

SUMMARY – SB 1095
81ST TEXAS LEGISLATURE

SB 1095 by Senator John Carona (R-Dallas) and Representative Senfronia Thompson (D-Houston) was passed by the Texas Senate and the Texas House of Representatives during the 81st Session of the Texas Legislature. SB 109 has been signed by the Governor. CJ Tredway, lobbyist for TARA has summarized the SB 1095.

Subchapter A - General Provisions

- Enacts the Texas Used Automotive Parts Recycling Act, Chapter 2309 Texas Occupations Code, providing for the licensing and regulation of used automotive parts recyclers.
- Transfers regulation of used automotive parts recyclers from the Texas Department of Transportation (TxDOT) to the Texas Department of Licensing & Regulation (TDLR), the state's umbrella occupational regulatory agency.
- Provides that the Act is not applicable to metal recyclers unless a motor vehicle is sold, transferred released, or delivered to a metal recycler as a source of used automotive parts and is used as a source of used automotive parts.
- Provides that the Act is not applicable to salvage vehicle dealers unless dealer deals in used automotive parts as more than an incidental part of its primary business.
- Provides that the Act is not applicable to insurance companies.

Subchapter B – Advisory Board

- Creates the Texas Automotive Parts Recycling Advisory Board to provide advice and recommendations to the TDLR on technical matters relevant to the administration and enforcement of provisions of the bill.
 - Prohibits the board from including more than one member from any one used automotive parts business entity.
 - Establishes requirements for the composition of the board, including requirements that the board include members who represent used automotive parts businesses owned by Texas entity and one member who represents a used automotive parts business owned by a entity from another state.
 - Establishes the terms of the board members, requirements for filling a vacancy on the board and appointing a presiding officer, and the presiding officer's term and authority.
 - Requires the board to meet at least twice a year.

Subchapter C – General Powers & Duties of TDLR

- Authorizes the executive director or the commission, as appropriate, to take action as necessary to administer and enforce provisions of the bill.
- Requires that commission to adopt rules for the licensing of used automotive parts recyclers and used automotive parts employees and to adopt rules for licensing applicants and standards of conduct for license holders by January 1, 2010.
- Requires the commission to establish and collect reasonable and necessary fees in amounts sufficient to cover the costs of administering the bill's provisions.
- Prohibits the commission from adopting a rule restricting advertising or competitive bidding by a license holder except to prohibit false, misleading, or deceptive practices, and prohibits the commission from including certain restrictions in its rules that prohibit such practices.
- Requires TDLR to inspect each used automotive parts recycling facility at least once every two years and authorizes TDLR to enter and inspect at any time during business hours the place of business or any place in which TDLR has reasonable cause to believe that a license holder is in violation of an applicable provision or of a rule or order.

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- Authorizes TDLR to conduct additional inspections based on a schedule of risk-based inspections that includes certain criteria. The bill requires a used automotive parts recycler to pay a fee for each additional inspection and requires the commission by rule to set the amount of the fee.
- Authorizes TDLR, in conducting an inspection, to inspect a facility, a used automotive part, a business record, or any other place or thing reasonably required to enforce these provisions or a rule or order adopted under them.
- Authorizes TDLR to employ personnel necessary to administer and enforce these provisions.

Subchapter D – License Requirements

- Creates a used automotive parts recycler license, which authorizes its holder to own or operate a used automotive parts recycling business or sell used automotive parts.
 - Provides that such a license is valid only with respect to the person who applied for the license.
 - Provides that the license holder may operate a used automotive parts recycling business only at the one facility listed on the license.
 - Requires that an applicant for a used automotive parts recycler license provide the following to TDLR: a federal tax identification number; proof of general liability insurance in an amount not less than \$250,000; and proof of a storm water permit if the applicant is required by the Texas Commission on Environmental Quality to obtain a permit.
- Creates a used automotive parts employee license, which authorizes its holder, in the scope of the person's employment by a used automotive parts recycler, to acquire a vehicle or used automotive parts or sell used automotive parts.
- Requires the commission by rule to adopt requirements for the application for and issuance of such a license.
- Requires that TDLR conduct criminal background checks of all applicants.
- Provides that a license issued by the executive director is valid throughout Texas and is not transferable.
- Establishes that a license issued under these provisions is valid for one year and sets out procedures for its renewal.

Subchapter E – Local Regulation

- Provides that requirements of bill are applicable in addition to the requirements of any applicable municipal ordinance relating to the regulation of a person who deals in used automotive parts and specifies that the bill's provisions do not prohibit the enforcement of an applicable municipal license or permit requirement that is related to an activity regulated under these provisions.

Subchapter F - Enforcement

- Authorizes TDLR to impose an administrative penalty on a person, regardless of whether the person holds a license under these provisions, if the person violates the provisions or a related rule or a rule or order of the executive director or commission.

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- Provides that penalties may not be imposed unless the person charged with a violation is provided the opportunity for a hearing.
- Authorizes the executive director to issue a cease and desist order as necessary to enforce provisions of the bill if the executive director determines that the action is necessary to prevent a violation of such provisions and to protect public health and safety.
- Authorizes the attorney general or executive director to institute an action for an injunction or a civil penalty relating to provisions of the bill and authorizes TDLR to impose administrative sanctions.
- Provides that it is a Class C misdemeanor to violate the licensing requirements, deal in used parts without a license, or employ an individual who does not hold the appropriate license.

