

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of metal recycling entities; providing 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 amending Subdivision (6-a) and adding Subdivision (6-b) to read as follows:

(6-a) "Explosive device" means a device or material that contains explosive powder, primer, fluid, or gas or a detonator. The term does not include:

(A) a device that is designed, made, or adapted for delivering or shooting ammunition of .50 caliber or less and that is purchased for personal or security reasons recognized under state or federal law;

(B) a component of a motor vehicle or mechanical equipment, including equipment that is used in the exploration or production of minerals;

(C) any type of compressed cylinder that is commonly used in a residence or commercial business; or

(D) any type of scrap metal that is routinely purchased in the metal recycling industry and that is not associated with military weaponry.

(6-b) "Lead material" means:

(A) a commercial grade lead battery, lead-acid

1 battery, or spiral cell battery; or

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

4 SECTION 2. Section 1956.003(c), Occupations Code, is
5 amended to read as follows:

6 (c) A county, municipality, or political subdivision of
7 this state that issues a license or permit to a business as
8 authorized under Subsection (b) shall submit to the department in
9 the manner required by the department information on each business
10 that is issued a license or permit, including inspection reports
11 for the business, information regarding violations of this chapter
12 by the business, and information regarding disciplinary actions
13 initiated against the business.

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

16 (f) A metal recycling entity shall report to the department
17 by telephone, by e-mail, or through the department's Internet
18 website the entity's possession of an explosive device unknowingly
19 purchased or otherwise obtained by the entity not later than the
20 close of business on the entity's first working day after the date
21 the possession of the device is discovered. A metal recycling
22 entity may also report to an appropriate law enforcement authority
23 or the nearest military installation the possession of an explosive
24 device that the entity unknowingly purchased or otherwise obtained
25 so that the explosive device may be removed from the entity or
26 disposed of as soon as possible.

27 SECTION 4. Section 1956.040, Occupations Code, is amended

1 by adding Subsections (c-1), (c-2), (c-3), (c-4), (c-5), and (d-1)
2 to read as follows:

3 (c-1) A person commits an offense if the person knowingly
4 sells an explosive device to a metal recycling entity.

5 (c-2) A metal recycling entity commits an offense if the
6 entity knowingly buys an explosive device.

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

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 device. Except as provided by Subsection
12 (c-5), an offense under this subsection is a Class A misdemeanor.
13 For purposes of this subsection, a metal recycling entity is
14 considered to store an explosive device on the entity's premises
15 beginning not earlier than 72 hours after the time a person presents
16 the explosive device to the entity for sale or an attempted sale and
17 ending at the time the entity reports the presence of the explosive
18 device on the entity's premises to the department. A metal
19 recycling entity is not liable under this section for the time it
20 takes for the department, a law enforcement agency, or a military
21 installation to respond to the entity's report that the entity
22 possesses an explosive device.

23 (c-5) An offense under Subsection (c-1), (c-2), or (c-4) is
24 a felony of the second degree if it is shown at the trial of the
25 offense that a person suffered death or serious bodily injury, as
26 defined by Section 1.07, Penal Code, as a result of the detonation
27 of an explosive device.

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

4 (1) the state or a political subdivision of the state
5 for the costs incurred by the state or subdivision for responding to
6 the offense and any removal, cleaning, sanitizing, demolition,
7 reconstruction, or other treatment required as a result of the
8 offense; and

9 (2) the owner of any property damaged as a result of
10 the offense.

11 SECTION 5. Section 1956.041, Occupations Code, is amended
12 by amending Subsections (a) and (b) and adding Subsections (b-1),
13 (b-2), and (f) to read as follows:

14 (a) The commission, after notice and an opportunity for a
15 hearing, may impose an administrative penalty on a person who:

16 (1) violates this subchapter or Subchapter A-2 or a
17 rule or order of the commission under this chapter; or

18 (2) engages in conduct that would constitute an
19 offense under Section 1956.040(c-2) or (c-4) [~~Section 1956.036~~].

20 (b) Except as provided by Subsection (b-1), the [The] amount
21 of the administrative penalty may not exceed \$1,000. Each day a
22 violation occurs or continues to occur is a separate violation for
23 the purpose of imposing a penalty under this section. In
24 determining the amount of the administrative penalty under this
25 section, the commission shall consider:

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

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

6 (b-1) The amount of an administrative penalty for engaging
7 in conduct described by Subsection (a)(2) or for a violation of
8 Section 1956.036(f) may not exceed \$1,000 for each violation. The
9 aggregate penalty under this subsection for multiple violations may
10 not exceed \$10,000.

11 (b-2) The commission by rule shall adopt a standardized
12 penalty schedule for a violation based on the criteria listed in
13 Subsection (b).

14 (f) An administrative penalty collected under this section
15 shall be deposited in a special account in the general revenue fund
16 and may be appropriated only to the department.

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

23 SECTION 7. This Act takes effect September 1, 2017.