

By: Smith

H.B. No. 2187

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of metal recycling entities; imposing an administrative penalty.

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

SECTION 1. Section 1956.001, Occupations Code, is amended by amending Subdivisions (4), (9), and (10) and adding Subdivision (6-a) to read as follows:

(4) "Copper or brass material" means:

(A) a power inverter or insulated or noninsulated copper wire or cable that contains copper or an alloy of copper or zinc and is of the type used by:

(i) a public utility or common carrier;

(ii) a telecommunications provider as defined by Section 51.002, Utilities Code;

(iii) a cable service provider as defined by Section 66.002, Utilities Code; or

(iv) a video service provider as defined by Section 66.002, Utilities Code ~~[that contains copper or an alloy of copper or zinc]~~;

(B) a copper or brass item of a type commonly used in construction or by:

(i) a public utility;

(ii) a telecommunications provider as defined by Section 51.002, Utilities Code;

1                    (iii) a cable service provider as defined  
2 by Section 66.002, Utilities Code; or

3                    (iv) a video service provider as defined by  
4 Section 66.002, Utilities Code; or

5                    (C) copper pipe or copper tubing.

6                    (6-a) "Lead material" means:

7                    (A) a commercial grade lead battery, lead-acid  
8 battery, or spiral cell battery; or

9                    (B) a material or an item readily identifiable as  
10 being made of or containing lead.

11                    (9) "Regulated material" means:

12                    (A) aluminum material;

13                    (B) bronze material;

14                    (C) copper or brass material; ~~[or]~~

15                    (D) lead material; or

16                    (E) regulated metal.

17                    (10) "Regulated metal" means:

18                    (A) manhole covers;

19                    (B) guardrails;

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

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

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

26                    (F) unused rebar;

27                    (G) street signs;

- 1 (H) drain gates;
- 2 (I) safes;
- 3 (J) communication, transmission, and service
- 4 wire or cable;
- 5 (K) condensing or evaporator coils for central
- 6 heating or air conditioning units;
- 7 (L) utility structures, including the fixtures
- 8 and hardware;
- 9 (M) aluminum or stainless steel containers
- 10 designed to hold propane for fueling forklifts;
- 11 (N) metal railroad equipment, including tie
- 12 plates, signal houses, control boxes, signs, signals, traffic
- 13 devices, traffic control devices, traffic control signals, switch
- 14 plates, e-clips, and rail tie functions;
- 15 (O) catalytic converters not attached to a
- 16 vehicle;
- 17 (P) fire hydrants;
- 18 (Q) metal bleachers or other seating facilities
- 19 used in recreational areas or sporting arenas;
- 20 (R) any metal item clearly and conspicuously
- 21 marked with any form of the name, initials, or logo of a
- 22 governmental entity, utility, cemetery, or railroad;
- 23 (S) insulated utility, communications, or
- 24 electrical wire that has been burned in whole or in part to remove
- 25 the insulation;
- 26 (T) backflow valves; ~~and~~
- 27 (U) metal in the form of commonly recognized

1 products of the industrial metals recycling process, including  
2 bales, briquettes, billets, sows, ingots, pucks, and chopped or  
3 shredded metals; and

4 (V) commercial grade lead batteries or lead-acid  
5 batteries.

6 SECTION 2. Section 1956.002, Occupations Code, is amended  
7 to read as follows:

8 Sec. 1956.002. EXCEPTION. This chapter does not apply to:

9 (1) a purchase of regulated material from a public  
10 utility, a telecommunications provider as defined by Section  
11 51.002, Utilities Code, a cable service provider as defined by  
12 Section 66.002, Utilities Code, a video service provider as defined  
13 by Section 66.002, Utilities Code, or a manufacturing, industrial,  
14 commercial, retail, or other seller that sells regulated material  
15 in the ordinary course of the seller's business;

16 (2) a purchase of regulated material by a manufacturer  
17 whose primary business is the manufacture of iron and steel  
18 products made from melting scrap iron and scrap steel; or

19 (3) the transport or hauling of recyclable materials  
20 to or from the metal recycling entity.

21 SECTION 3. Section 1956.032, Occupations Code, is amended  
22 by adding Subsection (a-1) to read as follows:

23 (a-1) A person attempting to sell regulated material to a  
24 metal recycling entity shall sign a written statement provided by  
25 the metal recycling entity certifying that the person has not  
26 previously been convicted of an offense:

27 (1) under Section 31.03, Penal Code, if the property

1 stolen was regulated material; or

2 (2) under another law of this state or of another  
3 jurisdiction involving the sale of regulated material.

