

## **BILL ANALYSIS**

C.S.S.B. 1646

By: King

Homeland Security, Public Safety & Veterans' Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The bill sponsor has informed the committee that, because the price of copper has risen substantially, copper theft and fiber vandalism of telecommunications infrastructure has increased in Texas, and that one company faced 20 incidents a week in 2024 and saw an increase in copper theft of more than 60 percent from 2022 to 2024. The bill sponsor has further informed the committee that copper theft can disrupt the flow of communications and connections to emergency services, presenting a risk to public safety and national security as telecommunications are considered critical infrastructure, and that public safety officials and district attorneys are seeking a solution to these issues. C.S.S.B. 1646 seeks to protect critical infrastructure by combating copper theft and fiber vandalism.

### **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 Public Safety Commission in SECTION 2.04 of this bill.

### **ANALYSIS**

C.S.S.B. 1646 amends the Penal Code and Occupations Code to revise and set out provisions relating to criminal conduct involving the theft, damage, or destruction of copper or brass or involving the unauthorized possession of certain copper or brass material, to transactions of metal recycling entities involving certain copper or brass material, to training on identifying certain copper or brass material, and to studying the effect of certain regulations on incidents of theft of copper or brass material.

#### **ARTICLE 1. Criminal Penalties**

##### **Unauthorized Possession of Certain Copper or Brass Material**

C.S.S.B. 1646 amends the Penal Code to create the state jail felony offense of unauthorized possession of certain copper or brass material for a person who intentionally or knowingly possesses copper or brass material and is not a person who is authorized under the bill's provisions to possess the copper or brass material. A person is authorized to possess copper or brass material if the person is:

- the owner of the material;
- a public utility or common carrier;

- a telecommunications provider as defined under provisions of the Public Utility Regulatory Act (PURA) regarding telecommunications utilities;
- a cable service provider or a video service provider as defined by PURA's provisions relating to state-issued cable and video franchises;
- a manufacturing, industrial, commercial, retail, or other business that sells the material in the ordinary course of the seller's business;
- a carrier-for-hire acting in the course and scope of the carrier's business with a bill of lading or a contract verifying transport information;
- a metal recycling entity registered under applicable Occupations Code provisions acting within the course and scope of the entity's business;
- a person acting in the ordinary course of the person's business who lawfully acquires possession of the materials during construction, remodeling, demolition, or salvage of a building or other structure in which the materials were installed or contained; or
- an agent for a person described by these provisions acting within the course and scope of the agent's authority to act on behalf of the person.

The bill establishes that this authorization does not apply to a person who knows that the copper or brass material was unlawfully obtained. For purposes of the offense, "copper or brass material" has the meaning assigned under Occupations Code provisions relating to metal recycling entities, as revised by the bill, except the term does not include copper pipe or copper tubing.

C.S.S.B. 1646 enhances the penalty for the offense to a third degree felony if it is shown on the trial of the offense that:

- the copper or brass material was unlawfully obtained from a critical infrastructure facility; or
- the person:
  - has been previously convicted of the offense;
  - has been previously convicted of any of the following offenses with respect to copper or brass material:
    - criminal mischief or theft;
    - criminal conspiracy to commit criminal mischief or theft; or
    - an offense under Penal Code provisions relating to offenses involving organized crime;
  - in connection with the offense, engaged in conduct with respect to copper or brass material constituting:
    - criminal conspiracy to commit criminal mischief, theft, or an offense under Penal Code provisions relating to offenses involving organized crime; or
    - an offense under Penal Code provisions relating to offenses involving organized crime; or
  - possessed a firearm during the commission of the offense.

If conduct constituting the offense also constitutes an offense under any other law, the actor may be prosecuted for the offense under that law, the offense of unauthorized possession of certain copper or brass material, or both offenses. For purposes of the penalty enhancement, "firearm" is defined by reference to Penal Code provisions relating to offenses involving prohibited weapons.

