

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Smith, Morrison, Cook, Turner of Harris,  
Phelan, et al.

H.B. No. 2187

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of metal recycling entities; imposing an administrative penalty; amending provisions subject to a criminal 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

1 defined by Section 51.002, Utilities Code;

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

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

6 (C) copper pipe or copper tubing.

7 (6-a) "Lead material" means:

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

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

12 (9) "Regulated material" means:

13 (A) aluminum material;

14 (B) bronze material;

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

16 (D) lead material; or

17 (E) regulated metal.

18 (10) "Regulated metal" means:

19 (A) manhole covers;

20 (B) guardrails;

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

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

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

27 (F) unused rebar;

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

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

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

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

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

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

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

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

SECTION 3. Section 1956.017(b), Occupations Code, is amended to read as follows:

(b) The advisory committee consists of 15 ~~12~~ members appointed by the director as follows:

(1) one representative of the department;

(2) two representatives of local law enforcement

1 agencies located in different municipalities, each with a  
2 population of 500,000 or more;

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

6 (4) one representative of a local law enforcement  
7 agency located in a municipality with a population of less than  
8 200,000;

9 (5) five [~~four~~] representatives of metal recycling  
10 entities; [~~and~~]

11 (6) two members who represent industries that are  
12 impacted by theft of regulated material;

13 (7) one sheriff of a county with a population of  
14 500,000 or more; and

15 (8) one sheriff of a county with a population of less  
16 than 500,000.

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

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

20 (1) the place, [~~and~~] date, and amount of the purchase;

21 (2) the name and address of the seller in possession of  
22 the regulated material purchased;

23 (3) the identifying number of the seller's personal  
24 identification document;

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

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

(6) as applicable:

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

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

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

(D) a copy of the documentation described by 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); and

(9) a copy of the documentation described by Section 1956.0381(b).

SECTION 5. Section 1956.035(a), Occupations Code, is amended to read as follows:

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

(1) a record required by Section 1956.033;

1           (2) a digital photograph or video recording required  
2 by Section 1956.0331; ~~[or]~~

3           (3) regulated material in the entity's possession; or  
4           (4) an application for a cash transaction card  
5 submitted to the entity.

6           SECTION 6. Section 1956.036, Occupations Code, is amended  
7 by amending Subsection (a) and adding Subsection (d-1) to read as  
8 follows:

9           (a) Except as provided by Subsections (b) and (d), not later  
10 than the close of business on a metal recycling entity's second  
11 working day after the date of the purchase or other acquisition of  
12 material for which a record is required under Section 1956.033, the  
13 entity shall send an electronic transaction report to the  
14 department via the department's Internet website. Except as  
15 provided by Subsection (d-1), the ~~[The]~~ report must contain the  
16 information required to be recorded under Section 1956.033.

17           (d-1) A metal recycling entity is not required to include in  
18 a transaction report required by this section:

19                   (1) the amount of the purchase; or  
20                   (2) a copy of the documentation described by Section  
21 1956.0381(b).

22           SECTION 7. Section 1956.038, Occupations Code, is amended  
23 by adding Subsection (a-1) to read as follows:

24           (a-1) A metal recycling entity may only pay for a purchase  
25 of regulated material in the manner provided by Section 1956.0381.

26           SECTION 8. Subchapter A-3, Chapter 1956, Occupations Code,  
27 is amended by adding Sections 1956.0381, 1956.0382, and 1956.041 to

1 read as follows:

2 Sec. 1956.0381. PAYMENT BY METAL RECYCLING ENTITY. (a) A  
3 metal recycling entity may pay for a purchase of regulated material  
4 only by:

5 (1) cash if the seller has been issued a cash  
6 transaction card under Section 1956.0382, unless the metal  
7 recycling entity is prohibited from paying in cash under Section  
8 1956.038(b);

9 (2) debit card if the seller has been issued a cash  
10 transaction card under Section 1956.0382;

11 (3) check;

12 (4) money order; or

13 (5) direct deposit by electronic funds transfer.

14 (b) A metal recycling entity shall include in the record of  
15 purchase required by Section 1956.033, as applicable, a copy of:

16 (1) the seller's cash transaction card or approved  
17 application for a cash transaction card if the entity paid for a  
18 purchase of regulated material by cash;

19 (2) the debit card receipt and the seller's cash  
20 transaction card or approved application for a cash transaction  
21 card if the entity paid for a purchase of regulated material by  
22 debit card; or

23 (3) the check if the entity paid for a purchase of  
24 regulated material by check.

