

- SUBJECT:** Revising regulations of scrap metal recyclers
- COMMITTEE:** Environmental Regulation — committee substitute recommended
- VOTE:** 9 ayes — W. Smith, Farrar, Aliseda, Burnam, Chisum, Hancock, Legler, Lyne, Reynolds
0 nays
- SENATE VOTE:** On final passage, April 12 — 31-0
- WITNESSES:** *(On House companion bill, HB 1933:)*
For — Daryl Miller, AT&T; Gary Tittle, for Dallas Police Department Chief of Police David Brown; *(Registered, but did not testify: Randy Cain, City of Baytown; Robert Howden, Texans for Economic Progress; Marti Johnson, Texas Brewers' Institute; James Jones, Houston Police Department; Jim Jones, San Antonio Police Department)*

Against — Jim Shapiro, Recycling Council of Texas/Austin Metal and Iron

On — *(Registered, but did not testify: Thomas Baker, Recycling Council of Texas and David J. Joseph Co.; Randy Cubriel, Nucor Steel – Texas; Wayne Mueller, 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 jurisdiction.

Registration is required for metal recyclers, who receive a Department of Public Safety (DPS) registration certificate if they apply, pay a fee, and present any relevant evidence of qualifications, as required by the Public Safety Commission.

A metal recycler must keep an accurate electronic or legible written record of each purchase and preserve it for three years and must provide the information to DPS by fax or e-mail within seven days after the date of purchase. If purchasing certain regulated material, the recycler must notify

DPS no later than the close of business on the first working day after the purchase and must mail or file the report no later than five days after the purchase date.

Recyclers must hold regulated metal unless they bought it more than 72 hours earlier, excluding weekends and holidays, or bought it from a manufacturing, industrial, commercial, retail, or other business that ordinarily sells regulated material.

DIGEST: CSSB 694 would revise the existing requirements for scrap metal recyclers, specifically by:

- expanding the list of regulated metals for recycling, the information a person attempting to sell regulated material to a metal recycler would have to provide, and the purchase record requirements;
- providing a penalty for metal recyclers who operated without a valid license or permit;
- requiring the metal recycler to send an electronic transaction report to DPS within 48 hours, rather than five to seven days depending on the type of material, of purchasing regulated materials;
- extending the time period that the metal recycler would have to maintain possession of an item from 72 hours to five days from the date of purchase, unless it was a cemetery vase, receptacle, or memorial made of a regulated material other than aluminum, in which case the material would need to be maintained for 30 days, excluding weekends or holidays;
- prohibiting an unregistered recycler from purchasing regulated materials with cash; and
- providing offenses to metal recyclers for certain actions, including failure to register, failure to report purchase records to DPS, and knowingly buying stolen items.

Penalties for operating without license or permit. Under CSSB 694, it would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) for a metal recycler to operate without a valid license or permit. If previously convicted, the offense would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

This punishment would apply only to an offense committed on or after January 1, 2012. The county or municipality would have to notify metal

recyclers in violation that they would have to cease operation until obtaining the appropriate license or permit.

Statewide electronic reporting system. DPS would be authorized to enter into contracts relating to the operation of the statewide electronic reporting system. Such contracts would have to include provisions related to confidentiality of information relating to regulated metal sales. This information would not be subject to the Public Information Act.

Registration database. CSSB 694 would require DPS to make a list available on its website of all registered metal recyclers. The bill would repeal the requirement that DPS post on its website information about the sellers of regulated materials.

Information provided by the seller of regulated material. A person attempting to sell regulated material would have to provide more information to a metal recycler, including:

- the state issuing the license plate and the color of the vehicle used to transport the regulated material;
- a description and license plate number of any trailer used to transport the regulated material;
- proof of the right to possess heating or air conditioning components, such as a refrigeration contractor license, refrigeration technician registration, or a receipt for the components or replacement unit; and
- if selling burned insulation wire, documentation from the fire department that the material was salvaged from a fire.

If a metal recycler, the seller would have to provide a copy of his or her registration certificate.

CSSB 694 also would require photos of the seller and the vehicle or trailer used to transport the items. Metal recyclers could be exempt from the photo requirements if they did not have the means of obtaining the photos.

Record of purchase to be kept by the metal recycler. CSSB 694 would require each metal recycler to keep records of each regulated material purchase rather than just purchase records for certain materials. The bill would expand the purchase record requirements to include:

- the name and address of the metal recycler;
- the date of the purchase;
- the name, address, and ID of the seller;
- certain supporting documentation for refrigerator, air conditioning, or heating materials; and
- photos of the metal recycler, vehicle, and each item, unless exempt.

A county, municipality, or other political subdivision could require the record of purchase to contain a clear and legible thumbprint of the seller of regulated material.

Preservation of records. Records could be maintained electronically or in any other recordkeeping technology, but a peace officer would have to be provided a hard copy if requested. The records would have to be kept where the purchase was made for one year.

Unauthorized use of seller information. Under CSSB 694, it would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) to knowingly release or disclose information contained in the records regarding a seller of regulated material.

If a person had been previously convicted of releasing this information, the penalty would be a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000).

Report to DPS. Metal recyclers would have to send an electronic transaction report containing the purchase record and photos to DPS within 48 hours, rather than seven days, of purchasing regulated materials. If the material purchased was a cemetery vase, receptacle, memorial, or a statuary or aluminum irrigation pipe, the metal recycler would have to notify DPS by the end of the next working day by phone or electronic means.

