious metal to retain certain crafted precious metal items subject to reporting requirements for 21 days after the report is filed unless authorized to dispose of the item. The bill provides that a crafted precious metals dealer may pay for a purchase of crafted precious metal only by check, and the names of the dealer and seller must be printed on the check. It is assumed that the bill would not result in a significant fiscal impact on the programs and workload of state agencies.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 405 Department of Public Safety

LBB Staff: JOB, SZ, GG, DH