

BILL ANALYSIS

C.S.S.B. 570
By: Rodríguez
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that illegal tire disposal has been a problem in Texas for years and that improperly disposed tires could lead to public health and safety risks. C.S.S.B. 570 seeks to provide for better regulation of the retention, storage, transportation, disposal, processing, and reuse of used or scrap tires.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTIONS 2 and 3 of this bill.

ANALYSIS

C.S.S.B. 570 amends the Health and Safety Code to require a used or scrap tire generator who stores used or scrap tires outdoors on its business premises to store the used or scrap tires in a locked, secured, or contained manner that protects the tires from theft. The bill requires the Texas Commission on Environmental Quality (TCEQ) to adopt rules to require a person who uses more than 1,000 used or scrap tires in a construction project to obtain approval from TCEQ before the use of the tires in the project. The bill requires TCEQ, in evaluating a project for approval under applicable rules, to consider potential effects on human health and the environment.

C.S.S.B. 570 authorizes a customer to retain a scrap or used tire removed from the customer's vehicle during the purchase of a tire. The bill requires a retailer whose customer retains a scrap tire to keep a record of the customer's retention of the tire in accordance with TCEQ rules at least until the third anniversary of the date the customer retained the tire and defines "retailer" as a person who is engaged in the business of selling or otherwise placing tires in the stream of commerce for use on a vehicle, trailer, or piece of equipment. The bill requires a retailer who takes possession of a scrap tire from a customer during a transaction to store or dispose of the scrap tire according to local and state laws. The bill requires a retailer to post a sign in a location readily visible to the customer that specifies the requirements for the disposal of scrap and used tires. The bill requires TCEQ to develop the language and specifications for the sign and make the language and specifications available on the TCEQ website. The bill defines "used tire" as a tire that has been used as a tire on a vehicle, trailer, or piece of equipment; has tire tread at least one-sixteenth inch deep; can still be used for its original intended purpose; and meets the visual and tread depth requirements for used tires established by the Department of Public Safety. The bill defines "scrap tire" by reference as a tire that can no longer be used for its original intended purpose and excludes from the term a tire in or on a vehicle that has been crushed or that is being

transported to a registered metal recycling entity or a licensed used automotive parts recycler and a tire that is mounted on a metal wheel that is intended to be recycled.

C.S.S.B. 570 authorizes a generator to contract for the transportation of used or scrap tires only with a transporter who is registered and has filed evidence of financial assurance as provided by the bill. The bill defines "generator" as a fleet operator, an automotive dismantler, a tire recapper or retreader, or a retailer, wholesaler, or manufacturer of whole new or used tires and excludes from the term a scrap tire energy recovery facility and a scrap tire recycling facility. The bill makes a generator who contracts for the transportation of used or scrap tires with a transporter the generator knows to be unregistered jointly and severally liable for any applicable civil penalty imposed on the transporter for the illegal disposal of the tires and makes such a generator criminally responsible, under Penal Code provisions relating to criminal responsibility for the conduct of another, for an offense involving the tires committed by the transporter under provisions relating to illegal dumping. The bill sets the minimum amount of a civil penalty for a violation of the bill's provisions relating to used or scrap tire generators at \$1,000 a day for each violation. The bill authorizes a separate penalty to be imposed for each day a violation occurs.

C.S.S.B. 570 requires a person to register annually with TCEQ if the person is a transporter or is a tire processor that is not required to register as a used or scrap tire storage site, but the bill does not require a person to register until September 1, 2018. The bill defines "transporter" for purposes of these provisions, as a person who collects used or scrap tires from another person for the purpose of removal to a used tire dealer, scrap tire processor, end user, or disposal facility and exempts certain persons from the registration requirement. The bill requires a transporter or tire processor who is required to register with TCEQ to provide financial assurance by filing with TCEQ a surety bond obtained from a surety company authorized to transact business in Texas, evidence of an established trust account, or an irrevocable letter of credit. The bill requires the bond, trust account, or irrevocable letter of credit to be in favor of the state and, for a transporter, to be in an amount of \$25,000 or more and, for a tire processor, to be in an amount adequate to ensure proper cleanup and closure of the site. The bill requires money that TCEQ receives from a bond, trust account, or irrevocable letter of credit obtained by a transporter to be used for the cleanup of unauthorized tire sites where the transporter has delivered tires.