25 Sec. 1956.0382. CASH TRANSACTION CARD. (a) A metal  
26 recycling entity may pay a seller for a purchase of regulated  
27 material by cash or debit card only if, before the entity issues



1 payment:

2 (1) the seller presents to the entity a valid cash  
3 transaction card issued by the entity or by another metal recycling  
4 entity located in this state; or

5 (2) the entity obtains a copy of the seller's cash  
6 transaction card from the records of the entity.

7 (b) An application for the issuance or renewal of a cash  
8 transaction card must include:

9 (1) the name, address, sex, and birth date of the  
10 applicant;

11 (2) the identification number from the applicant's  
12 personal identification document;

13 (3) a digital photograph that accurately depicts the  
14 applicant's entire face taken at the time the applicant completes  
15 the application;

16 (4) a clear and legible thumbprint of the applicant;  
17 and

18 (5) the signature of the applicant.

19 (c) On receipt of an application that contains the  
20 information required by Subsection (b), a metal recycling entity  
21 may approve the application and issue a cash transaction card to the  
22 applicant. The individual approving the application on behalf of  
23 the metal recycling entity must sign the application.

24 (d) A cash transaction card must include:

25 (1) the name and address of the seller;

26 (2) a digital photograph of the seller that accurately  
27 depicts the seller's entire face;

1           (3) an identifying number that is unique to the  
2 individual card; and

3           (4) the expiration date of the card, which may not be  
4 later than two years from the date the card was issued or renewed.

5           (e) A metal recycling entity must mail the issued cash  
6 transaction card to the address provided on the application for the  
7 card.

8           (f) A cash transaction card issued under this section is not  
9 transferable.

10          (g) A metal recycling entity shall preserve:

11           (1) each application for a cash transaction card the  
12 entity receives until the second anniversary of the date the  
13 application was received; and

14           (2) a copy of each cash transaction card the entity  
15 issues or renews until the second anniversary of the date the card  
16 was issued or renewed.

17          Sec. 1956.041. ADMINISTRATIVE PENALTY. (a) The  
18 commission, after notice and an opportunity for a hearing, may  
19 impose an administrative penalty on a person who violates Section  
20 1956.036.

21          (b) The amount of the administrative penalty may not exceed  
22 \$1,000. Each day a violation occurs or continues to occur is a  
23 separate violation for the purpose of imposing a penalty. In  
24 determining the amount of the administrative penalty, the  
25 commission shall consider:

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

- (2) the economic harm caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts to correct the violation; and
- (6) any other matter that justice may require.

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

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

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

SECTION 9. Section 1956.041, Occupations Code, as added by this Act, applies only to a violation of Section 1956.036, Occupations Code, as amended by this Act, committed on or after the effective date of this Act. A violation committed before the effective date of this Act is governed by the law in effect on the date the violation was committed, and the former law is continued in effect for that purpose.

SECTION 10. The change in law made by this Act applies only

1 to an offense committed on or after the effective date of this Act.  
2 An offense committed before the effective date of this Act is  
3 governed by the law in effect on the date the offense was committed,  
4 and the former law is continued in effect for that purpose. For  
5 purposes of this section, an offense was committed before the  
6 effective date of this Act if any element of the offense occurred  
7 before that date.

8       SECTION 11. As soon as practicable after the effective date  
9 of this Act, the public safety director of the Department of Public  
10 Safety of the State of Texas shall appoint the three additional  
11 members to the advisory committee as required by Section 1956.017,  
12 Occupations Code, as amended by this Act.

13       SECTION 12. During the calendar year ending December 31,  
14 2023, the advisory committee established under Section 1956.017,  
15 Occupations Code, as amended by this Act, shall study the effects of  
16 the cash transaction card provisions of Section 1956.0382,  
17 Occupations Code, as added by this Act, and report the committee's  
18 findings and recommendations to the legislature before December 1,  
19 2024.

20       SECTION 13. This Act takes effect September 1, 2015.

ADOPTED

MAY 22 2015

*Letay Law*  
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: *Ryan W. H.*

Amend H.B. No. 2187 (senate committee report) as follows:

(1) In the recital to SECTION 1 of the bill (page 1, lines 28 and 29), strike "Subdivision (6-a)" and substitute "Subdivisions (6-a), (6-b), and (6-c)".

