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H.B. No. 2187

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of metal recycling entities; imposing an administrative penalty; amending provisions subject to a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1956.001, Occupations Code, is amended by amending Subdivisions (4), (9), and (10) and adding Subdivision (6-a) to read as follows:

(4) "Copper or brass material" means:

(A) a power inverter or insulated or noninsulated copper wire or cable that contains copper or an alloy of copper or zinc and is of the type used by:

(i) a public utility or common carrier;

(ii) a telecommunications provider as defined by Section 51.002, Utilities Code;

(iii) a cable service provider as defined by Section 66.002, Utilities Code; or

(iv) a video service provider as defined by Section 66.002, Utilities Code ~~[that contains copper or an alloy of copper or zinc];~~

(B) a copper or brass item of a type commonly used in construction or by:

(i) a public utility;

(ii) a telecommunications provider as

1 defined by Section 51.002, Utilities Code;

2 (iii) a cable service provider as defined
3 by Section 66.002, Utilities Code; or

4 (iv) a video service provider as defined by
5 Section 66.002, Utilities Code; or

6 (C) copper pipe or copper tubing.

7 (6-a) "Lead material" means:

8 (A) a commercial grade lead battery, lead-acid
9 battery, or spiral cell battery; or

10 (B) a material or an item readily identifiable as
11 being made of or containing lead.

12 (9) "Regulated material" means:

13 (A) aluminum material;

14 (B) bronze material;

15 (C) copper or brass material; ~~[or]~~

16 (D) lead material; or

17 (E) regulated metal.

18 (10) "Regulated metal" means:

19 (A) manhole covers;

20 (B) guardrails;

21 (C) metal cylinders designed to contain
22 compressed air, oxygen, gases, or liquids;

23 (D) beer kegs made from metal other than
24 aluminum;

25 (E) historical markers or cemetery vases,
26 receptacles, or memorials made from metal other than aluminum;

27 (F) unused rebar;

- 1 (G) street signs;
- 2 (H) drain gates;
- 3 (I) safes;
- 4 (J) communication, transmission, and service
- 5 wire or cable;
- 6 (K) condensing or evaporator coils for central
- 7 heating or air conditioning units;
- 8 (L) utility structures, including the fixtures
- 9 and hardware;
- 10 (M) aluminum or stainless steel containers
- 11 designed to hold propane for fueling forklifts;
- 12 (N) metal railroad equipment, including tie
- 13 plates, signal houses, control boxes, signs, signals, traffic
- 14 devices, traffic control devices, traffic control signals, switch
- 15 plates, e-clips, and rail tie functions;
- 16 (O) catalytic converters not attached to a
- 17 vehicle;
- 18 (P) fire hydrants;
- 19 (Q) metal bleachers or other seating facilities
- 20 used in recreational areas or sporting arenas;
- 21 (R) any metal item clearly and conspicuously
- 22 marked with any form of the name, initials, or logo of a
- 23 governmental entity, utility, cemetery, or railroad;
- 24 (S) insulated utility, communications, or
- 25 electrical wire that has been burned in whole or in part to remove
- 26 the insulation;
- 27 (T) backflow valves; ~~and~~

(U) 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; and

(V) commercial grade lead batteries or lead-acid batteries.

SECTION 2. Section 1956.002, Occupations Code, is amended to read as follows:

Sec. 1956.002. EXCEPTION. This chapter does not apply to:

(1) a purchase of regulated material from a public utility, a telecommunications provider as defined by Section 51.002, Utilities Code, a cable service provider as defined by Section 66.002, 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;

(2) a purchase of regulated material by a manufacturer whose primary business is the manufacture of iron and steel products made from melting scrap iron and scrap steel; or

(3) the transport or hauling of recyclable materials to or from the metal recycling entity.

SECTION 3. Section 1956.017(b), Occupations Code, is amended to read as follows:

(b) The advisory committee consists of 15 ~~12~~ members appointed by the director as follows:

(1) one representative of the department;

(2) two representatives of local law enforcement

1 agencies located in different municipalities, each with a
2 population of 500,000 or more;

3 (3) two representatives of local law enforcement
4 agencies located in different municipalities, each with a
5 population of 200,000 or more but less than 500,000;

6 (4) one representative of a local law enforcement
7 agency located in a municipality with a population of less than
8 200,000;

9 (5) five [~~four~~] representatives of metal recycling
10 entities; [~~and~~]

11 (6) two members who represent industries that are
12 impacted by theft of regulated material;

13 (7) one sheriff of a county with a population of
14 500,000 or more; and

15 (8) one sheriff of a county with a population of less
16 than 500,000.

17 SECTION 4. Section 1956.033(b), Occupations Code, is
18 amended to read as follows:

19 (b) The record must be in English and include:

20 (1) the place, [~~and~~] date, and amount of the purchase;

21 (2) the name and address of the seller in possession of
22 the regulated material purchased;

23 (3) the identifying number of the seller's personal
24 identification document;

25 (4) a description made in accordance with the custom
26 of the trade of the commodity type and quantity of regulated
27 material purchased;

(5) the information required by Sections
1956.032(a)(2) and (3);

(6) as applicable:

(A) the identifying number of the seller's air
conditioning and refrigeration contractor license displayed under
Section 1956.032(a)(4)(A);

(B) a copy of the seller's air conditioning and
refrigeration technician registration displayed under Section
1956.032(a)(4)(B);

(C) a copy of the documentation described by
Section 1956.032(a)(4)(C); or

(D) a copy of the documentation described by
Section 1956.032(a)(4)(D);

(7) if applicable, a copy of the documentation
described by Section 1956.032(a)(5); ~~and~~

(8) a copy of the documentation described by Section
1956.032(g); and

(9) a copy of the documentation described by Section
1956.0381(b).