### Criminal Mischief and Theft

C.S.S.B. 1646 sets the penalty for a criminal mischief offense as a third degree felony, notwithstanding certain other penalty considerations, if the following conditions apply:

- the actor committed the offense by damaging or destroying a copper or brass component of:
  - a critical infrastructure facility; or

- equipment or communication wires appurtenant to or connected to the facility or on which the facility depends to properly function, regardless of whether the equipment or communication wires are enclosed by a fence or other barrier; and
- the damage or destruction causing, wholly or partly, the impairment or interruption of the facility or the equipment or communication wires.

C.S.S.B. 1646 increases the penalty for the state jail felony, third degree felony, and second degree felony offenses of theft to the next higher category if the following is shown on the trial of the offense:

- the property stolen was copper or brass; and
- the actor committed the offense by unlawfully appropriating the property from a critical infrastructure facility or from equipment or communication wires appurtenant to or connected to the facility or on which the facility depends to properly function, regardless of whether the equipment or communication wires are enclosed by a fence or other barrier.

#### Engaging in Organized Criminal Activity

C.S.S.B. 1646 expands the conduct that constitutes the offense of engaging in organized criminal activity to include committing or conspiring to commit one of the following offenses with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang or foreign terrorist organization:

- a criminal mischief offense involving damage or destruction of a copper or brass component of a critical infrastructure facility or related equipment or communication wires for which the bill sets the penalty as a third degree felony; or
- the state jail felony offense of unauthorized possession of certain copper or brass material.

#### Definition of "Critical Infrastructure Facility"

For purposes of provisions relating to the offense of criminal mischief and offenses involving theft, the bill defines "critical infrastructure facility" as follows:

- one of the following, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or if clearly marked with a sign or signs that are posted on the property, are reasonably likely to come to the attention of intruders, and indicate that entry is forbidden:
  - a petroleum or alumina refinery;
  - an electrical power generating facility, substation, switching station, or electrical control center;
  - a chemical, polymer, or rubber manufacturing facility;
  - a water intake structure, water treatment facility, wastewater treatment plant, or pump station;
  - a natural gas compressor station;
  - a liquid natural gas terminal or storage facility;
  - a telecommunications central switching office or any structure used as part of a system to provide wired or wireless telecommunications services, cable or video services, or Internet access services;
  - a port, a railroad switching yard, a trucking terminal, or any other freight transportation facility;
  - a gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas;
  - a transmission facility used by a federally licensed radio or television station;
  - a steelmaking facility that uses an electric arc furnace to make steel;
  - a dam that is classified as a high hazard by the Texas Commission on Environmental Quality (TCEQ);

- a concentrated animal feeding operation, as defined by Water Code provisions relating to the prohibited discharge to a playa from such an operation; or
- any component of a system on which a 9-1-1 service, as defined by Health and Safety Code provisions relating to state administration of emergency communications, depends to properly function or that enables interoperable communications between emergency services personnel, as defined by Penal Code provisions relating to the offense of assault, during an emergency or disaster; or
- the following, if enclosed by a fence or other physical barrier that is obviously designed to exclude intruders:
  - any portion of an aboveground oil, gas, or chemical pipeline;
  - an oil or gas drilling site;
  - a group of tanks used to store crude oil, such as a tank battery;
  - an oil, gas, or chemical production facility;
  - an oil or gas wellhead; or
  - any oil and gas facility that has an active flare.

### Procedural Provisions

C.S.S.B. 1646 establishes that these provisions apply only to an offense committed on or after September 1, 2025. An offense committed before September 1, 2025, is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For these purposes, an offense was committed before September 1, 2025, if any element of the offense occurred before that date.

## **ARTICLE 2. Regulation of Metal Recycling Entities**

### General Definition of "Copper or Brass Material"

C.S.S.B. 1646 amends the Occupations Code to revise the definition of "copper or brass material" for purposes of statutory provisions relating to metal recycling entities by including a bus bar that contains copper or an alloy of copper or zinc and is of the type used by a public utility or common carrier, a telecommunications provider, a cable service provider, or a video service provider.

