

BILL ANALYSIS

C.S.S.B. 459
By: Rodríguez
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Recent reports indicate that more than 24 million tires are discarded each year in Texas, which is roughly one tire for every person residing in the state. Interested parties contend that used tire disposal has been a rampant problem in Texas for years and that tires are often illegally transported and dumped, costing the state millions of dollars in cleanup. The parties note that these tires have proven to be more than a nuisance for Texans, leading to dangerous and environmentally hazardous tire piles and unsafe tires being sold back for use on the road. C.S.S.B. 459 seeks to address this issue by amending current law relating to scrap, unsafe, and used tires.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1 of this bill.

ANALYSIS

C.S.S.B. 459 amends the Health and Safety Code to require a scrap tire generator or used tire generator, including a tire dealer, junkyard, or fleet operator, who stores scrap tires or used tires outdoors on its business premises to store the scrap tires or used tires in a manner that may be made secure by locking. The bill exempts the Texas Department of Transportation from this requirement.

C.S.S.B. 459 requires a scrap tire transporter or used tire transporter to register with the Texas Commission on Environmental Quality (TCEQ) and exempts certain specified persons and transporters from such registration. The bill requires TCEQ to require the scrap tire transporter or used tire transporter to maintain records and use a manifest or other appropriate system to assure that those tires are transported to a storage site that is registered or to a site or facility authorized by TCEQ. The bill requires the scrap tire transporter or used tire transporter who is required to register with TCEQ to provide financial assurance as determined by TCEQ in an amount appropriate for the quantity of tires transported and specifies that a person is not required to comply with this requirement before the 180th day after the date that the rules adopted by TCEQ to implement this requirement take effect, or as otherwise required by TCEQ. The bill authorizes money that TCEQ receives from such financial assurance to be used for the cleanup of abandoned tire storage sites.

C.S.S.B. 459 amends the Transportation Code to prohibit a person from selling and installing an unsafe tire, as defined by the bill, and specifies that this provision does not apply to a mounted tire sold with a used vehicle. The bill makes it a Class A misdemeanor offense for a person to sell and install such an unsafe tire and provides that a person commits such an offense with regard to the sale and installation of an unsafe tire that is subject to a manufacturer's safety recall only if the seller of the tire knew or had reason to know that the tire was subject to the recall at the time of the sale and installation. The bill establishes that specified provisions regarding certain offenses relating to the offer, distribution, and sale of vehicle equipment for which certain

prescribed standards are not met do not limit any liability.

C.S.S.B. 459 amends the Business & Commerce Code to prohibit a customer from retaining a scrap tire or an unsafe tire removed from the customer's vehicle during the purchase of a tire from a retail seller. The bill requires a retail seller who takes possession of a scrap tire or unsafe tire from a customer during such a transaction to dispose of the scrap tire or unsafe tire according to local and state laws. The bill authorizes a customer to retain a scrap tire or unsafe tire removed from the customer's vehicle during the purchase of a tire if the customer certifies on a form prescribed by TCEQ that the customer assumes liability for the disposal of the tire. The bill requires TCEQ to develop the form and to make that form available on TCEQ's Internet website. The bill exempts from these provisions an entity that purchases scrap or salvage vehicles for the purpose of recycling. The bill authorizes a retail seller of tires to contract for the transportation of scrap tires, unsafe tires, or used tires only with a registered scrap tire transporter or used tire transporter who has filed the required evidence of financial assurance. The bill specifies that a person who violates these provisions is subject to a civil penalty in an amount determined by TCEQ not to exceed \$500 for each violation and authorizes a separate penalty to be imposed for each day a violation occurs. The bill requires TCEQ by rule to adopt criteria for determining the amount of the civil penalty. The bill authorizes the attorney general or the appropriate district or county attorney to bring an action against the person in the name of the state in a district court in the county in which the person resides or the person's principal place of business is located.

C.S.S.B. 459 amends the Water Code to make provisions governing TCEQ's authority to suspend or revoke a license, certificate, or registration applicable to the bill's provisions regarding the registration of scrap and used tire transporters.

C.S.S.B. 459 repeals Section 361.112(g), Health and Safety Code.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.S.B. 459 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Title 6, Business & Commerce Code, is amended by adding Chapter 205 to read as follows:

SECTION 1. Title 6, Business & Commerce Code, is amended by adding Chapter 205 to read as follows:

CHAPTER 205. SALE AND TRANSPORTATION OF SCRAP, UNSAFE, OR USED TIRES

CHAPTER 205. SALE AND TRANSPORTATION OF SCRAP, UNSAFE, OR USED TIRES

Sec. 205.001. DEFINITIONS.

