

SUBJECT: Regulation of metal recycling entities

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 7 ayes — Cook, Burnam, Dunnam, Hancock, Legler, Veasey, Weber

0 nays

2 absent — Chisum, Farrar

SENATE VOTE: On final passage, April 20 — 28-2 (Seliger, Shapiro)

WITNESSES: *(On House companion bill, HB 4524):*

For — Tom Baker, David J. Joseph Co., Texas Port Recycling; Michael McGinty, City of Houston Police Department; Jim Shapiro, Austin Metal & Iron; *(Registered, but did not testify):* Robert Henderson; Mike McKinney, Oncor Electric Delivery; Ned Munoz, Texas Association of Builders; Tim Nemec, M. Lipsitz Recycling; Michael Peterson, AT&T; Jackie Powell; Joseph Schneider, Houston Area Metal Processors Association, Holmes Road Recycling Company, Inc.; Keith Vaughn, Texas Port Recycling)

Against — Robert Shapiro; Johnny Triesch; Richard Dwyer, Dallas Police Department; James Jones, Houston Police Department; *(Registered, but did not testify):* Sherry Johnson, Gardner Iron & Metal Company, Incorporated; Jim Shapiro, Scrap Metal Recyclers)

On — Greg Easley, Texas Department of Public Safety; Stephen Minick, Texas Association of Business; Victoria Sungino, Texas Department of Public Safety; John Bateman, Texas Department of Public Safety Criminal Law Enforcement Division; *(Registered, but did not testify):* Jim Blodgett, Texas Department of Public Safety)

BACKGROUND: Under Occupations Code, ch. 1956, a county, municipality, or political subdivision may issue a license or permit to a business to allow the business to act as a metal recycling entity in that county or municipality.

A person may not act as such an entity or represent to the public that the

person is such an entity unless the person is registered. A person will receive a Texas Department of Public Safety (DPS) certificate of registration if the person applies, pays a registration fee, and presents any relevant evidence relating to the person's qualifications, as required by the commission.

A metal recycling entity must keep an accurate electronic or legible written record of each purchase and preserve each record for three years. An entity must furnish the information from the purchase record to DPS by fax or electronic mail within seven days after the date of purchase. For the purchase of certain material, the entity must notify DPS no later than the close of business on the entity's first work day after the purchase, and mail or file the report no later than five days after the purchase date.

An entity must hold regulated metal unless the entity acquired the item more than 72 hours earlier, excluding weekends and holidays, or the entity purchased the item from a manufacturing, industrial, commercial, retail, or other seller that sells regulated material in the ordinary course of business.

**DIGEST:**

CSSB 1203 would amend the list of prohibited acts by a metal recycling entity, revise reporting rules, and establish penalties.

**Offenses and prohibited acts.** CSSB 1203 would amend Occupations Code, ch. 1956, adding to the list of prohibited acts to:

- prohibit a person from displaying another's identification document in connection with the sale of regulated material with the intent to deceive;
- prohibit a metal recycling entity from paying for a purchase of regulated material in cash unless the entity was registered by the Texas Department of Public Safety (DPS) by January 1, 2010, or began operations after that date and received a DPS-issued certificate of registration; and
- prohibit a metal recycling entity from paying more than \$150 in cash for a purchase of regulated metal or more than \$1,000 in cash for a purchase of regulated material other than regulated metal.

A county, municipality, or political subdivision could not limit the use of cash by a metal recycling entity in a more restrictive manner than was prohibited by the bill.

A person would commit an offense if the person knowingly:

- acted as a metal recycling entity without registering, or with an expired registration certificate;
- failed to comply with the requirement to furnish DPS with the report of purchase record information; or
- committed any of the listed prohibited acts.

An offense would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000), but if the person had previously been convicted, a state jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000). Penal Code, sec. 31.03 would be amended to provide that theft of brass would be a state jail felony.

The list of items a person could not sell or otherwise transfer to a metal recycling entity would be amended to include a metal alcoholic beverage keg, regardless of its condition, unless the seller was the manufacturer of the keg, brewer, or distiller of the beverage it contained, or was an authorized representative of the manufacturer, brewer, or distiller.

**Licensing.** A county, municipality, or political subdivision that issued a license or permit to allow a business to act as a metal recycling entity would be required to issue a notice to an owner or operator of a metal recycling entity that operated without the license or permit informing the owner or operator that the entity was operating without the required license or permit and that the owner or operator could be subject to criminal penalties if the owner or operator did not submit an application for the appropriate license or permit within 15 days after receiving notice.

If such a person failed to submit the appropriate licensing or permit application within the given time period, the person would commit an offense, which would be a class A misdemeanor, unless the person had been previously convicted of the offense, in which case it would be a state-jail felony.

