

BILL ANALYSIS

Senate Research Center

H.B. 2187
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Natural Resources & Economic Development
5/17/2015
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Recent reports indicate that Texas, along with most states nationwide, is experiencing an increase in thefts of metals, such as copper, bronze, and brass. Losses from the theft of these regulated metals include not only the value of the stolen metal but also the losses resulting from damage caused during the extraction of the metal from property and equipment. Current law regulates the sale of certain metals and materials and establishes tracking procedures to aid law enforcement in detecting possible sales or purchases of items obtained unlawfully, but interested parties contend that current law does not go far enough to deter criminals from stealing regulated metals. H.B. 2187 seeks to address these issues by revising the applicable law relating to the regulation of metal recycling entities.

H.B. 2187 amends current law relating to the regulation of metal recycling entities; imposing an administrative penalty and amending provisions subject to a criminal penalty.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1956.001, Occupations Code, by amending Subdivisions (4), (9), and (10) to redefine "copper or brass material," "regulated material," and "regulated metal" and adding Subdivision (6-a) to define "lead material."

SECTION 2. Amends Section 1956.002, Occupations Code, to provide that this chapter does not apply to a purchase of regulated material from a public utility, a telecommunications provider as defined by Section 51.002 (General Provisions), Utilities Code, a cable service provider as defined by Section 66.002 (Definitions), Utilities Code, a video service provider as defined by Section 66.002, Utilities Code, or a manufacturing, industrial, commercial, retail, or other seller that sells regulated material in the ordinary course of the seller's business.

SECTION 3. Amends Section 1956.017(b), Occupations Code, as follows:

(b) Provides that the advisory committee consists of 15, rather than 12, members appointed by the public safety director of the Department of Public Safety of the State of Texas (director) , as follows:

- (1)-(4) Makes no change to these subdivisions;
- (5) five, rather than four, representatives of metal recycling entities;
- (6) Makes a nonsubstantive change;
- (7) one sheriff of a county with a population of 500,000 or more; and
- (8) one sheriff of a county with a population of less than 500,000.

SECTION 4. Amends Section 1956.033(b), Occupations Code, as follows:

- (b) Requires that the record be in English and include:
 - (1) the place, date, and amount of the purchase;
 - (2)-(6) Makes no change to these subdivisions;
 - (7)-(8) Makes nonsubstantive changes;
 - (9) a copy of the documentation described by Section 1956.0381(b).

SECTION 5. Amends Section 1956.035(a), Occupations Code, as follows:

- (a) Requires a metal recycling entity, on request, to permit a peace officer of this state, a representative of the Texas Department of Public Safety (DPS), or a representative of a county, municipality, or other political subdivision that issues a license or permit under Section 1956.003(b) to inspect, during the entity's usual business hours:
 - (1) Makes no change to this subdivision;
 - (2) and (3) Makes a nonsubstantive change;
 - (4) an application for a cash transaction card submitted to the entity.

SECTION 6. Amends Section 1956.036, Occupations Code, by amending Subsection (a) and adding Subsection (d-1), as follows:

- (a) Requires the entity, except as provided by Subsections (b) and (d), not later than the close of business on a metal recycling entity's second working day after the date of the purchase or other acquisition of material for which a record is required under Section 1956.033 (Record of Purchase), to send an electronic transaction report to DPS via DPS's Internet website. Requires that except as provided by Subsection (d-1), the report contain the information required to be recorded under Section 1956.033 (Record of Purchase). Makes a nonsubstantive change.
- (d-1) Provides that a metal recycling entity is not required to include in a transaction report required by this section the amount of the purchase or a copy of the documentation described by Section 1956.0381(b).

SECTION 7. Amends Section 1956.038, Occupations Code, by adding Subsection (a-1), to provide that a metal recycling entity may only pay for a purchase of regulated material in the manner provided by Section 1956.0381.