Sec. 205.001. DEFINITIONS.

Sec. 205.002. RETENTION AND DISPOSAL OF SCRAP OR UNSAFE TIRES. (a) Except as provided by Subsection (c), a retail seller shall prohibit a customer from retaining a scrap tire or an unsafe tire removed from the customer's vehicle during the purchase of a tire.

Sec. 205.002. RETENTION AND DISPOSAL OF SCRAP OR UNSAFE TIRES. (a) Except as provided by Subsection (c), a customer may not retain a scrap tire or an unsafe tire removed from the customer's vehicle during the purchase of a tire from a retail seller.

(b) A retail seller who takes possession of a scrap tire or unsafe tire from a customer during a transaction described by Subsection (a) shall dispose of the scrap tire or unsafe tire according to local and state laws, including Section 361.112(c), Health and Safety Code.

(c) A retail seller is not required to prohibit a customer from retaining a scrap tire or unsafe tire removed from the customer's vehicle during the purchase of a tire if the customer certifies on a form prescribed by the Texas Commission on Environmental Quality that:

(1) the tire will be used in the customer's agricultural business; and

(2) the customer assumes liability for the tire.

(d) The Texas Commission on Environmental Quality shall develop the form described by Subsection (c) and shall make that form available on the commission's Internet website.

No equivalent provision.

Sec. 205.003. TRANSPORTATION OF SCRAP, UNSAFE, OR USED TIRES. A retail seller of tires may contract for the transportation of scrap tires, unsafe tires, or used tires only with a scrap tire transporter or used tire transporter who:

(1) is registered as described by Section 361.1121(b), Health and Safety Code; and

(2) has filed evidence of financial assurance according to Section 361.1121(d), Health and Safety Code.

Sec. 205.004. CIVIL PENALTY. (a) A person who violates this chapter is subject to a civil penalty in an amount not less than \$500 for each violation. A separate penalty may be imposed for each day a violation occurs.

(b) The attorney general or the appropriate

(b) A retail seller who takes possession of a scrap tire or unsafe tire from a customer during a transaction described by Subsection (a) shall dispose of the scrap tire or unsafe tire according to local and state laws, including Section 361.112(c), Health and Safety Code.

(c) A customer may retain a scrap tire or unsafe tire removed from the customer's vehicle during the purchase of a tire if the customer certifies on a form prescribed by the Texas Commission on Environmental Quality that the customer assumes liability for the disposal of the tire.

(d) The Texas Commission on Environmental Quality shall develop the form described by Subsection (c) and shall make that form available on the commission's Internet website.

(e) This section does not apply to an entity that purchases scrap or salvage vehicles for the purpose of recycling.

Sec. 205.003. TRANSPORTATION OF SCRAP, UNSAFE, OR USED TIRES. A retail seller of tires may contract for the transportation of scrap tires, unsafe tires, or used tires only with a scrap tire transporter or used tire transporter who:

(1) is registered as described by Section 361.1121(b), Health and Safety Code; and

(2) has filed evidence of financial assurance according to Section 361.085(m), Health and Safety Code.

Sec. 205.004. CIVIL PENALTY. (a) A person who violates this chapter is subject to a civil penalty in an amount determined by the Texas Commission on Environmental Quality not to exceed \$500 for each violation. A separate penalty may be imposed for each day a violation occurs. The commission by rule shall adopt criteria for determining the amount of a civil penalty under this subsection.

(b) The attorney general or the appropriate

district or county attorney may bring an action against a person under this section in the name of the state in a district court in the county in which:

- (1) the person resides; or
- (2) the person's principal place of business is located.

No equivalent provision.

SECTION 2. The heading to Section 361.112, Health and Safety Code, is amended.

SECTION 3. Section 361.112, Health and Safety Code, is amended by adding Subsection (n) to read as follows:

(n) A scrap tire generator or used tire generator, including a tire dealer, junkyard, or fleet operator, who stores scrap tires or used tires outdoors on its business premises shall store the scrap tires or used tires in a manner that may be made secure by locking.

