

1-1 By: West S.B. No. 208
 1-2 (In the Senate - Filed November 14, 2016; January 25, 2017,
 1-3 read first time and referred to Committee on Natural Resources &
 1-4 Economic Development; April 3, 2017, reported adversely, with
 1-5 favorable Committee Substitute by the following vote: Yeas 9,
 1-6 Nays 0; April 3, 2017, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13			X	
1-14	X			
1-15	X			
1-16			X	
1-17	X			
1-18	X			
1-19	X			

1-20 COMMITTEE SUBSTITUTE FOR S.B. No. 208 By: Hinojosa

1-21 A BILL TO BE ENTITLED
 1-22 AN ACT

1-23 relating to the regulation of metal recycling entities; providing
 1-24 an administrative penalty; creating a criminal offense.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Section 1956.001, Occupations Code, is amended
 1-27 by amending Subdivision (6-a) and adding Subdivision (6-b) to read
 1-28 as follows:

1-29 (6-a) "Explosive device" means a device or material
 1-30 that contains explosive powder, primer, fluid, or gas or a
 1-31 detonator. The term does not include:

1-32 (A) a device that is designed, made, or adapted
 1-33 for delivering or shooting ammunition of .50 caliber or less and
 1-34 that is purchased for personal or security reasons recognized under
 1-35 state or federal law;

1-36 (B) a component of a motor vehicle or mechanical
 1-37 equipment, including equipment that is used in the exploration or
 1-38 production of minerals;

1-39 (C) any type of compressed cylinder that is
 1-40 commonly used in a residence or commercial business; or

1-41 (D) any type of scrap metal that is routinely
 1-42 purchased in the metal recycling industry and that is not
 1-43 associated with military weaponry.

1-44 (6-b) "Lead material" means:

1-45 (A) a commercial grade lead battery, lead-acid
 1-46 battery, or spiral cell battery; or

1-47 (B) a material or an item readily identifiable as
 1-48 being made of or containing lead.

1-49 SECTION 2. Section 1956.003(c), Occupations Code, is
 1-50 amended to read as follows:

1-51 (c) A county, municipality, or political subdivision of
 1-52 this state that issues a license or permit to a business as
 1-53 authorized under Subsection (b) shall submit to the department in
 1-54 the manner required by the department information on each business
 1-55 that is issued a license or permit, including inspection reports
 1-56 for the business, information regarding violations of this chapter
 1-57 by the business, and information regarding disciplinary actions
 1-58 initiated against the business.

1-59 SECTION 3. Section 1956.036, Occupations Code, is amended
 1-60 by adding Subsection (f) to read as follows:

2-1 (f) A metal recycling entity shall report to the department
 2-2 by telephone, by e-mail, or through the department's Internet
 2-3 website the entity's possession of an explosive device unknowingly
 2-4 purchased or otherwise obtained by the entity not later than the
 2-5 close of business on the entity's first working day after the date
 2-6 the possession of the device is discovered. A metal recycling
 2-7 entity may also report to an appropriate law enforcement authority
 2-8 or the nearest military installation the possession of an explosive
 2-9 device that the entity unknowingly purchased or otherwise obtained
 2-10 so that the explosive device may be removed from the entity or
 2-11 disposed of as soon as possible.

2-12 SECTION 4. Section 1956.040, Occupations Code, is amended
 2-13 by adding Subsections (c-1), (c-2), (c-3), (c-4), (c-5), and (d-1)
 2-14 to read as follows:

2-15 (c-1) A person commits an offense if the person knowingly
 2-16 sells an explosive device to a metal recycling entity.

2-17 (c-2) A metal recycling entity commits an offense if the
 2-18 entity knowingly buys an explosive device.

2-19 (c-3) Except as provided by Subsection (c-5), an offense
 2-20 under Subsection (c-1) or (c-2) is a Class A misdemeanor.

2-21 (c-4) A metal recycling entity commits an offense if the
 2-22 entity knowingly stores or allows to be stored on the entity's
 2-23 premises an explosive device. Except as provided by Subsection
 2-24 (c-5), an offense under this subsection is a Class A misdemeanor.
 2-25 For purposes of this subsection, a metal recycling entity is
 2-26 considered to store an explosive device on the entity's premises
 2-27 beginning not earlier than 72 hours after the time a person presents
 2-28 the explosive device to the entity for sale or an attempted sale and
 2-29 ending at the time the entity reports the presence of the explosive
 2-30 device on the entity's premises to the department. A metal
 2-31 recycling entity is not liable under this section for the time it
 2-32 takes for the department, a law enforcement agency, or a military
 2-33 installation to respond to the entity's report that the entity
 2-34 possesses an explosive device.

2-35 (c-5) An offense under Subsection (c-1), (c-2), or (c-4) is
 2-36 a felony of the second degree if it is shown at the trial of the
 2-37 offense that a person suffered death or serious bodily injury, as
 2-38 defined by Section 1.07, Penal Code, as a result of the detonation
 2-39 of an explosive device.

2-40 (d-1) On conviction of an offense under Subsection (c-1),
 2-41 (c-2), or (c-4), the court may order the defendant to make
 2-42 restitution to:

2-43 (1) the state or a political subdivision of the state
 2-44 for the costs incurred by the state or subdivision for responding to
 2-45 the offense and any removal, cleaning, sanitizing, demolition,
 2-46 reconstruction, or other treatment required as a result of the
 2-47 offense; and

2-48 (2) the owner of any property damaged as a result of
 2-49 the offense.

2-50 SECTION 5. Section 1956.041, Occupations Code, is amended
 2-51 by amending Subsections (a) and (b) and adding Subsections (b-1)
 2-52 and (f) to read as follows:

2-53 (a) The commission, after notice and an opportunity for a
 2-54 hearing, may impose an administrative penalty on a person who
 2-55 violates this subchapter or Subchapter A-2 or a rule or order of the
 2-56 commission under this chapter [Section 1956.036].

2-57 (b) The amount of the administrative penalty may not exceed
 2-58 \$1,000 for each violation. The aggregate penalty for multiple
 2-59 violations may not exceed \$10,000. Each day a violation occurs or
 2-60 continues to occur is a separate violation for the purpose of
 2-61 imposing a penalty. In determining the amount of the
 2-62 administrative penalty, the commission shall consider:

2-63 (1) the seriousness of the violation, including the
 2-64 nature, circumstances, extent, and gravity of the violation;

2-65 (2) the economic harm caused by the violation;

2-66 (3) the history of previous violations;

2-67 (4) the amount necessary to deter a future violation;

2-68 (5) efforts to correct the violation; and

2-69 (6) any other matter that justice may require.

3-1 (b-1) The commission by rule shall adopt a standardized
3-2 penalty schedule for a violation based on the criteria listed in
3-3 Subsection (b).

3-4 (f) An administrative penalty collected under this section
3-5 shall be deposited in a special account in the general revenue fund
3-6 and may be appropriated only to the department.

3-7 SECTION 6. Section [1956.041](#), Occupations Code, as amended
3-8 by this Act, applies only to a violation committed on or after the
3-9 effective date of this Act. A violation committed before the
3-10 effective date of this Act is governed by the law in effect on the
3-11 date the violation was committed, and the former law is continued in
3-12 effect for that purpose.

3-13 SECTION 7. This Act takes effect September 1, 2017.

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