

BILL ANALYSIS

Senate Research Center

S.B. 1818
By: Zaffirini
Natural Resources & Economic Development
5/25/2021
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Metal recycling entities (MREs), as defined by the Occupations Code and licensed by the Department of Public Safety of the State of Texas, purchase scrap metal from the public, private businesses, and law enforcement and then arrange for the disposal of this material with treatment facilities, incineration vessels, steel plants, and other similar industrial entities. Sometimes the facilities with which MREs have recycling arrangements go out of business after having polluted the environment with the scrap metal. Under current state law, the MRE could be held liable for the polluting that occurred after the material was sold to the facility. Because federal law has a different liability standard, stakeholders have raised concerns about this incongruity and whether state law should be aligned with federal law.

In 2019 the legislature passed H.B. 3224, which required the Texas Commission on Environmental Quality (TCEQ) to conduct a study on the potential impacts of creating a liability exemption for recyclers under the Solid Waste Disposal Act. A workgroup met this interim to conduct the study and submitted a report to the legislature in January, 2021. S.B. 1818 reflects the workgroup's legislative recommendations.

Accordingly, S.B. 1818 would create an exemption from liability for MREs as it relates to scrap metal similar to federal law: if the MRE arranged for disposal by contract in an appropriate manner, or if the MRE arranged for transport for disposal or treatment in an appropriate manner, the MRE is not held liable for the polluter's actions.

S.B. 1818 amends current law relating to a defense under the Solid Waste Disposal Act for persons engaged in certain scrap metal recycling transactions.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 2 (Section 361.2755, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 361.275(a), Health and Safety Code, to provide that a person responsible for solid waste under Section 361.271 (Persons Responsible for Solid Waste) is liable under Section 361.272 (Administrative Orders Concerning Imminent and Substantial Endangerment) or 361.273 (Injunction as Alternative to Administrative Order) unless the person can establish by a preponderance of evidence that the release or threatened release was caused solely by certain incidents, except as provided by Section 361.2755. Makes a nonsubstantive change.

SECTION 2. Amends Subchapter I, Chapter 361, Health and Safety Code, by adding Section 361.2755, as follows:

Sec. 361.2755. SCRAP METAL RECYCLING TRANSACTIONS; DEFENSE.
(a) Defines "consuming facility" and "scrap metal."

(b) Provides that this section applies only to a scrap metal transaction that occurs on or after November 29, 1999, and does not apply to any material that is not scrap metal.

(c) Provides that a person who arranges for recycling of scrap metal, other than a person described by Subsection (f), is not responsible for the scrap metal under Section 361.271(a)(3) or (4) (relating to certain actions that make a person responsible for scrap metal) if the person can establish by a preponderance of the evidence that the following criteria were met at the time of the recycling transaction:

(1) the scrap metal met a commercial specification grade;

(2) a market existed for the scrap metal;

(3) a substantial portion of the scrap metal was made available for use as feedstock for the manufacture of a new saleable product;

(4) the scrap metal could have been a replacement or substitute for a virgin raw material, or the product to be made from the scrap metal could have been a replacement or substitute for a product made, in whole or in part, from a virgin raw material;

(5) the person was in compliance with any applicable regulations or standards regarding the handling, processing, reclamation, storage, transport, or management of the scrap metal or other activities associated with the recycling of scrap metal;

(6) the person did not melt the scrap metal prior to the transaction; and

(7) the person exercised reasonable care to determine that the consuming facility was in compliance with the substantive provisions of any:

(A) federal, state, or local environmental law or regulation applicable to the handling, processing, reclamation, storage, or transport of scrap metal or other management activities associated with scrap metal; or

(B) compliance order or decree issued pursuant to a law or regulation described by Paragraph (A).

(d) Provides that for purposes of Subsection (c)(6), thermal separation of two or more materials due to differences in melting points of the materials does not constitute melting.

(e) Requires that reasonable care, for purposes of Subsection (c)(7), be determined using criteria that include:

(1) the price paid for the scrap metal in the recycling transaction;

(2) the ability of the person to detect the nature of the consuming facility's operations concerning the facility's handling, processing, reclamation, storage, or transport of scrap metal or other management activities associated with the scrap metal; and

(3) the result of inquiries made by the person to the appropriate federal, state, or local environmental agency regarding the consuming facility's past and current compliance with:

(A) substantive provisions of any law, regulation, order, or decree described by Subsection (c)(7); and

(B) any requirement to obtain a permit applicable to the handling, processing, reclamation, storage, or transport of scrap metal or other management activity associated with scrap metal.

(f) Provides that Subsection (c) does not apply to a person who arranges for the recycling of scrap metal if the person:

(1) had an objectively reasonable basis to believe at the time of the scrap metal transaction that:

(A) the scrap metal would not be recycled;

(B) the scrap metal would be burned as fuel or for energy recovery or incineration; or

(C) the consuming facility was not in compliance with:

(i) a substantive provision of any law, regulation, order, or decree described by Subsection (c)(7); or

(ii) a requirement to obtain a permit applicable to the handling, processing, reclamation, storage, or transport of the scrap metal or other management activity associated with the scrap metal;

(2) had reason to believe that hazardous substances had been added to the scrap metal for purposes other than processing for recycling; or

(3) failed to exercise reasonable care with respect to the handling, processing, reclamation, storage, transport, and management of the scrap metal, including adhering to customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the scrap metal by hazardous substances.

(g) Requires that an objectively reasonable basis for belief, for purposes of Subsection (f)(1), be determined using criteria that include the size of the person's business; customary industry practices, including customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the scrap metal by hazardous substances; the price paid for the scrap metal in the recycling transaction; and the ability of the person to detect the nature of the consuming facility's operations concerning the facility's handling, processing, reclamation, storage, or transport of scrap metal or other management activities associated with scrap metal.

(h) Authorizes the Texas Commission on Environmental Quality (TCEQ) to adopt rules as necessary to administer this section.

(i) Provides that a person who commences an action for contribution against a person who is not responsible for the scrap metal under this section is liable to that person for all reasonable costs incurred in defending that action, including reasonable attorney's fees and expert witness fees.

(j) Prohibits this section from being construed to affect any defenses or liabilities of any person to whom Subsection (c) does not apply, to create any presumption of liability against any person to whom Subsection (c) does not apply, or to affect the responsibility of a person for solid waste under Section 361.271(a)(1) or (2)

(relating to persons who own or operate or owned or operated a solid waste facility).

SECTION 3. Provides that the change in law made by this Act does not apply to any judicial or administrative action initiated by TCEQ that is pending or on appeal on the effective date of this Act, and does not affect any final decision in a judicial or administrative action that exists on the effective date of this Act.

SECTION 4. Effective date: September 1, 2021.