SECTION 4. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.1121 to read as follows: **Sec. 361.1121. SCRAP AND USED TIRE TRANSPORTERS.**

(a) In this section:

- (1) "Scrap tire" means a tire that can no longer be used for its original intended purpose.
- (2) "Scrap tire transporter" means a person who collects scrap tires from another person for the purpose of removal to a scrap tire processor, end user, or disposal facility.
- (3) "Used tire" means a tire that:
 - (A) has been used as a tire on a vehicle;

district or county attorney may bring an action against a person under this section in the name of the state in a district court in the county in which:

- (1) the person resides; or
- (2) the person's principal place of business is located.

SECTION 2. Section 361.085, Health and Safety Code, is amended by adding Subsection (m) to read as follows:

(m) A scrap tire transporter or used tire transporter, as those terms are defined by Section 361.1121(a), who is required to register with the commission shall provide financial assurance as determined by the commission in an amount appropriate for the quantity of tires transported. Money that the commission receives from financial assurance obtained to meet the requirements of this subsection may be used for the cleanup of abandoned tire storage sites.

SECTION 3. Same as engrossed version.

SECTION 4. Section 361.112, Health and Safety Code, is amended by adding Subsection (n) to read as follows:

(n) A scrap tire generator or used tire generator, including a tire dealer, junkyard, or fleet operator, who stores scrap tires or used tires outdoors on its business premises shall store the scrap tires or used tires in a manner that may be made secure by locking.
This subsection does not apply to the Texas Department of Transportation.

SECTION 5. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.1121 to read as follows: **Sec. 361.1121. SCRAP AND USED TIRE TRANSPORTERS.**

(a) In this section:

- (1) "Scrap tire" means a tire that can no longer be used for its original intended purpose.
- (2) "Scrap tire transporter" means a person who collects scrap tires from another person for the purpose of removal to a scrap tire processor, end user, or disposal facility.
- (3) "Used tire" means a tire that:
 - (A) has been used as a tire on a vehicle;

(B) has tire tread at least one-sixteenth inch deep; and
(C) can still be used for its original intended purpose.
(4) "Used tire transporter" means a person who collects used tires from another person for the purpose of removal to a scrap tire processor, end user, or disposal facility.

(b) A scrap tire transporter or used tire transporter shall register with the commission unless the scrap tire transporter or used tire transporter is:
(1) a retreader who transports retreadable casings; or
(2) a person who transports scrap tires or used tires that are intended for use in that person's agricultural business and who does not transport at one time a number of scrap tires or used tires that exceeds a number determined by commission rule.

(c) A scrap tire transporter or used tire

(B) has tire tread at least one-sixteenth inch deep; and
(C) can still be used for its original intended purpose.
(4) "Used tire transporter" means a person who collects used tires from another person for the purpose of removal to a scrap tire processor, end user, or disposal facility.

(b) A scrap tire transporter or used tire transporter shall register with the commission unless the scrap tire transporter or used tire transporter is:
(1) a retreader who transports retreadable casings;
(2) a person who transports scrap tires or used tires that are intended for use in that person's agricultural business and who does not transport at one time a number of scrap tires or used tires that exceeds a number determined by commission rule;
(3) a person who transports scrap tires to the manufacturer or the manufacturer's representative for adjustment, provided that the generator of the tires complies with the recordkeeping and manifest requirements under Subsection (c);
(4) a person who:
(A) is registered with the commission as an on-site sewage disposal system installer;
(B) transports used or scrap tires or tire pieces for the construction of an on-site sewage disposal system; and
(C) complies with the recordkeeping and manifest requirements under Subsection (c);
(5) a person engaged in the collection of incidental amounts of scrap tires, used tires, or tire pieces during the course of household or commercial waste collection for a municipal solid waste facility or a commercial landfill;
(6) a person engaged on behalf of a political subdivision in the transport of scrap or used tires to another site, provided that the person complies with the recordkeeping and manifest requirements under Subsection (c);
(7) a tire retailer who transports the retailer's own tires in the ordinary course of business as a tire retailer, including the transportation of tires between places of business owned by the retailer; or
(8) a person who transports scrap tires or used tires that are intended for recycling.

No equivalent provision.

transporter who is required to register with the commission shall:

(1) obtain a surety bond from a surety company authorized to transact business in this state;

(2) establish a trust account; or

(3) obtain an irrevocable letter of credit.

(d) The bond, trust account, or irrevocable letter of credit described by Subsection (c) must be:

(1) filed with the commission;

(2) in an amount of \$100,000 or more; and

(3) in favor of this state.

(e) Money that the commission receives from a bond, trust account, or letter of credit obtained to meet the requirements of Subsection (c) may be used for the cleanup of abandoned tire storage sites.