The transaction report to DPS could be submitted by fax if the recycler annually applied for an exception and provided an affidavit stating he or she did not have the means to submit the transaction report electronically.

A county, municipality, or other political subdivision that required a metal recycler to report information relating to the sale of regulated material would have to include confidentiality provisions in any contract entered into relating to the reporting of information.

Hold on regulated material. CSSB 694 would require that a metal recycler maintain possession of a cemetery vase, receptacle, or memorial made of a regulated material other than aluminum for 30 days, excluding weekends and holidays, from the purchase date. Other regulated materials would need to be maintained for five days (rather than 72 hours), excluding weekends and holidays, from the purchase date.

Payment for purchase of regulated metal. The metal recycler could only pay for the purchase of regulated metal by check no earlier than five days of the purchase or by cash no earlier than 10 days after the purchase.

An unregistered metal recycler would not be able to pay cash for a regulated material. An unregistered metal recycler who violated that restriction could not pay cash for another purchase within two years of registering.

Offenses. CSSB 694 would create a misdemeanor offense punishable by a fine not to exceed \$10,000, if a metal recycler knowingly:

- failed to register;
- let the registration expire;
- failed to report purchase records to DPS; or
- purchased regulated materials outside of the hours prescribed in current law.

The punishment for these offenses would apply only to an offense committed on or after January 1, 2012. A civil penalty could not be assessed for these violations.

It would be an affirmative defense to prosecution of a violation if the person made a diligent effort to obtain or renew a certificate of registration at the time of the violation.

It would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) if a recycler knowingly bought:

- stolen regulated material;
- burned insulated wire unless documented by the fire department that the material was salvaged from a fire; or
- components of central air conditioning units that had been altered to resemble components from a self-contained air conditioning unit.

These offenses would be a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) for repeat violators.

The bill would amend the Penal Code as it relates to the offense of theft to provide state-jail felony punishment (180 days to two years in a state jail and an optional fine of up to \$10,000) if the value of the property stolen was less than \$20,000 and the property stolen was aluminum, bronze, copper, or brass, rather than if the value of the property stolen was less than \$20,000 and involved certain materials that consisted of at least 50 percent aluminum, bronze, or copper.

The change in law would apply only to an offense committed on or after September 1, 2011.

Prohibited recycling of metal beer kegs. CSSB 694 would prohibit the sale of metal beer kegs to a metal recycler unless the seller was the manufacturer of the keg or the brewer/distiller or its representative.

Prevention of scrap metal theft grant program. CSSB 694 would require the Public Safety Commission to establish and implement a grant program, funded from fines collected and distributed to DPS, to fund local law enforcement's efforts to prevent theft of regulated materials.

Effective date. The bill would take effect September 1, 2011.

**SUPPORTERS
SAY:**

In 2007, legislation was enacted that attempted to curtail metal theft, but after implementation it was clear that certain provisions of the bill were difficult to enforce. CSSB 694 would address weaknesses in current law by making numerous changes to the regulation of the scrap metal recycling industry to prevent metal theft.

Metal theft has become a major problem for many Texas communities because stolen metal can easily be recycled for cash. Scrap metal prices are \$0.69 to \$4.00 per pound, with copper currently generating between \$3.00 and \$4.00 per pound. Scrap metal thefts have occurred at churches, charitable organizations, schools, municipalities, and businesses.

The bill would amend the term "regulated metal" to include additional items that have become common targets for thieves. The bill also would require a metal recycler to obtain additional information about individuals who sold regulated material and would require that the purchase record

include photos of the seller and the vehicle used to transport the items for sale. CSSB 694 would provide penalties and offenses that would prevent and deter theft and the purchase of stolen materials.

Current law does not include an enforcement mechanism for the registration requirement. CSSB 694 would include a penalty for recyclers who failed to register. This would help to ensure compliance with regulations. Although DPS cannot give an exact number of metal recycling entities currently in business, it is estimated that there could be as many as 2,400 potential recyclers, of whom approximately only 687 are registered and 329 have reported transactions in the last 12 months.

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

**OPPONENTS
SAY:**

CSSB 694 would not solve the problem of theft of regulated metals and materials. Many metal dealers in the state are not registered and threat of penalty generally is not effective. The bill would serve only to burden already law-abiding business owners and operators.

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 hold time for material 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 unnecessary additional hurdles and could be objectionable to customers.

NOTES:

The companion bill, HB 1933 by W. Smith, passed the House by 125-19 on April 27 and was received by the Senate on April 28.

The House committee substitute made numerous changes to the Senate-passed version of the bill, including:

- requiring a person who was attempting to sell material that included insulated utility, communications, or electrical wire that had been burned to remove the insulation and to provide documentation stating that the material was salvaged from a fire;

- exempting a metal recycling entity from obtaining a digital or video photograph of the seller and motor vehicle and trailer under certain circumstances;
- requiring a metal recycling entity to preserve each record of information regarding a seller of regulated material and each record of purchase for three years from the date the record was made, rather than two years;
- setting the deadline by which a metal recycling entity was required to send the report to DPS on a record of purchase of at least 48 hours after the purchase, as opposed to no later than the close of business on a metal recycling entity's second working day after the date of the purchase;
- prohibiting a metal recycling entity from disposing of, processing, selling, or removing from the premises certain regulated materials by certain deadlines;
- provisions governing the circumstances under which cash payments were allowed; and
- creating a class A misdemeanor offense or state-jail felony, as applicable, for a person who knowingly bought certain regulated material without meeting certain conditions.