

By: Johnson

H.B. No. 4090

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of metal recycling entities; imposing an administrative penalty; creating a criminal offense.

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

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

(6-a) "Explosive component" means any component of an explosive weapon containing or consisting of regulated material, including exploded or disassembled ammunition, munitions, shell casings, spin or fin stabilized projectiles, and shrapnel. The term does not include pellet ammunition, shotgun ammunition, or ammunition of .50 caliber or less that does not contain explosive powder.

(6-b) "Explosive weapon" means any explosive or incendiary device that is designed, made, or adapted for the purpose of inflicting serious bodily injury, death, or substantial property damage, or for the principal purpose of causing such a loud report as to cause undue public alarm or terror, including an explosive or incendiary bomb, grenade, rocket, or mine, or a device designed, made, or adapted for delivering or shooting an explosive or incendiary device or starting a fire in a time-delayed manner. The term includes exploded or unexploded ammunition, munition, blasting caps, anti-tank rounds, ordnances, or projectiles. The term does not include pellet ammunition, shotgun ammunition, or

1 ammunition of .50 caliber or less that does not contain explosive  
2 powder.

3 SECTION 2. Section 1956.015(a), Occupations Code, is  
4 amended to read as follows:

5 (a) The department shall establish a statewide electronic  
6 reporting system to track the sales of regulated metal reported to  
7 the department under Section 1956.036. The department shall use  
8 the system to track the sale or attempted sale of an explosive  
9 weapon or an explosive component reported to the department under  
10 Section 1956.036(f).

11 SECTION 3. Section 1956.036, Occupations Code, is amended  
12 by adding Subsection (f) to read as follows:

13 (f) A metal recycling entity shall report to the department  
14 by telephone, by e-mail, or through the department's Internet  
15 website each sale or attempted sale to the entity of an explosive  
16 weapon or explosive component as soon as possible after the sale or  
17 attempted sale, but not later than the close of business on the  
18 entity's first working day after the date of the sale or attempted  
19 sale.

20 SECTION 4. Section 1956.040, Occupations Code, is amended  
21 by adding Subsections (c-1), (c-2), (c-3), (c-4), (c-5), and (d-1)  
22 to read as follows:

23 (c-1) A person commits an offense if the person knowingly  
24 sells to a metal recycling entity:

25 (1) an explosive component; or

26 (2) an explosive weapon.

27 (c-2) A metal recycling entity commits an offense if the

1 entity knowingly buys:

2 (1) an explosive component; or

3 (2) an explosive weapon.

4 (c-3) Except as provided by Subsection (c-5), an offense  
5 under Subsection (c-1)(1) or (c-2)(1) is a Class A misdemeanor.

6 Except as provided by Subsection (c-5), an offense under Subsection  
7 (c-1)(2) or (c-2)(2) is a felony of the third degree.

8 (c-4) A metal recycling entity commits an offense if the  
9 entity knowingly stores or allows to be stored on the entity's  
10 premises an explosive component or explosive weapon. Except as  
11 provided by Subsection (c-5), an offense under this subsection is a  
12 Class A misdemeanor.

13 (c-5) An offense under Subsection (c-1), (c-2), or (c-4) is  
14 a felony of the second degree if it is shown at the trial of the  
15 offense that a person suffered death or serious bodily injury, as  
16 defined by Section 1.07, Penal Code, as a result of the detonation  
17 of an explosive component or explosive weapon.

18 (d-1) On conviction of an offense under Subsection (c-1),  
19 (c-2), or (c-4), the court may order the defendant to make  
20 restitution to:

21 (1) the state or a political subdivision of the state  
22 for the costs incurred by the state or subdivision for responding to  
23 an offense and any removal, cleaning, sanitizing, demolition,  
24 reconstruction, or other treatment required as a result of the  
25 offense; and

26 (2) the owner of any property damaged as a result of  
27 the offense.

1 SECTION 5. Subchapter A-3, Chapter 1956, Occupations Code,  
2 is amended by adding Section 1956.041 to read as follows:

3 Sec. 1956.041. ADMINISTRATIVE PENALTY. (a) The  
4 commission, after notice and an opportunity for a hearing, may  
5 impose an administrative penalty on a person who violates this  
6 subchapter or Subchapter A-2 or a rule or order of the commission  
7 under this chapter.

8 (b) The amount of the administrative penalty may not exceed  
9 \$1,000 for each violation. The aggregate penalty for multiple  
10 violations may not exceed \$10,000. Each day a violation occurs or  
11 continues to occur is a separate violation for the purpose of  
12 imposing a penalty. In determining the amount of the  
13 administrative penalty, the commission shall consider:

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

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

17 (3) the history of previous violations;

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

19 (5) efforts to correct the violation; and

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

21 (c) The commission by rule shall adopt a standardized  
22 penalty schedule for a violation based on the criteria listed in  
23 Subsection (b).

24 (d) The enforcement of the administrative penalty may be  
25 stayed during the time the order is under judicial review if the  
26 person pays the penalty to the clerk of the court or files a  
27 supersedeas bond with the court in the amount of the penalty. A

1 person who cannot afford to pay the penalty or file the bond may  
2 stay the enforcement by filing an affidavit in the manner required  
3 by the Texas Rules of Civil Procedure for a party who cannot afford  
4 to file security for costs, subject to the right of the commission  
5 to contest the affidavit as provided by those rules.

6 (e) The attorney general may sue to collect the  
7 administrative penalty.

8 (f) A proceeding to impose an administrative penalty is  
9 considered to be a contested case under Chapter 2001, Government  
10 Code.

11 (g) An administrative penalty collected under this section  
12 shall be deposited in a special account in the general revenue fund  
13 and may be appropriated only to the department.

14 SECTION 6. Section 1956.041, Occupations Code, as added by  
15 this Act, applies only to a violation committed on or after the  
16 effective date of this Act. A violation committed before the  
17 effective date of this Act is governed by the law in effect on the  
18 date the violation was committed, and the former law is continued in  
19 effect for that purpose.

20 SECTION 7. This Act takes effect September 1, 2015.