

BILL ANALYSIS

Senate Research Center
85R4833 SLB-D

S.B. 570
By: Rodríguez
Natural Resources & Economic Development
3/10/2017
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Illegal tire disposal has been a rampant problem in Texas for years. More than 36 million tires are discarded each year in Texas, roughly one and a half tires for every person residing in the state. If not transported and disposed of properly, these tires can lead to dangerous outcomes including costly, environmentally hazardous tire piles and increased fire, pollution, and public health and safety risks, such as increases in vector-borne illnesses like Zika, West Nile, and dengue fever.

Illegal dumping is often a result of unlicensed scavengers culling and stealing used tires from generators, then dumping their rejects. These tires are transported illegally and dumped, costing the state millions of dollars in cleanup.

S.B. 570 remedies these issues by outlining safe methods by which tires may be disposed of and assuring proper oversight and enforcement from the Texas Commission on Environmental Quality.

As proposed, S.B. 570 amends current law relating to the regulation of the retention, storage, transportation, and disposal of used or scrap tires; providing a civil penalty; creating a criminal offense.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 3 (Section 361.1122, Health and Safety Code) and SECTION 7 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Section 361.112, Health and Safety Code, to read as follows:

Sec. 361.112. STORAGE AND DISPOSAL OF USED OR SCRAP TIRES.

SECTION 2. Amends Section 361.112, Health and Safety Code, by adding Subsection (n), to require a used or scrap tire generator, including a tire dealer, junkyard, or fleet operator, who stores used or scrap tires outdoors on its business premises to store the used or scrap tires in a secure manner that locks the tires during nonbusiness hours.

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

Sec. 361.1121. DISPOSITION OF TIRE REMOVED FROM VEHICLE DURING PURCHASE OF TIRE. (a) Defines "scrap tire," "seller," and "used tire."

(b) Prohibits a customer from retaining a scrap tire removed from the customer's vehicle during the purchase of a tire from a seller.

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

(d) Authorizes a customer to retain a used tire removed from the customer's vehicle during the purchase of a tire only if the customer certifies on a form prescribed by the Texas Commission on Environmental Quality (TCEQ) that the customer assumes liability for the tire disposal.

(e) Requires a seller to maintain, in a manner accessible to local law enforcement agencies and TCEQ, a record of a customer's retention of a used tire until at least the third anniversary of the date the tire was removed.

(f) Requires TCEQ to develop the form described by Subsection (d) and make that form available on TCEQ's Internet website.

(g) Authorizes a seller to contract for the transportation of used or scrap tires only with a transporter or tire processor who is registered as described by Section 361.1122(b) and has filed evidence of financial assurance according to Sections 361.1122(d) and (e).

(h) Provides that a seller who contracts for the transportation of used or scrap tires with a transporter the seller knows to be unregistered is jointly and severally liable for any civil penalty imposed on the transporter for the illegal disposal of the tires under Subchapter D (Civil Penalties), Chapter 7 (Enforcement), Water Code, and criminally responsible, under Chapter 7 (Criminal Responsibility For Conduct of Another), Penal Code, for an offense involving the tires committed by the transporter under Section 365.012 (Illegal Dumping; Discarding Lighted Materials; Criminal Penalties).

(i) Prohibits the amount of a civil penalty for a violation of this section, notwithstanding Sections 7.102 (Maximum Penalty) and 7.103 (Continuing Violations), Water Code, from being less than \$1,000 a day for each violation. Authorizes a separate penalty to be imposed for each day a violation occurs.

(j) Authorizes the attorney general or the appropriate district or county attorney to bring an action against a 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.

Sec. 361.1122. USED OR SCRAP TIRE TRANSPORTERS AND CERTAIN TIRE PROCESSORS. (a) Defines "scrap tire," "used tire," and "transporter."

(b) Requires a person, except as provided by Subsection (c), to register annually with TCEQ if the person is a transporter or a tire processor that is not required to register as a storage site under Section 361.112.

(c) Provides that the following persons are not required to register:

(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, certain written records and makes those records available to TCEQ on request;

(2) an on-site sewage facility installer who is registered with TCEQ 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 TCEQ'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 certain facilities 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 TCEQ;

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

(7) a person exempt from registration requirements under TCEQ rules.

(d) 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 this state, evidence of an established trust account, or an irrevocable letter of credit.

(e) Requires the bond, trust account, or irrevocable letter of credit to be in favor of the state and, for a transporter, in an amount of \$25,000 or more and, for a tire processor, in an amount adequate to ensure proper cleanup and closure of the site.

(f) Requires money that TCEQ receives from a bond, trust account, or letter of credit obtained by a transporter to be used for the cleanup of abandoned tire storage sites.

(g) Requires TCEQ to require a 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 TCEQ. Requires TCEQ to require a transporter to submit to TCEQ in an electronic format an annual report on the records maintained by the transporter.

(h) Provides that a transporter who fails to submit an annual report is not eligible to renew the transporter's registration.

(i) 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. Provides that the insignia expires on the first anniversary of the date of issuance. Authorizes TCEQ to adopt rules for issuing duplicate and multiple insignia.

(j) Authorizes a county, by order, to require a transporter to register with the county. Requires that adopted registration requirements be compatible with and not less stringent than rules adopted by TCEQ.

SECTION 4. Amends Subchapter E, Section 7, Water Code, by adding Section 7.1855, as follows:

Sec. 7.1855. VIOLATIONS RELATING TO USED OR SCRAP TIRES. (a) Provides that a person commits an offense if the person recklessly violates Section 361.1121, Health and Safety Code. Provides that an offense under this subsection is punishable for an individual under Section 7.187(a)(1)(B) (relating to an offense punishable by a fine not less than \$1,000 or more than \$50,000) or 7.187(a)(2)(D) (relating to an offense

punishable by confinement for a period not to exceed one year) or both. Provides that an offense under this subsection is punishable for a person other than an individual under Section 7.187(a)(1)(C) (relating to an offense punishable by a fine not less than \$1,000 or more than \$100,000).

(b) Provides that a person commits an offense if the person intentionally or knowingly violates Section 361.1121, Health and Safety Code. Provides that an offense under this subsection is punishable for an individual under Section 7.187(a)(1)(C) or Section 7.187(a)(2)(E) (relating to an offense punishable by confinement for a period not to exceed two years) or both. Provides that an offense under this subsection is punishable for a person other than an individual under Section 7.187(a)(1)(D) (relating to an offense punishable by a fine not less than \$1,000 or more than \$250,000).

SECTION 5. Amends Section 7.303(a), Water Code, to provide that this section applies to a license, certificate, or registration issued under Section 361.0861 (Separate Recycling or Recovery Permit Not Required), 361.092 (Registration For Extracting Materials From Certain Solid Waste Facilities), 361.112, or 361.1122, Health and Safety Code.

SECTION 6. Repealers: Sections 361.112(g) (relating to TCEQ requirements for the transportation of tires to a registered storage site or disposal facility) and (k) (relating to the prohibition on TCEQ registering or issuing a permit to certain facilities), Health and Safety Code.

SECTION 7. Requires TCEQ, not later than March 1, 2018, to adopt rules necessary to implement the changes in law made by this Act.

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

SECTION 9. Effective date: September 1, 2017.