

BILL ANALYSIS

Senate Research Center
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S.B. 642
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Natural Resources
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, current forms of identification are required for persons attempting to redeem or sell materials at secondary metals recycling facilities and purchases exceeding a certain weight are required to be reported by the recycling entity, but the reporting system is failing to identify or deter those persons who have obtained such materials illegally. Furthermore, the Texas Department of Public Safety (DPS) requires a weekly report on the purchases and sales of regulated metals. However, due to volume and demand of such purchases and sales, these reports are not immediately available for use by local law enforcement agencies. Dallas estimates that there are approximately 363 salvage yards and scrap dealers in Texas, but only 167 regulated metals purchase and sales reports were submitted in 2005. It is also of note that the current system consists of a paper-driven reporting format that relies on manual data entry.

Dallas is among the cities across Texas and the United States that are experiencing a drastic increase in the theft of regulated metals such as copper, bronze, and brass. In 2006, Dallas Police filed reports on more than 2,592 regulated metal thefts, surpassing the total of 1,022 metal thefts reported for 2005. These crimes impact homeowners, the construction industry, businesses, and utility operators.

As proposed, S.B. 642 creates an electronic statewide regulated metals purchase reporting system. This bill reclassifies certain items as regulated metals and requires proof of ownership or legitimate access in order for these materials to be redeemed or sold by a person. This bill also authorizes cities to limit the hours that a metal recycling entity is authorized to accept materials and be open to the general public. Finally, this bill requires all metal recycling entities to register with DPS.

RULEMAKING AUTHORITY

This bill expressly grants rulemaking authority to the Public Safety Commission in SECTION 2 (Sections 1956.013, 1956.014, and 1956.022, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Chapter 1956, Occupations Code, to read as follows:

CHAPTER 1956. SECONDHAND METAL DEALERS AND METAL RECYCLING ENTITIES

SECTION 2. Amends Chapter 1956, Occupations Code, by amending Subchapter A and adding Subchapters A-1, A-2, and A-3, as follows:

SUBCHAPTER A. New heading: GENERAL PROVISIONS.

Sec. 1956.001. DEFINITIONS. Defines "commission," "director," "metal recycling entity," and "regulated metal." Redefines "regulated material." Makes conforming and nonsubstantive changes.

Sec. 1956.001. EXCEPTION. Makes a conforming change.

[Reserves Sections 1956.003-1956.010 for expansion.]

SUBCHAPTER A-1. POWERS AND DUTIES

Sec. 1956.011. ADMINISTRATION OF CHAPTER. Requires the Texas Department of Public Safety (DPS) to administer this chapter.

Sec. 1956.012. DEPARTMENT STAFF. Authorizes DPS to employ administrative and clerical staff as necessary to carry out this chapter.

Sec. 1956.013. RULES. Requires the Public Safety Commission (commission) to adopt rules as necessary to administer this chapter, including certain rules.

Sec. 1956.014. FEES. Requires the commission by rule to prescribe certain fees in reasonable amounts sufficient to cover the costs of administering this chapter.

Sec. 1956.015. RULES REGARDING ADVERTISING OR COMPETITIVE BIDDING. Prohibits the commission from adopting rules restricting advertising or competitive bidding by a registrant except to prohibit false, misleading, or deceptive practices. Prohibits the commission from including certain rules in developing rules to prohibit false, misleading, or deceptive practices.

Sec. 1956.016. STATEWIDE REPORTING SYSTEM. (a) Requires DPS to establish a statewide reporting system to track the sales of regulated metal reported to DPS under Section 1956.036.

(b) Requires DPS to post a summary of the reports provided to DPS under Section 1956.036 on the DPS website. Provides that the summary must include by county or region the frequency with which a person presents regulated materials for sale to a secondhand metal dealer or metal recycling entity.

(c) Provides that Subsection (b) does not apply to regulated material sold by certain entities that routinely have access to regulated metal.