(f) The commission shall require a scrap tire transporter or used tire transporter to maintain records and use a manifest or other appropriate system to assure that tires are transported to a storage site that is registered or to a site or facility authorized by the commission.

SECTION 5. Section 547.201, Transportation Code, is amended by adding Subsections (c), (d), (e), and (f) to read as follows:

(c) A person may not sell at retail an unsafe tire. In this subsection, "unsafe tire" means a passenger or light truck tire that:

(1) has tire tread less than one-sixteenth inch deep;

(2) has chunking, bumps, knots, or bulges evidencing cord, ply, or tread separation from the casing or other adjacent material;

(3) has exposed tire cords or belting material as a result of damage to the tire;

(4) has a repair to the tire in the tread shoulder, sidewall, bead area, or belt edge area;

(5) has a puncture that has not been sealed or patched on the inside with a cured rubber stem or plug that extends through to the outside surface;

(6) does not clearly show the United States Department of Transportation tire

No equivalent provision.

No equivalent provision.

(c) The commission shall require a scrap tire transporter or used tire transporter to maintain records and use a manifest or other appropriate system to assure that those tires are transported to a storage site that is registered or to a site or facility authorized by the commission.

SECTION 6. Section 547.201, Transportation Code, is amended by adding Subsections (c), (d), (e), (f), and (g) to read as follows:

(c) A person may not sell and install an unsafe tire. In this subsection, "unsafe tire" means a passenger car or light truck tire for which a visual or tactile inspection of the tire exterior and inner liner indicates that the

(1) has tire tread less than one-sixteenth inch deep;

(2) has chunking, bumps, knots, or bulges evidencing cord, ply, or tread separation from the casing or other adjacent material;

(3) has exposed tire cords or belting material as a result of damage to the tire;

(4) has a repair to the tire in the tread shoulder, sidewall, bead area, or belt edge area;

(5) has a puncture that has not been sealed or patched on the inside with a cured rubber stem or plug that extends through to the outside surface;

(6) does not clearly show the United States Department of Transportation tire

identification number located on the sidewall of the tire;
(7) is subject to a manufacturer's safety recall;
(8) has a puncture larger than one-quarter inch; or
(9) does not otherwise meet department safety standards under Section 547.101.

(d) Subsection (c) does not apply to a mounted tire sold with a used vehicle.

(e) A person commits an offense under Subsection (c) for the sale of an unsafe tire described by Subsection (c)(7) only if the seller of the tire knew or had reason to know that the tire was subject to a manufacturer's safety recall at the time of the sale.

(f) A person who violates Subsection (c) commits an offense. An offense under this subsection is a Class A misdemeanor.

No equivalent provision.

SECTION 6. Subsection (a), Section 7.303, Water Code, is amended to read as follows:

(a) This section applies to a license, certificate, or registration issued:

(1) by the commission under:

(A) Section 26.0301;

(B) Chapter 37;

(C) Section 361.0861, 361.092, ~~[or]~~ 361.112, or 361.1121, Health and Safety Code;

(D) Chapter 366, 371, or 401, Health and Safety Code; or

(E) Chapter 1903, Occupations Code;

(2) by a county under Subchapter E, Chapter 361, Health and Safety Code; or

(3) under a rule adopted under any of those provisions.

SECTION 7. Subsection (g), Section 361.112, Health and Safety Code, is repealed.

No equivalent provision.

identification number located on the sidewall of the tire;
(7) is subject to a manufacturer's safety recall;
(8) has a puncture larger than one-quarter inch; or
(9) does not otherwise meet department safety standards under Section 547.101.

(d) Subsection (c) does not apply to a mounted tire sold with a used vehicle.

(e) A person commits an offense under Subsection (f) for the sale **and installation** of an unsafe tire described by Subsection (c)(7) only if the seller of the tire knew or had reason to know that the tire was subject to a manufacturer's safety recall at the time of the sale **and installation.**

(f) A person who violates Subsection (c) commits an offense. An offense under this subsection is a Class A misdemeanor.

(g) This section does not limit any liability.

SECTION 7. Same as engrossed version except for recitation.

SECTION 8. Substantially the same as engrossed version.

SECTION 9. A person is not required to comply with the requirements of Section 361.085(m), Health and Safety Code, as added by this Act, before the 180th day after the date that the rules adopted by the Texas Commission on Environmental Quality to implement that section take effect, or as

otherwise required by the commission.

SECTION 8. This Act takes effect
September 1, 2013.

SECTION 10. Same as engrossed version.