

## **BILL ANALYSIS**

Senate Research Center  
89R8475 JCG-F

S.B. 1646  
By: King  
Criminal Justice  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Copper theft and fiber vandalism of telecommunications infrastructure have risen exponentially in Texas because the price of copper has increased 500 percent since 2000. Theft and vandalism of critical communications infrastructure are serious matters that disrupt essential services for customers, public safety, and the greater community.

S.B. 1646 addresses these issues by modernizing the definition of critical infrastructure related to communications, increasing penalties for copper theft and fiber vandalism, banning unauthorized possession of copper, and increasing reporting requirements to deter bad actors. The bill seeks to protect critical infrastructure by deterring copper theft and fiber vandalism on telecommunication lines.

As proposed, S.B. 1646 amends current law relating to criminal conduct involving the theft or unauthorized possession of copper or brass and to the sale of copper or brass material to metal recycling entities, creates criminal offenses, and provides an administrative penalty.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Public Safety Commission of Texas in SECTION 2.01 (Section 1956.134, Occupations Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

#### **ARTICLE 1. CRIMINAL PENALTIES**

SECTION 1.01. Amends Section 423.0045(a)(1-a), Government Code, to redefine "critical infrastructure facility."

SECTION 1.02. Amends Section 28.03(g), Penal Code, by adding Subdivision (10) to define "critical infrastructure facility."

SECTION 1.03. Amends Section 28.03, Penal Code, by adding Subsection (l), as follows:

(l) Provides that, notwithstanding Subsection (b) (relating to providing that an offense under Section 28.03 (Criminal Mischief) is a certain kind of offense if certain conditions are met), an offense under Section 28.03 is a felony of the third degree if the actor committed the offense by damaging or destroying a copper or brass component of a critical infrastructure facility or of equipment appurtenant to the facility or on which the facility depends to properly function, and the damage or destruction causes, wholly or partly, the impairment or interruption of the facility or that equipment.

SECTION 1.04. Amends Section 31.01, Penal Code, by adding Subdivisions (15) and (16) to define "critical infrastructure facility" and "firearm."

SECTION 1.05. Amends Section 31.03, Penal Code, by adding Subsection (f-2), as follows:

(f-2) Provides that an offense described for purposes of punishment by certain subsections of Section 31.03 (Theft) is increased to the next higher category of offense if

it is shown on the trial of the offense that 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 appurtenant to the facility or on which the facility depends to properly function.

SECTION 1.06. Amends Chapter 31, Penal Code, by adding Section 31.22, as follows:

Sec. 31.22. UNAUTHORIZED POSSESSION OF CERTAIN COPPER OR BRASS MATERIAL. (a) Defines "copper or brass material."

(b) Provides that a person commits an offense if the person intentionally or knowingly possesses copper or brass material and is not a person who is authorized under Subsection (c) to possess the copper or brass material.

(c) Provides that a person is presumed to be authorized to possess copper or brass material if the person meets certain requirements.

(d) Provides that the presumption established under Subsection (c) does not apply to a person who knows that the material was unlawfully obtained.

(e) Provides that, except as provided by Subsection (f), an offense under this section is a state jail felony.

(f) Provides that an offense under this section is a felony of the third degree if it is shown on the trial of the offense that:

(1) the copper or brass material was unlawfully obtained from a critical infrastructure facility; or

(2) the person has been previously convicted of an offense under this section; has been previously convicted of certain offenses with respect to copper or brass material; in connection with the offense, engaged in conduct with respect to copper or brass material constitutes certain offenses or conspiracies to commit an offense; or possessed a firearm during the commission of the offense.

(g) Authorizes the actor, if conduct constituting an offense under this section also constitutes an offense under any other law, to be prosecuted under this section, the other law, or both.

SECTION 1.07. Reenacts Section 71.02(a), Penal Code, as amended by Chapters 269 (S.B. 224), 369 (H.B. 1442), 462 (S.B. 1900), 885 (H.B. 4635), and 910 (H.B. 6), Acts of the 88th Legislature, Regular Session, 2023, and amends it, as follows:

(a) Provides that a person commits an offense if, 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, the person commits or conspires to commit certain offenses, including an offense under Section 28.03 that is punishable under certain provisions of that section, including Subsection (l), or an offense under Section 31.21 (Unauthorized Possession of Catalytic Converter) or 31.22 that is punishable under Subsection (d) (relating to providing that an offense under Section 31.21 is a state jail felony) or (e), respectively, of those sections.

Deletes text of existing Subsections (5-b) and (5-b) providing that a person commits an offense if, 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, the person commits or conspires to commit any unlawful possession with intent to deliver a controlled substance or dangerous drug or unlawful possession with intent to deliver a controlled substance listed in Penalty Group 1-B under Section 481.1022 (Penalty Group 1-B), Health and Safety Code. Makes nonsubstantive changes

SECTION 1.08. Repealer: Section 31.03(h)(8) (relating to defining "firearm"), Penal Code.