[Reserves Sections 1956.017-1956.020 for expansion.]

SUBCHAPTER A-2. CERTIFICATE OF REGISTRATION

Sec. 1956.021. REGISTRATION REQUIRED. Prohibits a person from acting as a secondhand metal dealer or metal recycling entity or representing to the public that the person is such unless the person is registered under this chapter.

Sec. 1956.022. ISSUANCE OF CERTIFICATE; QUALIFICATIONS. (a) Requires DPS to issue a certificate of registration to certain applicants.

(b) Authorizes the commission by rule to establish qualifications for the holder of a certificate of registration under this chapter.

Sec. 1956.023. TERM OF CERTIFICATE. (a) Provides that a certificate of registration is valid for two years after the date of issuance.

(b) Requires DPS to adopt a system under which certificates of registration expire and are renewed on various dates.

(c) Requires DPS to send written notice of an impending expiration to the person at the person's last known address according to the records of DPS, not later than the 30th day before the date a person's certificate of registration is scheduled to expire.

(d) Prohibits a person whose certificate of registration has expired from making a representation for which a certificate of registration is required under Section 1956.023 or perform collections services until the certificate has been renewed.

Sec. 1956.024. RENEWAL OF CERTIFICATE. Requires a person to submit an application for renewal in the manner prescribed by DPS in order to renew a certificate of registration and sets forth certain renewal fees to be paid based upon when the registration is renewed. Prohibits a person whose certificate of registration has been expired for one year or more from renewing the certificate and authorizes such a person to obtain a new certificate by complying with the requirements and procedures, including the examination requirements, for an original certificate.

[Reserves Sections 1956.025-1956.030 for expansion.]

SUBCHAPTER A-3. PRACTICE BY CERTIFICATE HOLDERS

Sec. 1956.031. NOTICE TO SELLERS. Redesignates Section 1956.003 as Section 1956.031. Requires secondhand metal dealers and metal recycling entities, at all times, to maintain in a prominent place in their respective place of business, in open view to a seller of regulated material, a notice in two-inch lettering that includes specific language. Makes conforming changes.

Sec. 1956.032. INFORMATION PROVIDED BY SELLER. Redesignates Section 1956.004 as Section 1956.032. Requires a person attempting to sell regulated material to a secondhand metal dealer or metal recycling entity to display to that person or entity the person's personal identification document or sign a statement that the person does not possess such a document and either present proof that the person is the legal owner or is lawfully entitled to sell the regulated material or sign a written statement provided by the secondhand metal dealer or metal recycling entity that the person is the legal owner of or is lawfully entitled to sell the regulated material offered for sale. Makes conforming changes.

Sec. 1956.033. RECORD OF PURCHASE. Redesignates Section 1956.005 as Section 1956.033. Includes regulated material as a material that a secondhand metal dealer and metal recycling entity in this state is required to keep an accurate and legible written record for each purchase made in the course of the dealer's or entity's business. Makes conforming and nonsubstantive changes.

Sec. 1956.034. PRESERVATION OF RECORDS. Redesignates Section 1956.006 as Section 1956.034. Makes conforming changes.

Sec. 1956.035. INSPECTION OF RECORDS BY PEACE OFFICER. Redesignates Section 1956.007 as Section 1956.035. Makes conforming changes.

Sec. 1956.036. FURNISHING OF REPORT TO DEPARTMENT. Redesignates Section 1956.008 as Section 1956.036. Makes conforming changes.

Sec. 1956.037. PLACEMENT OF ITEMS ON HOLD. Redesignates Section 1956.009 as Section 1956.037. Prohibits a secondhand metal dealer or metal recycling entity from disposing of, processing, selling, or removing from the premises an item of regulated metal unless the dealer or entity acquired the item more than 72 hours before the disposal, processing, sale, or removal.

(b) Makes conforming changes.

