

SUBJECT: Criminal offenses for metal recyclers

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 9 ayes — Harless, Márquez, Isaac, Kacal, Lewis, Reynolds, E. E. Thompson, C. Turner, Villalba

0 nays

WITNESSES: For — Fred Persons, Harris County Sheriff's Office; Cathy Sisk, Harris County; (*Registered, but did not testify*: Thomas Baker, The Recycling Council of Texas; Alan Burrows, CenterPoint Energy; Randy Cubriel, Texas Port Recycling; Gary Gibbs, American Electric Power; Gilbert Hughes, American Electric Power; Scott Norman, Texas Association of Builders; Patrick Reinhart, El Paso Electric Co.; Jim Shapiro, The Recycling Council of Texas; William Yarnell, City of Houston)

Against — (*Registered, but did not testify*: Melanie Oldham)

On — (*Registered, but did not testify*: Rita Beving)

BACKGROUND: Occupations Code, ch. 1956 regulates metal recyclers. The Department of Public Safety (DPS) administers the chapter under sec. 1956.02. Local governments, under sec. 1956.003 may adopt rules, with limitations, that are more stringent than required by state law.

Occupations Code, sec. 1956.040 (a-2) establishes the penalty for violating sec. 1956.040 (a-1) as a misdemeanor with a maximum fine of \$10,000. Violations include: operating with an expired registration certificate; offering to buy regulated material more than 15 straight hours a day or operating later than 9 p.m.; and failing to send to DPS a required electronic report with certain information, including contact information of the seller of the regulated material.

“Regulated material” is defined as aluminum, bronze, copper, brass, and regulated metals, such as those used in railroads, utilities and telecommunications.

DIGEST: HB 555 would define the class of misdemeanor for violating Occupations

Code, sec. 1956.040 (a-1) as class A misdemeanor (up to one year in jail and/or a maximum fine of \$10,000).

The bill would add sec. 1956.204, General Criminal Penalty, and provide that an offense under that section was a class C misdemeanor (maximum fine of \$500) unless the conduct that constituted the offense under that section also was an offense under another section in ch. 1956, in which case the person would be prosecuted under the other section.

**SUPPORTERS
SAY:**

CSHB 555 would strengthen current law, close loopholes, and enhance the ability of counties to enforce laws and regulations designed to stop unscrupulous metal recyclers.

Thieves steal millions of dollars worth of metal and cause extensive damage, well in excess of the metal's value, at building sites, water district lift and pump stations, electric utilities and other businesses. In the unincorporated areas of Harris County, officials estimate that metal theft is causing about \$1 million per month in damages. While existing law allows the thieves to be charged under various criminal penalties, unscrupulous metal dealers enable these thieves by ignoring local, county, and state law regulating their industry.

The city of Houston has increased its enforcement against metal recyclers, and the unscrupulous dealers have moved into the unincorporated areas of Harris County. Counties were granted additional authority over metal recyclers in SB 694, enacted by the 82nd Legislature in 2011. CSHB 555 would close enforcement loopholes uncovered by county officials.

The bill would clear up confusion about the misdemeanor penalty in existing law, which provides a fine up to \$10,000, by classifying the penalty as a class A misdemeanor, thus strengthening the penalty by allowing up to one year of jail time in addition to the existing monetary fine. CSHB 555 would grant local governments specific authority to charge a person who violates metal recycling laws with a class C misdemeanor. This provision would allow counties to write tickets for minor violations of metal recycling laws.

A class A misdemeanor is an appropriate penalty for metal recyclers operating outside the law. They are, in effect, acting as fences for a criminal activity that is causing millions of dollars in damages. If unscrupulous recyclers were appropriately penalized, metal theft would

decrease significantly.

With the bill's passage, counties would have the added incentive and needed tools to work together to penalize unscrupulous metal recyclers.

**OPPONENTS
SAY:**

The bill is not needed and would be ineffective if passed. Unscrupulous metal dealers simply would move to nearby counties where laws may not have been enacted or remain unenforced. Moreover, a one-year jail penalty is excessive for the violations specifically named in the bill. The state should not have a one-year jail term for a crime such as operating without a license or operating after 9 p.m. or more than 15 consecutive hours a day.