### Training on Identifying Certain Copper or Brass Material

C.S.S.B. 1646 requires the Department of Public Safety (DPS) to develop and make available to metal recycling entities educational and training materials to aid the entities in identifying copper or brass material, including copper or brass material that may be stolen property. For this purpose, "copper or brass material" has the meaning assigned under the bill's provisions relating to the regulation of transactions involving certain copper or brass material. The bill requires the educational and training materials to be developed in coordination with the following:

- the advisory committee established by DPS to advise DPS on matters related to DPS's regulation of metal recycling entities under applicable state law;
- trade associations representing metal recycling entities;
- representatives of the communications industries that deploy materials composed of copper or brass material;
- representatives of law enforcement agencies and the offices of prosecuting attorneys; and
- other interested stakeholders.

For the purposes of developing the materials, the bill requires the representatives of communications industries that deploy materials composed of copper or brass material to provide examples to DPS of copper or brass material as defined by the applicable bill provisions.

## Study on the Effect of Regulations on Incidents of Theft of Copper or Brass Material

C.S.S.B. 1646 requires DPS, at least once every three years, to conduct a study on the following:

- the effect that the implementation of the bill's provisions relating to the regulation of transactions involving certain copper or brass material and similar laws has had on the incidents of theft of copper or brass material; and
- the manner and extent to which metal recycling entities are coordinating and cooperating with law enforcement agencies and prosecutors to assist in preventing and prosecuting that theft.

The bill requires DPS to make available on DPS's publicly accessible website a written report on the study. The bill requires DPS to complete the initial study not later than September 1, 2028.

## Regulation of Transactions Involving Certain Copper or Brass Material

C.S.S.B. 1646 provides for the regulation of transactions by metal recycling entities involving certain copper or brass material. For purposes of these provisions, "copper or brass material" does not include common household insulated or noninsulated copper wire or cable and does not include the following components of the term's definition under provisions regulating metal recycling entities generally:

- a copper or brass item of a type commonly used in construction or by a public utility, a telecommunications provider, a cable service provider, or a video service provider; or
- copper pipe or copper tubing.

## *Limitation on Purchasing or Otherwise Acquiring Certain Copper or Brass Material*

C.S.S.B. 1646 prohibits a metal recycling entity from purchasing or otherwise acquiring copper or brass material from a public utility, a telecommunications provider, a cable service provider, a video service provider, or a manufacturing, industrial, commercial, retail, or other seller that sells regulated material in the ordinary course of the seller's business, unless each of the following is satisfied:

- the person selling the copper or brass material to the metal recycling entity acquired it in the ordinary course of the person's business, including in the ordinary course of business of any of the following entities:
  - a business that owns the copper or brass material;
  - a public utility or common carrier;
  - a telecommunications provider;
  - a cable service provider or a video service provider;
  - a manufacturing, industrial, commercial, retail, or other business that sells the material in the ordinary course of the seller's business;
  - a carrier-for-hire acting in the course and scope of the carrier's business with a bill of lading or a contract verifying transport information;
  - a registered metal recycling entity acting within the course and scope of the entity's business; or
  - a person acting in the ordinary course of the person's business who lawfully acquires possession of the materials during the construction, remodeling, demolition, or salvage of a building or other structure in which the materials were installed or contained; and
- any individual acting on behalf of that person has apparent authority to enter into the transaction and is acting in the scope of that authority.

## *Certain Records Required When Purchasing or Otherwise Acquiring Certain Copper or Brass Material; Offense*

C.S.S.B. 1646 requires a metal recycling entity to maintain an accurate record of each transaction in which the entity purchases or otherwise acquires copper or brass material from a

person described by the bill's provisions establishing limitations on such a purchase or acquisition. A record meets this requirement if it contains the following information:

- a description of the weight of copper or brass material purchased or otherwise acquired made in accordance with the custom of the trade for the material that is the subject of the transaction;
- the business name of the person from whom the copper or brass material was purchased or otherwise acquired;
- if the copper or brass material includes insulated communications wire that has been burned wholly or partly to remove the insulation, documentation acceptable under the rules adopted by the Public Safety Commission under the bill's provisions that states that the material was salvaged from a fire; and
- the date of the transaction.