C.S.S.B. 570 requires TCEQ to require a person who transports used or scrap tires 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 TCEQ. The bill expressly does not require a political subdivision or a person who contracts with a political subdivision to comply with the records and manifest requirement regarding the transportation of used or scrap tires directly from a roadway maintained by the political subdivision or from an easement maintained by the political subdivision that is adjacent to a roadway. The bill requires TCEQ to require a transporter to submit to TCEQ in an electronic format an annual report on the records maintained by the transporter and makes a transporter who fails to submit the annual report ineligible to renew the transporter's registration. The bill requires TCEQ to annually issue a registration insignia to each transporter, requires the transporter to display the insignia on each vehicle used to transport tires under the registration, and sets the insignia to expire annually on a date specified by TCEQ. The bill authorizes TCEQ to adopt rules for issuing duplicate and multiple insignia.

C.S.S.B. 570 amends the Water Code to create an offense for a person who recklessly violates provisions relating to the storage and disposal of used or scrap tires and the certain reuse of scrap tires, as amended by the bill; the bill's provisions relating to used or scrap tire generators; the bill's provisions relating to used or scrap tire transporters and certain tire processors and the manifest requirement; or a rule adopted under or the terms of an order, permit, or exception granted or issued under the Solid Waste Disposal Act relating to used or scrap tires. The bill sets the punishment for an individual as a fine of not less than \$1,000 or more than \$50,000, confinement for a period not to exceed one year, or both the fine and confinement and sets the punishment for a person other than an individual as a fine of not less than \$1,000 or more than \$100,000.

C.S.S.B. 570 creates an offense for a person who intentionally or knowingly violates provisions relating to the storage and disposal of used or scrap tires and the certain reuse of scrap tires, as amended by the bill; the bill's provisions relating to used or scrap tire generators; the bill's provisions relating to used or scrap tire transporters and certain tire processors and the manifest requirement; or a rule adopted under or the terms of an order, permit, or exception granted or issued under the Solid Waste Disposal Act relating to used or scrap tires. The bill sets the punishment for an individual as a fine of not less than \$1,000 or more than \$100,000, confinement for a period not to exceed two years, or both the fine and confinement and sets the punishment for a person other than an individual as a fine of not less than \$1,000 or more than \$250,000.

C.S.S.B. 570 makes certain statutory provisions relating to the grounds for revocation or suspension of a license, certificate, or registration applicable to a registration issued by TCEQ for a transporter or tire processor under the applicable bill provisions.

C.S.S.B. 570 requires TCEQ, not later than March 1, 2018, to adopt rules necessary to implement the bill.

C.S.S.B. 570 repeals Sections 361.112(g) and (k), Health and Safety Code.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 570 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. The heading to Section 361.112, Health and Safety Code, is amended.

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

SECTION 3. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Sections 361.1121 and 361.1122 to read as follows:

Sec. 361.1121. USED OR SCRAP TIRE GENERATORS. (a) In this section:

(1) "Generator" means a fleet operator, an automotive dismantler, a tire recapper or retreader, or a retailer, wholesaler, or manufacturer of whole new or used tires. The term does not include a scrap tire energy recovery facility or a scrap tire recycling facility.

(2) "Retailer" means a person who is

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as engrossed version.

SECTION 2. Same as engrossed version.

SECTION 3. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Sections 361.1121 and 361.1122 to read as follows:

Sec. 361.1121. USED OR SCRAP TIRE GENERATORS. (a) In this section:

(1) "Generator" means a fleet operator, an automotive dismantler, a tire recapper or retreader, or a retailer, wholesaler, or manufacturer of whole new or used tires. The term does not include a scrap tire energy recovery facility or a scrap tire recycling facility.

(2) "Retailer" means a person who is

engaged in the business of selling or otherwise placing tires in the stream of commerce for use on a vehicle, trailer, or piece of equipment.

(3) "Scrap tire" has the meaning assigned by Section 361.112. The term does not include a tire:

(A) in or on a vehicle that:

(i) has been crushed; or

(ii) is being transported to a registered metal recycling entity or a licensed used automotive parts recycler; or

(B) that is mounted on a metal wheel that is intended to be recycled.

(4) "Used tire" means a tire that:

(A) has been used as a tire on a vehicle, trailer, or piece of equipment;

(B) has tire tread at least one-sixteenth inch deep;

(C) can still be used for its original intended purpose; and

(D) meets the visual and tread depth requirements for used tires established by the Department of Public Safety.

(b) A customer may retain a scrap or used tire removed from the customer's vehicle during the purchase of a tire. A retailer whose customer retains a scrap tire shall keep a record of the return in accordance with commission rules at least until the third anniversary of the date the customer returned the tire.