(2) In SECTION 1 of the bill, in amended Section 1956.001, Occupations Code (page 1, between lines 51 and 52), insert the following:

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

(3) In SECTION 1 of the bill, in amended Section 1956.001, Occupations Code (page 1, line 52), strike "(6-a)" and substitute

1 "(6-c)".

2 (4) In the recital to SECTION 6 of the bill (page 3, line  
3 57), strike "Subsection (d-1)" and substitute "Subsections (d-1)  
4 and (f)".

5 (5) In SECTION 6 of the bill, in amended Section 1956.036,  
6 Occupations Code (page 4, between lines 2 and 3), insert the  
7 following:

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

15 (6) Add the following appropriately numbered SECTIONS to  
16 the bill and renumber subsequent SECTIONS of the bill accordingly:

17 SECTION \_\_\_\_\_. Section 1956.015(a), Occupations Code, is  
18 amended to read as follows:

19 (a) The department shall establish a statewide electronic  
20 reporting system to track the sales of regulated metal reported to  
21 the department under Section 1956.036. The department shall use  
22 the system to track the sale or attempted sale of an explosive  
23 weapon or an explosive component reported to the department under  
24 Section 1956.036(f).

25 SECTION \_\_\_\_\_. Section 1956.040, Occupations Code, is  
26 amended by adding Subsections (c-1), (c-2), (c-3), (c-4), (c-5),  
27 and (d-1) to read as follows:

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

30 (1) an explosive component; or

31 (2) an explosive weapon.

1        (c-2) A metal recycling entity commits an offense if the  
2 entity knowingly buys:

3            (1) an explosive component; or

4            (2) an explosive weapon.

5        (c-3) Except as provided by Subsection (c-5), an offense  
6 under Subsection (c-1)(1) or (c-2)(1) is a Class A misdemeanor.  
7 Except as provided by Subsection (c-5), an offense under Subsection  
8 (c-1)(2) or (c-2)(2) is a felony of the third degree.

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

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

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

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

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

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**May 24, 2015**

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

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2187** by Smith (Relating to the regulation of metal recycling entities; imposing an administrative penalty; amending provisions subject to a criminal penalty.), **As Passed 2nd House**

<b>No significant fiscal implication to the State is anticipated.</b>
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The bill would amend the Occupations Code to add additional regulations on certain metals bought by metal recyclers. The bill would also authorize the Department of Public Safety to assess administrative penalties against persons or entities who violate these regulations. It is assumed any costs associated with implementing the provisions of the bill could be absorbed within current resources. The bill would take effect September 1, 2015.

**Local Government Impact**

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

**Source Agencies:** 302 Office of the Attorney General, 405 Department of Public Safety, 360 State Office of Administrative Hearings

**LBB Staff:** UP, JAW, SZ, AI, TBo, ER



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**May 18, 2015**

**TO:** Honorable Troy Fraser, Chair, Senate Committee on Natural Resources & Economic Development

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2187** by Smith (Relating to the regulation of metal recycling entities; imposing an administrative penalty; amending provisions subject to a criminal penalty.), **As Engrossed**

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**Source Agencies:** 302 Office of the Attorney General, 360 State Office of Administrative Hearings, 405 Department of Public Safety

**LBB Staff:** UP, JAW, SZ, AI, TBo, ER

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**April 15, 2015**

**TO:** Honorable Geanie Morrison, Chair, House Committee on Environmental Regulation

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2187** by Smith (relating to the regulation of metal recycling entities; imposing an administrative penalty; amending provisions subject to a criminal penalty.), **Committee Report 1st House, Substituted**

<b>No significant fiscal implication to the State is anticipated.</b>
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**Source Agencies:** 302 Office of the Attorney General, 360 State Office of Administrative Hearings, 405 Department of Public Safety

**LBB Staff:** UP, JAW, SZ, AI, TBo, ER

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**April 5, 2015**

**TO:** Honorable Geanie Morrison, Chair, House Committee on Environmental Regulation

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2187** by Smith (Relating to the regulation of metal recycling entities; imposing an administrative penalty.), **As Introduced**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
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**Source Agencies:** 302 Office of the Attorney General, 360 State Office of Administrative Hearings, 405 Department of Public Safety

**LBB Staff:** UP, SZ, AI, JAW, TBo, ER