SECTION 8. Amends Subchapter A-3, Chapter 1956, Occupations Code, by adding Sections 1956.0381, 1956.0382, and 1956.041, as follows:

- Sec. 1956.0381. PAYMENT BY METAL RECYCLING ENTITY. (a) Provides that a metal recycling entity may pay for a purchase of regulated material only by cash if the seller has been issued a cash transaction card under Section 1956.0382, unless the metal recycling entity is prohibited from paying in cash under Section 1956.038(b), debit card if the seller has been issued a cash transaction card under Section 1956.0382, check, money order, or direct deposit by electronic funds transfer.
- (b) Requires a metal recycling entity to include in the record of purchase required by Section 1956.033, as applicable, a copy of:
 - (1) the seller's cash transaction card or approved application for a cash transaction card if the entity paid for a purchase of regulated material by cash;

(2) the debit card receipt and the seller's cash transaction card or approved application for a cash transaction card if the entity paid for a purchase of regulated material by debit card; or

(3) the check if the entity paid for a purchase of regulated material by check.

Sec. 1956.0382. CASH TRANSACTION CARD. (a) Authorizes a metal recycling entity to pay a seller for a purchase of regulated material by cash or debit card only if, before the entity issues payment:

(1) the seller presents to the entity a valid cash transaction card issued by the entity or by another metal recycling entity located in this state; or

(2) the entity obtains a copy of the seller's cash transaction card from the records of the entity.

(b) Requires an application for the issuance or renewal of a cash transaction card to include certain identifying information set forth.

(c) Authorizes a metal recycling entity, on receipt of an application that contains the information required by Subsection (b), to approve the application and issue a cash transaction card to the applicant. Requires the individual approving the application on behalf of the metal recycling entity to sign the application.

(d) Requires cash transaction card to include certain information set forth.

(e) Requires a metal recycling entity to mail the issued cash transaction card to the address provided on the application for the card.

(f) Provides that a cash transaction card issued under this section is not transferable.

(g) Requires a metal recycling entity to preserve each application for a cash transaction card the entity receives until the second anniversary of the date the application was received, and a copy of each cash transaction card the entity issues or renews until the second anniversary of the date the card was issued or renewed.

Sec. 1956.041. ADMINISTRATIVE PENALTY. (a) Authorizes the Public Safety Commission (commission), after notice and an opportunity for a hearing, to impose an administrative penalty on a person who violates Section 1956.036 (Furnishing of Report to the Department).

(b) Prohibits the amount of the administrative penalty from exceeding \$1,000. Provides that each day a violation occurs or continues to occur is a separate violation for the purpose of imposing a penalty. Requires the commission, in determining the amount of the administrative penalty, to consider certain circumstances set forth.

(c) Provides that the enforcement of the administrative penalty may be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. Provides that a person who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the commission to contest the affidavit as provided by those rules.

(d) Authorizes the attorney general to sue to collect the administrative penalty.

(e) Provides that a proceeding to impose an administrative penalty is considered to be a contested case under Chapter 2001 (Administrative Procedure), Government Code.

SECTION 9. Provides that Section 1956.041, Occupations Code, as added by this Act, applies only to a violation of Section 1956.036, Occupations Code, as amended by this Act, committed on or after the effective date of this Act. Provides that a violation committed before the effective date of this Act is governed by the law in effect on the date the violation was committed, and the former law is continued in effect for that purpose.

SECTION 10. Provides that the change in law made by this Act applies only to an offense committed on or after the effective date of this Act. Provides that an offense committed before the effective date of this Act 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. Provides that for purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 11. Requires the director as soon as practicable after the effective date of this Act, to appoint the three additional members to the advisory committee as required by Section 1956.017, Occupations Code, as amended by this Act.

SECTION 12. Requires the advisory committee established under Section 1956.017, Occupations Code, as amended by this Act, during the calendar year ending December 31, 2023, to study the effects of the cash transaction card provisions of Section 1956.0382, Occupations Code, as added by this Act, and report the committee's findings and recommendations to the legislature before December 1, 2024.

SECTION 13. Effective date: September 1, 2015.