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

(d) A retailer shall post a sign in a location readily visible to the customer that specifies the requirements for the disposal of scrap and used tires.

(e) The commission shall develop the language and specifications for the sign described by Subsection (d) and make the language and specifications available on the commission's Internet website.

(f) A generator may contract for the transportation of used or scrap tires only with a transporter who:

(1) is registered as described by Section 361.1122(b); and

(2) has filed evidence of financial assurance according to Sections 361.1122(d) and (e).

(g) A generator who contracts for the transportation of used or scrap tires with a

engaged in the business of selling or otherwise placing tires in the stream of commerce for use on a vehicle, trailer, or piece of equipment.

(3) "Scrap tire" has the meaning assigned by Section 361.112. The term does not include a tire:

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(C) can still be used for its original intended purpose; and

(D) meets the visual and tread depth requirements for used tires established by the Department of Public Safety.

(b) A customer may retain a scrap or used tire removed from the customer's vehicle during the purchase of a tire. A retailer whose customer retains a scrap tire shall keep a record of the customer's retention of the tire in accordance with commission rules at least until the third anniversary of the date the customer retained the tire.

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

(d) A retailer shall post a sign in a location readily visible to the customer that specifies the requirements for the disposal of scrap and used tires.

(e) The commission shall develop the language and specifications for the sign described by Subsection (d) and make the language and specifications available on the commission's Internet website.

(f) A generator may contract for the transportation of used or scrap tires only with a transporter who:

(1) is registered as described by Section 361.1122(b); and

(2) has filed evidence of financial assurance according to Sections 361.1122(d) and (e).

(g) A generator who contracts for the transportation of used or scrap tires with a

transporter the generator knows to be unregistered is:

(1) jointly and severally liable for any civil penalty imposed on the transporter under Subchapter D, Chapter 7, Water Code, for the illegal disposal of the tires; and

(2) criminally responsible, under Chapter 7, Penal Code, for an offense involving the tires under Section 365.012 of this code committed by the transporter.

(h) Notwithstanding Sections 7.102 and 7.103, Water Code, the amount of a civil penalty for a violation of this section may not be less than \$1,000 a day for each violation. A separate penalty may be imposed for each day a violation occurs.

Sec. 361.1122. USED OR SCRAP TIRE TRANSPORTERS AND CERTAIN TIRE PROCESSORS; MANIFEST REQUIREMENT. (a) In this section:

(1) "Scrap tire" and "used tire" have the meanings assigned by Section 361.1121.

(2) "Transporter" means a person who collects used or scrap tires from another person for the purpose of removal to a used tire dealer, scrap tire processor, end user, or disposal facility.

(b) Except as provided by Subsection (c), a person shall register annually with the commission if the person is:

(1) a transporter; or

(2) a tire processor that is not required to register as a storage site under Section 361.112.

(c) The following persons are not required to register under this section:

(1) a person who ships used or defective tires back to the manufacturer or the manufacturer's representative for adjustment, provided that the person retains, until the third anniversary of the shipment date, written records of the shipments indicating the date of shipment, the destination, and the number of tires in each shipment and makes those records available to the commission on request;

(2) an on-site sewage facility installer who is registered with the commission and who transports used or scrap tires or tire pieces for construction of an on-site sewage disposal system, provided that the installer complies with the commission's manifest and recordkeeping requirements;

(3) a retreader who hauls tires from customers for the purpose of retreading the

transporter the generator knows to be unregistered is:

(1) jointly and severally liable for any civil penalty imposed on the transporter under Subchapter D, Chapter 7, Water Code, for the illegal disposal of the tires; and

(2) criminally responsible, under Chapter 7, Penal Code, for an offense involving the tires under Section 365.012 of this code committed by the transporter.

(h) Notwithstanding Sections 7.102 and 7.103, Water Code, the amount of a civil penalty for a violation of this section may not be less than \$1,000 a day for each violation. A separate penalty may be imposed for each day a violation occurs.

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(2) an on-site sewage facility installer who is registered with the commission and who transports used or scrap tires or tire pieces for construction of an on-site sewage disposal system, provided that the installer complies with the commission's manifest and recordkeeping requirements;

(3) a retreader who hauls tires from customers for the purpose of retreading the

tires or who returns tires to customers after retreading or recapping, provided that the retreader does not haul tires to an authorized facility for used or scrap tire collection;

(4) a person who owns or operates a truck for municipal solid waste collection or commercial route collection and handles incidental loads of used or scrap tires or tire pieces as part of normal household or commercial collection activities;

(5) a municipality, county, or other governmental entity that owns or operates a transport vehicle used to transport used or scrap tires to an authorized facility or to a facility used by a governmental entity to collect used or scrap tires, provided that each load of used or scrap tires is manifested as required by the commission;

(6) a generator, as that term is defined in Section 361.1121, transporting the generator's used or scrap tires:

(A) between business locations owned or controlled by the generator; or

(B) to a facility authorized by the commission to receive used or scrap tires;

(7) a person transporting five or fewer used or scrap tires; and

(8) a person exempt from registration requirements under commission rules.