(c) Prohibits the dealer or entity, on receiving the notice, from processing or removing from the dealer's or entity's premises the item identified on the notice before the 60th, rather than the 11th, day after the date the notice is issued unless the hold is released at an earlier time in writing by a peace officer of this state or a court order.

(d) Makes a conforming change.

Sec. 1956.038. PROHIBITED ACTS. Redesignates Section 1956.010 as Section 1956.038. Makes conforming changes.

Sec. 1956.039. HOURS OF OPERATION. Prohibits a secondhand metal dealer or metal recycling facility from operating more than 15 consecutive hours in one day or later than 9 p.m.

Sec. 1956.0395. CRIMINAL PENALTY. Redesignates Section 1956.011 as Section 1956.0395. Includes a person who knowingly violates Subchapter A-2 as a person committing an offense. Makes conforming changes.

SECTION 3. Amends Chapter 1956, Occupations Code, by adding Subchapters D, E, and F, as follows:

SUBCHAPTER D. DISCIPLINARY PROCEDURES

Sec. 1956.151. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION. Requires DPS to deny an application for a certificate of registration, or reprimand a person who is registered under this chapter if the person commits certain acts.

Sec. 1956.152. INVESTIGATION. Requires DPS to investigate a person who engages in a practice that violates this chapter and each complaint filed with DPS against a person registered under this chapter.

Sec. 1956.153. HEARING. Entitles certain persons to a hearing before DPS if the person submits to DPS a written request for the hearing. Provides that such a hearing is governed by DPS rules for a contested hearing and by Chapter 2001 (Administrative Procedure), Government Code.

Sec. 1956.154. EMERGENCY SUSPENSION. (a) Requires DPS to temporarily suspend the certificate of registration of a certificate holder if DPS determines from the evidence or information presented to it that continued practice by the certificate holder would constitute a continuing and imminent threat to the public welfare.

(b) Authorizes a certificate of registration to be suspended under this section without notice of hearing on the complaint if action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings (SOAH) simultaneously with the temporary suspension and a hearing is held as soon as practicable under this chapter and Chapter 2001, Government Code.

(c) Requires SOAH to hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare exists. Requires a final hearing on the matter to be held not later than the 61st day after the date of the temporary suspension.

[Reserves Sections 1956.155-1956.200 for expansion.]

SUBCHAPTER E. ADMINISTRATIVE PENALTY

Sec. 1956.201. IMPOSITION OF PENALTY. Authorizes DPS to assess an administrative penalty against a person who violates this chapter or a rule adopted under this chapter.

Sec. 1956.202. AMOUNT OF PENALTY. (a) Prohibits the amount of the administrative penalty from exceeding \$1,000 for each violation. Provides that each day of a continuing violation is a separate violation.

(b) Provides the criteria upon which the amount of the penalty should be based.

Sec. 1956.203. NOTICE OF VIOLATION AND PENALTY. Requires DPS to give written notice of the violation to the person alleged to have committed the violation if,

after investigation, DPS determines that a violation occurred. Sets forth the information that must be contained in the written notice.

Sec. 1956.204. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Authorizes the person receiving a notice to accept DPS' determination and proposed administrative penalty or make a written request for a hearing on that determination not later than the 20th day after the date the person receives the notice.

(b) Requires the public safety director (director) or the public safety director's designee (director's designee) by order to approve the determination and assess the proposed penalty if the person accepts DPS' determination.

Sec. 1956.205. HEARING. (a) Requires DPS to set a hearing, give written notice of the hearing to the person, and designate a hearings examiner to conduct the hearing if the person requests a hearing in a timely manner.

(b) Requires the hearings examiner to make findings of fact and conclusions of law and promptly issue to the director or the director's designee a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

Sec. 1956.206. DECISION. (a) Authorizes the director or the director's designee by order, based on the findings of fact, conclusions of law, and proposal for decision, to determine that either a violation occurred and assess an administrative penalty or a violation did not occur.

(b) Requires DPS to give notice, with certain information included, of the order to the person.