SECTION 5. Section 1956.035(a), Occupations Code, is
amended to read as follows:

(a) On request, a metal recycling entity shall permit a
peace officer of this state, a representative of the department, 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) a record required by Section 1956.033;

(2) a digital photograph or video recording required by Section 1956.0331; ~~or~~

(3) regulated material in the entity's possession; or

(4) an application for a cash transaction card submitted to the entity.

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

(a) 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, the entity shall send an electronic transaction report to the department via the department's Internet website. Except as provided by Subsection (d-1), the ~~The~~ report must contain the information required to be recorded under Section 1956.033.

(d-1) A metal recycling entity is not required to include in a transaction report required by this section:

(1) the amount of the purchase; or

(2) a copy of the documentation described by Section 1956.0381(b).

SECTION 7. Section 1956.038, Occupations Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) A metal recycling entity may only pay for a purchase of regulated material in the manner provided by Section 1956.0381.

SECTION 8. Subchapter A-3, Chapter 1956, Occupations Code, is amended by adding Sections 1956.0381, 1956.0382, and 1956.041 to

1 read as follows:

2 Sec. 1956.0381. PAYMENT BY METAL RECYCLING ENTITY. (a) A
3 metal recycling entity may pay for a purchase of regulated material
4 only by:

5 (1) cash if the seller has been issued a cash
6 transaction card under Section 1956.0382, unless the metal
7 recycling entity is prohibited from paying in cash under Section
8 1956.038(b);

9 (2) debit card if the seller has been issued a cash
10 transaction card under Section 1956.0382;

11 (3) check;

12 (4) money order; or

13 (5) direct deposit by electronic funds transfer.

14 (b) A metal recycling entity shall include in the record of
15 purchase required by Section 1956.033, as applicable, a copy of:

16 (1) the seller's cash transaction card or approved
17 application for a cash transaction card if the entity paid for a
18 purchase of regulated material by cash;

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

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

25 Sec. 1956.0382. CASH TRANSACTION CARD. (a) A metal
26 recycling entity may pay a seller for a purchase of regulated
27 material by cash or debit card only if, before the entity issues

1 payment:

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

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

7 (b) An application for the issuance or renewal of a cash
8 transaction card must include:

9 (1) the name, address, sex, and birth date of the
10 applicant;

11 (2) the identification number from the applicant's
12 personal identification document;

13 (3) a digital photograph that accurately depicts the
14 applicant's entire face taken at the time the applicant completes
15 the application;

16 (4) a clear and legible thumbprint of the applicant;
17 and

18 (5) the signature of the applicant.

19 (c) On receipt of an application that contains the
20 information required by Subsection (b), a metal recycling entity
21 may approve the application and issue a cash transaction card to the
22 applicant. The individual approving the application on behalf of
23 the metal recycling entity must sign the application.

24 (d) A cash transaction card must include:

25 (1) the name and address of the seller;

26 (2) a digital photograph of the seller that accurately
27 depicts the seller's entire face;

1 (3) an identifying number that is unique to the
2 individual card; and

3 (4) the expiration date of the card, which may not be
4 later than two years from the date the card was issued or renewed.

5 (e) A metal recycling entity must mail the issued cash
6 transaction card to the address provided on the application for the
7 card.

8 (f) A cash transaction card issued under this section is not
9 transferable.

10 (g) A metal recycling entity shall preserve:

11 (1) each application for a cash transaction card the
12 entity receives until the second anniversary of the date the
13 application was received; and

14 (2) a copy of each cash transaction card the entity
15 issues or renews until the second anniversary of the date the card
16 was issued or renewed.

17 Sec. 1956.041. ADMINISTRATIVE PENALTY. (a) The
18 commission, after notice and an opportunity for a hearing, may
19 impose an administrative penalty on a person who violates Section
20 1956.036.

21 (b) The amount of the administrative penalty may not exceed
22 \$1,000. Each day a violation occurs or continues to occur is a
23 separate violation for the purpose of imposing a penalty. In
24 determining the amount of the administrative penalty, the
25 commission shall consider:

26 (1) the seriousness of the violation, including the
27 nature, circumstances, extent, and gravity of the violation;

- (2) the economic harm caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts to correct the violation; and
- (6) any other matter that justice may require.

(c) 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. 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) The attorney general may sue to collect the administrative penalty.

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

SECTION 9. 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. 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. The change in law made by this Act applies only

1 to an offense committed on or after the effective date of this Act.
2 An offense committed before the effective date of this Act is
3 governed by the law in effect on the date the offense was committed,
4 and the former law is continued in effect for that purpose. For
5 purposes of this section, an offense was committed before the
6 effective date of this Act if any element of the offense occurred
7 before that date.

8 SECTION 11. As soon as practicable after the effective date
9 of this Act, the public safety director of the Department of Public
10 Safety of the State of Texas shall appoint the three additional
11 members to the advisory committee as required by Section 1956.017,
12 Occupations Code, as amended by this Act.

13 SECTION 12. During the calendar year ending December 31,
14 2023, the advisory committee established under Section 1956.017,
15 Occupations Code, as amended by this Act, shall study the effects of
16 the cash transaction card provisions of Section 1956.0382,
17 Occupations Code, as added by this Act, and report the committee's
18 findings and recommendations to the legislature before December 1,
19 2024.

20 SECTION 13. This Act takes effect September 1, 2015.