The bill requires a metal recycling entity to preserve each required record until the second anniversary of the date the record was made and requires the records to be maintained in an easily retrievable format and to be available for inspection as provided by the bill's provisions not later than 72 hours after the time of purchase or acquisition. A record containing the required information that is maintained in accordance with other law or as a routine business practice satisfies the bill's record maintenance requirement.

C.S.S.B. 1646 requires the Public Safety Commission by rule to prescribe the method by which a metal recycling entity is required to document in a required record the type of seller, including a seller listed in the bill's provisions relating to limitations on purchasing or otherwise acquiring certain copper or brass material, from which the entity purchased or acquired copper or brass material. The bill also requires the commission to adopt rules establishing the type of documentation that must be provided to a metal recycling entity by a person listed by those bill provisions who sells insulated communications wire that has been burned wholly or partly to remove the insulation for the purpose of establishing that the wire was salvaged from a fire.

C.S.S.B. 1646 creates a Class A misdemeanor offense for a metal recycling entity that intentionally or knowingly fails to maintain a record as required by the bill's provisions.

#### *Inspection of Records*

C.S.S.B. 1646 requires a metal recycling entity, on request, to permit a peace officer, a representative of DPS, or a representative of a county, municipality, or other political subdivision that issues a license or permit allowing a business to act as a metal recycling entity in that county or municipality to do the following during the entity's usual business hours:

- enter the premises of the entity; and
- inspect a record required to be maintained by the bill's provisions.

#### *Effect on Local Law*

C.S.S.B. 1646 prohibits a county, municipality, or political subdivision of the state from doing the following:

- with respect to copper or brass material, restricting the purchase, acquisition, sale, transfer, or possession of the material by a person described by the bill's provisions relating to limitations on purchasing or otherwise acquiring certain copper or brass material; or
- altering or adding to the recordkeeping requirements provided by the bill's provisions.

This prohibition expressly does not affect the authority of a county, municipality, or political subdivision of the state to issue a license or permit to allow a business to act as a metal recycling entity in that county or municipality or such an entity's authority to inspect a record as provided by the bill's provisions. Moreover, the prohibition against altering or adding to the bill's recordkeeping requirements expressly does not affect a municipal ordinance in effect on March 1, 2025, to the extent the ordinance requires a metal recycling entity to submit records, in addition to any records required by the bill's provisions, to a searchable online database that

is used by law enforcement to identify and locate damaged or stolen property and any individuals who may be associated with the damaged or stolen property.

### *Administrative Penalty*

C.S.S.B. 1646 authorizes the Public Safety Commission to impose an administrative penalty under applicable Government Code provisions on a metal recycling entity that does the following:

- violates the bill's provisions relating to limitations on purchasing or otherwise acquiring copper or brass material due to the entity's failure to exercise due diligence in purchasing or acquiring copper or brass material; or
- violates the bill's provisions relating to required recordkeeping.

The bill caps the administrative penalty at \$10,000.

### *Applicability and Effect of Law*

C.S.S.B. 1646 establishes that the bill's provisions relating to the regulation of metal recycling entity transactions involving certain copper or brass material apply to the purchase or acquisition of copper or brass material from a public utility, a telecommunications provider, a cable service provider, a video service provider, or a manufacturing, industrial, commercial, retail, or other seller that sells regulated material in the ordinary course of the seller's business. Those provisions expressly do not affect any requirement under statutory provisions relating to practices by metal recycling entity certificate holders, including any requirement applicable to the purchase or acquisition of copper or brass material from a person not described by these provisions.

### **Rulemaking Deadline**

C.S.S.B. 1646 requires the Public Safety Commission to adopt rules necessary to implement certain provisions of the bill relating to the regulation of metal recycling entities not later than January 1, 2026.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2025.