(d) A transporter or tire processor who is required to register with the commission shall provide financial assurance by filing with the commission:

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

(2) evidence of an established trust account;
or

(3) an irrevocable letter of credit.

(e) The bond, trust account, or irrevocable letter of credit described by Subsection (d) must be in favor of the state and:

(1) for a transporter, in an amount of \$25,000 or more; and

(2) for a tire processor, in an amount adequate to ensure proper cleanup and closure of the site.

(f) Money that the commission receives from a bond, trust account, or irrevocable letter of credit obtained by a transporter to meet the requirements of Subsections (d) and (e) must be used for the cleanup of unauthorized tire sites where the transporter has delivered tires.

(g) The commission shall require a person who transports used or scrap tires to

tires or who returns tires to customers after retreading or recapping, provided that the retreader does not haul tires to an authorized facility for used or scrap tire collection;

(4) a person who owns or operates a truck for municipal solid waste collection or commercial route collection and handles incidental loads of used or scrap tires or tire pieces as part of normal household or commercial collection activities;

(5) a municipality, county, or other governmental entity that owns or operates a transport vehicle used to transport used or scrap tires to an authorized facility or to a facility used by a governmental entity to collect used or scrap tires, provided that each load of used or scrap tires is manifested as required by the commission;

(6) a generator, as that term is defined in Section 361.1121, transporting the generator's used or scrap tires:

(A) between business locations owned or controlled by the generator; or

(B) to a facility authorized by the commission to receive used or scrap tires;

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(1) for a transporter, in an amount of \$25,000 or more; and

(2) for a tire processor, in an amount adequate to ensure proper cleanup and closure of the site.

(f) Money that the commission receives from a bond, trust account, or irrevocable letter of credit obtained by a transporter to meet the requirements of Subsections (d) and (e) must be used for the cleanup of unauthorized tire sites where the transporter has delivered tires.

(g) The commission shall require a person who transports used or scrap tires 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.

(h) The commission shall require a transporter to submit to the commission in an electronic format an annual report on the records maintained by the transporter under this subsection. A transporter who fails to submit an annual report under this subsection is not eligible to renew the transporter's registration.

(i) The commission shall annually issue a registration insignia to each transporter. The transporter shall display the insignia on each vehicle used to transport tires under the registration. The insignia expires annually on a date specified by the commission. The commission may adopt rules for issuing duplicate and multiple insignia.

SECTION 4. Subchapter E, Chapter 7, Water Code, is amended.

SECTION 5. Section 7.303(a), Water Code, is amended.

SECTION 6. Sections 361.112(g) and (k), Health and Safety Code, are repealed.

SECTION 7. Not later than March 1, 2018, the Texas Commission on Environmental Quality shall adopt rules necessary to implement the changes in law made by this Act.

SECTION 8. Notwithstanding Section 361.1122, Health and Safety Code, as added by this Act, a person is not required to register under that section until September 1, 2018.

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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. A political subdivision or a person who contracts with a political subdivision is not required to comply with this subsection regarding the transportation of used or scrap tires directly from:

(1) a roadway maintained by the political subdivision; or

(2) an easement maintained by the political subdivision that is adjacent to a roadway.

(h) The commission shall require a transporter to submit to the commission in an electronic format an annual report on the records maintained by the transporter under this subsection. A transporter who fails to submit an annual report under this subsection is not eligible to renew the transporter's registration.

(i) The commission shall annually issue a registration insignia to each transporter. The transporter shall display the insignia on each vehicle used to transport tires under the registration. The insignia expires annually on a date specified by the commission. The commission may adopt rules for issuing duplicate and multiple insignia.

SECTION 4. Same as engrossed version.

SECTION 5. Same as engrossed version.

SECTION 6. Same as engrossed version.

SECTION 7. Same as engrossed version.

SECTION 8. Same as engrossed version.

17.122.1094

SECTION 9. This Act takes effect
September 1, 2017.

SECTION 9. Same as engrossed version.