## ARTICLE 2. REGULATION OF METAL RECYCLING ENTITIES

SECTION 2.01. Amends Chapter 1956, Occupations Code, by adding Subchapter C-2, as follows:

### SUBCHAPTER C-2. TRANSACTIONS INVOLVING CERTAIN COPPER OR BRASS MATERIAL

Sec. 1956.131. DEFINITION. Defines "copper or brass material."

Sec. 1956.132. APPLICABILITY; EFFECT OF LAW. (a) Provides that, notwithstanding any other provision of Chapter 1956 (Metal Recycling Entities), this subchapter applies to the purchase or acquisition, from a person described by Section 1956.002(1) (relating to providing that Chapter 1956 does not apply to a purchase of regulated material from certain entities), of copper or brass material.

(b) Provides that this subchapter does not affect any requirement under Subchapter A-3 (Practice by Certificate Holders), including any requirement applicable to the purchase or acquisition of copper or brass material from a person not described by Section 1956.002(1).

Sec. 1956.133. LIMITATION ON PURCHASING OR OTHERWISE ACQUIRING CERTAIN COPPER OR BRASS MATERIAL. Prohibits a metal recycling entity from purchasing or otherwise acquiring copper or brass material from a person described by Section 1956.002(1), unless each of the following is satisfied:

- (1) 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 certain entities; or
- (2) any individual acting on behalf of the person described by Subdivision (1) who has apparent authority to enter into the transaction and is acting in the scope of that authority.

Sec. 1956.134. CERTAIN RECORDS REQUIRED WHEN PURCHASING OR OTHERWISE ACQUIRING CERTAIN COPPER OR BRASS MATERIAL; OFFENSE. (a) 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 Section 1956.133.

(b) Provides that a record meets the requirements of Subsection (a) if it contains certain information.

(c) Requires a metal recycling entity to preserve each record required by this section until the second anniversary of the date the record was made. Requires that the records be maintained in an easily retrievable format and be available for inspection as provided by Section 1956.135 not later than 72 hours after the time of purchase or acquisition.

(d) Provides that a record containing the information described by Subsection (b) that is maintained in accordance with other law or as a routine business practice satisfies the requirements of Subsection (a).

(e) Requires the Public Safety Commission (commission) by rule to prescribe the method by which a metal recycling entity is required to document in a record required by this section the type of seller, including a seller listed in Section 1956.133, from which the entity purchased or acquired copper or brass material.

(f) Provides that a metal recycling entity commits an offense if the entity intentionally or knowingly fails to maintain a record as required by this section. Provides that an offense under this subsection is a Class A misdemeanor.

Sec. 1956.135. INSPECTION OF RECORDS. Requires a metal recycling facility, on request, to permit a peace officer, a representative of the Department of Public Safety, or a representative of a county, municipality, or other political subdivision that issues a license or permit under Section 1956.003(b) (relating to authorizing a political subdivision of this state to issue a permit to a business to allow the business to act as a metal recycling entity in that county or municipality), during the entity's usual business hours, to enter the premises of the entity and inspect a record required to be maintained by Section 1956.134.

Sec. 1956.136. EFFECT ON LOCAL LAW. (a) Prohibits a county, municipality, or political subdivision of this state, notwithstanding Section 1956.003, with respect to copper or brass material, from restricting the purchase, acquisition, sale, transfer, or possession of the material by a person described by Section 1956.133 or alter or add to the recordkeeping requirements provided by Section 1956.134.

(b) Provides that Subsection (a) does not affect the authority of a county, municipality, or political subdivision of this state to issue a license or permit as provided by Section 1956.003 (Local Law; Criminal Penalty) or inspect a record as provided by Section 1956.135.

Sec. 1956.137. ADMINISTRATIVE PENALTY. (a) Authorizes the commission to impose an administrative penalty under Subchapter R (Administrative Penalty), Chapter 411 (Department of Public Safety of the State of Texas), Government Code, on a metal recycling entity that violates Section 1956.133 due to the entity's failure to exercise due diligence in purchasing or acquiring copper or brass material or violates Section 1956.134.

(b) Prohibits the amount of the administrative penalty from exceeding \$10,000.

### ARTICLE 3. TRANSITIONS; EFFECTIVE DATE

SECTION 3.01. Requires the Public Safety Commission, as soon as practicable after the effective date of this Act, to adopt rules necessary to implement Subchapter C-2, Chapter 1956, Occupations Code, as added by this Act.

SECTION 3.02. Makes application of Sections 28.03 and 71.02 (Engaging in Organized Criminal Activity), Penal Code, as amended by this Act, prospective to September 1, 2025.

SECTION 3.03. Effective date: upon passage or September 1, 2025.