### **COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

While C.S.S.B. 1646 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute omits the provision present in the engrossed that revised the definition of "critical infrastructure facility" for purposes of Government Code provisions relating to the offense of operation of an unmanned aircraft over a critical infrastructure facility by including any structure used as part of a system to provide cable or video services or Internet access services if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders or if clearly marked with a sign or signs that are posted on the property, are reasonably likely to come to the attention of intruders, and indicate that entry is forbidden.

Both the engrossed and substitute define "critical infrastructure facility" for purposes of provisions relating to the offense of criminal mischief and offenses involving theft. However, the engrossed defined the term by reference to Government Code provisions relating to the offense of operation of an unmanned aircraft over a critical infrastructure facility and included any component of a system on which a 9-1-1 service depends to properly function or that enables interoperable communications between emergency services personnel during an emergency or

disaster, whereas the substitute does not. The substitute instead provides for the following definition of the term:

- one of the following, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or if clearly marked with a sign or signs that are posted on the property, are reasonably likely to come to the attention of intruders, and indicate that entry is forbidden:
  - a petroleum or alumina refinery;
  - an electrical power generating facility, substation, switching station, or electrical control center;
  - a chemical, polymer, or rubber manufacturing facility;
  - a water intake structure, water treatment facility, wastewater treatment plant, or pump station;
  - a natural gas compressor station;
  - a liquid natural gas terminal or storage facility;
  - a telecommunications central switching office or any structure used as part of a system to provide wired or wireless telecommunications services, cable or video services, or Internet access services;
  - a port, a railroad switching yard, a trucking terminal, or any other freight transportation facility;
  - a gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas;
  - a transmission facility used by a federally licensed radio or television station;
  - a steelmaking facility that uses an electric arc furnace to make steel;
  - a dam that is classified as a high hazard by the TCEQ;
  - a concentrated animal feeding operation, as defined by Water Code provisions relating to the prohibited discharge to a playa from such an operation; or
  - any component of a system on which a 9-1-1 service, as defined by Health and Safety Code provisions relating to state administration of emergency communications, depends to properly function or that enables interoperable communications between emergency services personnel, as defined by Penal Code provisions relating to the offense of assault, during an emergency or disaster; or
- the following, if enclosed by a fence or other physical barrier that is obviously designed to exclude intruders:
  - any portion of an aboveground oil, gas, or chemical pipeline;
  - an oil or gas drilling site;
  - a group of tanks used to store crude oil, such as a tank battery;
  - an oil, gas, or chemical production facility;
  - an oil or gas wellhead; or
  - any oil and gas facility that has an active flare.

Both the engrossed and the substitute define "firearm" by reference to Penal Code provisions relating to offenses involving prohibited weapons. However, the engrossed defined the term for purposes of Penal Code provisions generally relating to offenses involving theft and accordingly repealed the definition of "firearm" for purposes of Penal Code provisions relating to the specific offense of theft, whereas the substitute makes neither of those changes. Instead, the substitute defines the term for purposes of the specific offense of unauthorized possession of certain copper or brass material, whereas the engrossed did not.

While the engrossed and substitute both require DPS to conduct a study on the effect that the implementation of the bill's provisions relating to the regulation of transactions involving certain copper or brass material and similar laws has had on certain incidents of theft, the engrossed specified that the incidents are theft of regulated material, particularly copper or brass material, whereas the substitute instead specifies that incidents are theft of copper or brass material.

While the engrossed and substitute both establish that the bill's changes to the offense of criminal mischief and the offense of engaging in organized criminal activity provisions apply only to an offense committed on or after September 1, 2025, and include a related saving provision, the substitute further establishes that the bill's provisions creating the offense of unauthorized possession of certain copper or brass material, changing provisions relating to offenses involving theft, and enhancing the penalty for the offense of theft apply only to an offense committed on or after such date and includes a related saving provision.