Sec. 1956.207. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Requires the person to take certain actions, not later than the 30th day after the date the order becomes final, for paying or appealing the administrative penalty.

(b) Authorizes a person who does not pay the penalty and files a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both to take certain actions not later than the 30th day after the date the order is final to stay enforcement of the penalty or to request the court to stay enforcement of the penalty.

(c) Authorizes DPS to file with the court a contest to the affidavit, not later than the fifth day after the date DPS receives the copy, if DPS receives a copy of an affidavit under Subsection (b)(2).

(d) Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and stay enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

Sec. 1956.208. DETERMINATION BY COURT. Authorizes the court to uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty if the court sustains the occurrence of the violation. Requires the court to order that a penalty is not owed if the court does not sustain the occurrence of the violation.

Sec. 1956.209. REMITTANCE OF PENALTY AND INTEREST. (a) Requires the court, if after judicial review the administrative penalty is reduced or not imposed by the court, to, after the judgment becomes final, order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the amount of the penalty, order the release of the bond in full if the penalty is not imposed, or order the release of

the bond after the person pays the penalty imposed if the person posed a supersedeas bond.

(b) Provides that interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. Requires the interest to be paid for the period beginning on the date the penalty is paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Sec. 1956.210. COLLECTION OF PENALTY. (a) Defines "reasonable expenses and costs."

(b) Authorizes DPS to refer the matter to the attorney general for collection of the amount of the penalty if the person does not pay the amount of the administrative penalty and the enforcement of the penalty is not stayed.

(c) Authorizes DPS to assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, an administrative penalty is assessed against the person. Requires the person to pay expenses and costs assessed under this subsection not later than the 30th day after the date the order of the director or the director's designee requiring the payment of expenses and costs is final. Authorizes DPS to refer the matter to the attorney general for collection of expenses and costs.

(d) Authorizes the attorney general to recover, on behalf of the attorney general and DPS, reasonable expenses and costs if the attorney general brings an action against a person to enforce an administrative penalty assessed under this chapter and the person is found liable for an administrative penalty.

Sec. 1956.211. ADMINISTRATIVE PROCEDURE. Provides that a proceeding for the assessment of an administrative penalty under this subchapter is subject to Chapter 2001, Government Code.

[Reserves Sections 1956.212-1956.250 for expansion.]

SUBCHAPTER F. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1956.251. ENFORCEMENT PROCEEDINGS; INJUNCTION. (a) Requires DPS, the attorney general, or the district or county attorney for the county in which an alleged violation of this chapter occurs to bring an appropriate administrative or judicial proceeding to enforce this chapter or a rule adopted under this chapter on receipt of a verified complaint.

(b) Authorizes the attorney general or an attorney representing the state to initiate an action for an injunction to prohibit a person from violating this chapter or a rule adopted under this chapter.

Sec. 1956.252. CIVIL PENALTY. Authorizes a court to impose a civil penalty for a violation of this chapter or a rule adopted under this chapter, in addition to any other remedy provided by law, including injunctive relief.

SECTION 4. (a) Requires the commission to adopt the rules necessary to implement the changes in law made by this Act to Chapter 1956, Occupations Code, by January 1, 2008.

(b) Requires DPS to establish the statewide reporting system to track the sales of regulated metal as required under Chapter 1956, Occupations Code, as amended by this Act, by September 1, 2008.

SECTION 5. Provides that a person is not required to hold a certificate of registration as a secondhand metal dealer or metal recycling entity under Chapter 1956, Occupations Code, as

amended by this Act, before September 1, 2008, notwithstanding Section 1956.021, Occupations Code, as added by this Act.

SECTION 6. Makes application of this Act prospective.

SECTION 7. (a) Effective date: September 1, 2007, except as provided by Subsection (b).

(b) Effective date for Section 1956.0395, Occupations Code, as added by this Act, and Subchapters D, E, and F, Occupations Code, as added by this Act: September 1, 2008.