**Purchase record.** A county, municipality, or political subdivision could require that the record of purchase contain a clear and legible thumbprint of a seller of regulated material. A metal recycling entity would have to keep preserved records in an easily retrievable format.

**Electronic reporting system.** A metal recycling entity would have to report all the information from a purchase record to the DPS electronically on the DPS website no later than 48 hours after the transaction for which the purchase record was required. For certain purchases, the entity would have to notify DPS by phone no later than the close of business on the first business day after the purchase and submit the electronic report no later than 48 hours after the purchase. An entity could submit the report by fax if the entity annually submitted an application requesting an exception to the electronic reporting requirement and an affidavit stating that the entity did not have an available, reliable means of electronic reporting and DPS approved the application.

Information provided as part of the statewide electronic reporting system would not be subject to disclosure under the Public Information Act. Aside from posting the summary of reports, the DPS would maintain the confidentiality of provided information and require that any contractor, subcontractor, or third party that had access to or possession of the information also maintained the confidentiality of the information.

**Hold items.** The conditions for releasing regulated metal items would be amended to provide that the items could not be released unless:

- the entity acquired the item more than five days earlier, excluding weekends and holidays; or
- the entity acquired the item more than 72 hours earlier, excluding weekends and holidays, and obtained a digital or video photograph of the seller of the regulated material and the regulated material purchased.

**Seller information.** The list of information a person who attempted to sell regulated material to a metal recycling entity would be required to provide would be amended to include the name of the state that issued the license plate of the motor vehicle used to transport the regulated material. In addition, a person who claimed to be a metal recycling entity and

attempted to sell regulated material would be required to provide a copy of the DPS-issued certificate of registration.

**Registration.** The reasons for which the DPS could deny a person a certificate of registration, suspend or revoke a certificate, or reprimand a registered person would be amended to include that the person violated a

provision of ch. 1956.

An entity that purchased regulated material with cash before receiving a DPS-issued certificate of registration could not pay cash for regulated material until two years after the entity registered for a DPS certificate of registration.

**Definitions.** The definition of “regulated metals” would be amended to include:

- tubing or rods for central heating or air conditioning units;
- catalytic converters not attached to a vehicle;
- fire hydrants;
- metal bleachers or other seating facilities used in recreational areas or sporting arenas;
- any metal item clearly and conspicuously marked with any form of the name, initials, or logo of a governmental entity, utility, cemetery, or railroad;
- insulated utility, communications, or electrical wire that had been burned in whole or in part to remove the insulation;
- backflow valves; and
- metal in the form of commonly recognized products of the industrial metals recycling process, including bales, briquettes, billets, sows, ingots, pucks, and chopped or shredded metals.

The bill would take effect September 1, 2009, and would apply only to offense committed on or after this date, except that the punishment enhancements would apply only to offenses committed on or after January 1, 2010.

**SUPPORTERS  
SAY:**

By increasing penalties for certain offenses and adding to the list of behaviors that would constitute an offense, CSSB 1203 would address weaknesses in current law concerning regulated metals and materials. The theft of regulated metal and materials is a growing problem in this state. It can cause property damage and is costly for the victim. The enhanced penalties and offenses would deter theft and would prevent and deter the purchase of stolen materials.

Providing penalties for recyclers that failed to register would help to ensure compliance with regulations. Current law does not include an enforcement mechanism for the registration requirement. CSSB 1203

would address that issue in order to reach metal recyclers not currently complying with the law.

CSSB 1203 would not necessarily lengthen the hold time on regulated metal. A metal recycler still could release items after 72 hours if the recycler photographed the seller and the item.

Fingerprinting sellers would not be mandatory. This would be an option available to local governments.

OPPONENTS  
SAY:

CSSB 1203 would not solve the problem of theft of regulated metals and materials. Many metal dealers in the state are not registered. The bill would serve only to place added burdens on already law-abiding business owners and operators. In addition, penalty enhancements are not generally an effective deterrent.

Extending the hold period for regulated material would cost businesses money. The market fluctuates, especially for copper. In order for businesses to lock in prices, material needs to be sold and shipped as soon as possible. Increasing the time material had to be held could mean financial sacrifices for metal recyclers.

Given the information already collected from sellers, recorded by purchasers, and reported to DPS, metal recyclers should be able to pay customers as they see fit. Restricting cash purchases and adding a fingerprint requirement would be an unnecessary additional hurdle and would be objectionable to customers.

NOTES:

The House companion bill, HB 4524 by Phillips, was reported favorably, as substituted, by the Environmental Regulation Committee on May 4.