4 SECTION 4. Section 1956.033(b), Occupations Code, is  
5 amended to read as follows:

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

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

8 (2) the name and address of the seller in possession of  
9 the regulated material purchased;

10 (3) the identifying number of the seller's personal  
11 identification document;

12 (4) a description made in accordance with the custom  
13 of the trade of the commodity type and quantity of regulated  
14 material purchased;

15 (5) the information required by Sections  
16 1956.032(a)(2) and (3) and (a-1);

17 (6) as applicable:

18 (A) the identifying number of the seller's air  
19 conditioning and refrigeration contractor license displayed under  
20 Section 1956.032(a)(4)(A);

21 (B) a copy of the seller's air conditioning and  
22 refrigeration technician registration displayed under Section  
23 1956.032(a)(4)(B);

24 (C) a copy of the documentation described by  
25 Section 1956.032(a)(4)(C); or

26 (D) a copy of the documentation described by  
27 Section 1956.032(a)(4)(D);

(7) if applicable, a copy of the documentation described by Section 1956.032(a)(5); and

(8) a copy of the documentation described by Section 1956.032(g).

SECTION 5. Section 1956.038, Occupations Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (b-1) to read as follows:

(a) A person may not, with the intent to deceive:

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

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

(A) that person's execution of a written statement required by Sections [Section] 1956.032(a)(3) and (a-1); or

(B) the entity's efforts to obtain the information required under Section 1956.033(b);

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

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

(b) A metal recycling entity may only ~~[not]~~ pay for a purchase of regulated material in the manner provided by Section 1956.0381 ~~[in cash if:]~~

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

5           ~~[(2) the entity has been prohibited by the department~~  
6 ~~from paying cash under Section 1956.036(e)].~~

7           (b-1) A metal recycling entity may not enter into more than  
8 one transaction for the purchase of regulated material from the  
9 same seller in a business day.

10          (c) A person may not sell or attempt to sell regulated  
11 material to a metal recycling entity if the person has been  
12 previously convicted of an offense:

13           (1) under Section 31.03, Penal Code, if the property  
14 stolen was regulated material; or

15           (2) under another law of this state or of another  
16 jurisdiction involving the sale of regulated material  
17 ~~[Notwithstanding Section 1956.003(a) or any other law, a county,~~  
18 ~~municipality, or other political subdivision may not adopt or~~  
19 ~~enforce a rule, charter, or ordinance or issue an order or impose~~  
20 ~~standards that limit the use of cash by a metal recycling entity in~~  
21 ~~a manner more restrictive than that provided by Subsection (b)].~~

22          SECTION 6. Subchapter A-3, Chapter 1956, Occupations Code,  
23 is amended by adding Sections 1956.0381 and 1956.041 to read as  
24 follows:

25          Sec. 1956.0381. PAYMENT BY METAL RECYCLING ENTITY. (a)  
26 Except as provided by Subsection (c), a metal recycling entity may  
27 only pay for a purchase of regulated material by:

- (1) check;
- (2) money order; or
- (3) direct deposit by electronic funds transfer.

(b) A metal recycling entity that pays for a purchase of regulated material by check or money order shall obtain a digital photograph or video recording that accurately depicts:

- (1) the seller's entire face; and
- (2) each type of regulated material purchased.

(c) For any sale of regulated material to a metal recycling entity in which the amount of the transaction is equal to or exceeds \$25, the metal recycling entity must pay the seller by mailing to the address located on the personal identification document provided by the seller under Section [1956.032](#):

- (1) a check or money order made payable to the seller;
- or
- (2) a notice to the seller stating the time after which the seller may pick up at the metal recycling entity a check or money order made payable to the seller.

Sec. 1956.041. ADMINISTRATIVE PENALTY. (a) The commission, after notice and an opportunity for a hearing, may impose an administrative penalty on a person who violates Section [1956.036](#).

(b) The amount of the administrative penalty may not exceed \$1,000. Each day a violation occurs or continues to occur is a separate violation for the purpose of imposing a penalty. In determining the amount of the administrative penalty, the commission shall consider:



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

3           (2) the economic harm caused by the violation;

4           (3) the history of previous violations;

5           (4) the amount necessary to deter a future violation;

6           (5) efforts to correct the violation; and

7           (6) any other matter that justice may require.

8           (c) The enforcement of the administrative penalty may be  
9 stayed during the time the order is under judicial review if the  
10 person pays the penalty to the clerk of the court or files a  
11 supersedeas bond with the court in the amount of the penalty. A  
12 person who cannot afford to pay the penalty or file the bond may  
13 stay the enforcement by filing an affidavit in the manner required  
14 by the Texas Rules of Civil Procedure for a party who cannot afford  
15 to file security for costs, subject to the right of the commission  
16 to contest the affidavit as provided by those rules.

17           (d) The attorney general may sue to collect the  
18 administrative penalty.

19           (e) A proceeding to impose an administrative penalty is  
20 considered to be a contested case under Chapter 2001, Government  
21 Code.

22           SECTION 7. The following provisions of the Occupations Code  
23 are repealed:

24           (1) Section 1956.036(e); and

25           (2) Section 1956.038(d).

26           SECTION 8. Section 1956.041, Occupations Code, as added by  
27 this Act, applies only to a violation of Section 1956.036,

1 Occupations Code, as amended by this Act, committed on or after the  
2 effective date of this Act. A violation committed before the  
3 effective date of this Act is governed by the law in effect on the  
4 date the violation was committed, and the former law is continued in  
5 effect for that purpose.

6 SECTION 9. This Act takes effect September 1, 2015.