Subchapter G – Conducting Business

- Specifies that provisions relating to salvage vehicle dealers do not apply to a licensed used automotive parts recycler and makes conforming changes.
- Updates reporting requirements to accurately reflect current regulatory requirements and industry practices
- Requires a used automotive parts recycler to obtain a properly assigned title from the previous owner of the vehicle.
- Requires a used automotive parts recycler who acquires a vehicle purpose of dismantling, scrapping, or destroying to submit to TxDOT, before the 31st day after the date of acquiring the motor vehicle, a properly assigned manufacturer's certificate of origin, regular certificate of title, nonrepairable vehicle title, salvage vehicle title, other ownership document, or comparable out-of-state ownership document for the motor vehicle.
- Requires TxDOT, after receiving the report and title or document, to issue the used automotive parts recycler a receipt for the document.
- Requires the recycler to comply with Transportation Code provisions relating to nonrepairable and salvage motor vehicles.
- Requires a used automotive parts recycler to maintain a record of or sales receipt for each motor vehicle, salvage motor vehicle, nonrepairable motor vehicle, and used automotive part purchased.
- Requires a recycler, before moving a place of business, to notify TDLR of the new location; and requires a used automotive parts recycler to provide a storm water permit for the location if a permit is required by the Texas Commission on Environmental Quality.

Subchapter H – Used Automotive Parts Recyclers Duties Relating to Component Parts

- Requires a used automotive parts recycler, immediately on receipt of a motor vehicle, to remove any unexpired license plates from the vehicle and place the license plates in a secure place until destroyed by the recycler.
- Prohibits a used automotive parts recycler from dismantling or disposing of a motor vehicle unless the recycler first obtains a certificate of authority to dispose of the vehicle, a sales receipt, or an abandoned motor vehicle transfer document for the vehicle or a certificate of title showing that there are no liens on the vehicle or that all recorded liens have been released.
- Requires a used automotive parts recycler to keep an accurate and legible record of each used component part purchased by or delivered to the recycler.

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- Authorizes a used automotive parts recycler, as an alternative to the required information, to record the name of the person who sold the part or the motor vehicle from which the part was obtained and the Texas certificate of inventory number or the federal taxpayer identification number of the person.
- Requires TDLR to prescribe the form of the record and to make the form available to used automotive parts recyclers.
- Specifies that these record requirements do not apply to an interior component part or special accessory part from a motor vehicle more than 10 years old or a part delivered to a used automotive parts recycler by a commercial freight line, commercial carrier, or licensed used automotive parts recycler.
- Requires a used automotive parts recycler to retain each component part in its original condition on the business premises of the recycler for at least three calendar days, excluding Sundays, after the date the recycler obtains the part.
- Specifies that provisions relating to the assignment of an inventory number do not apply to the purchase by a used automotive parts recycler of a nonoperational engine, transmission, or rear axle assembly from another used automotive parts recycler or an automotive-related business.
- Requires a used automotive parts recycler to maintain copies until the first anniversary of the purchase date of the item for which the record is maintained.
- Requires a used automotive parts recycler, as required by TDLR, to surrender to TxDOT for cancellation a certificate of title or authority, sales receipt or transfer document and requires TxDOT to provide a signed receipt for a surrendered certificate of title.
- Authorizes a peace officer at any reasonable time to inspect a record required to be maintained, including an inventory record, and requires a used automotive parts recycler, on demand by a peace officer, to provide a copy of such a record.
 - Authorizes a peace officer to inspect the inventory on the premises of a used automotive parts recycler at any reasonable time to verify, check, or audit such records.
 - Requires a used automotive parts recycler or an employee of the recycler to allow and not interfere with a peace officer's inspection of the recycler's inventory, premises, or required inventory records.

Subchapter I – Motor Vehicle Salvage Yards in Certain Counties

- Prohibits a used automotive parts recycler located in Harris County from operating heavy machinery in a used automotive parts recycling facility between the hours of 7 p.m. of one day and 7 a.m. of the following day, except for operation necessary to a sale or purchase by the recycler.

Conforming Provisions

- Amends the Transportation Code to add to the definition of "salvage vehicle dealer" a used automotive parts recycler if the sale of repaired, rebuilt, reconstructed, or nonrepairable motor vehicles or salvage motor vehicles is more than an incidental part of the used automotive parts recycler's business.
- Removes from the definition a person engaged in Texas in the business of dismantling nonrepairable or salvage motor vehicles and amends the definition to specify that the term includes a person engaged in the business of acquiring, selling, repairing, rebuilding,

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reconstructing, or otherwise dealing in used automotive parts if incidental to a salvage motor vehicle dealer's primary business.

- Excludes from the definition a person who casually repairs, rebuilds, or reconstructs fewer than five salvage motor vehicles in the same calendar year or a used automotive parts recycler, except as allowed under these provisions.
- Removes language specifying that the inclusion in the definition of a person in the business of dealing in nonrepairable motor vehicles or salvage motor vehicles applies regardless of whether the person deals in used parts and removes a person in the business of dealing in used parts regardless of whether the person deals in nonrepairable motor vehicles or salvage motor vehicles.
- Amends Transportation Code provisions authorizing the sale or assignment of title of certain salvage or nonrepairable motor vehicles by an insurance company or the sale, transfer, or release of such vehicles by certain businesses or governmental entities to include a used automotive parts recycler as a buyer.
- Makes applicable to a used automotive parts recycler the requirement that certain sellers of nonrepairable or salvage motor vehicles at a casual sale retain records relating to such sales.

Repealer

- Repeals Section 2302.253, Occupations Code, which had provided for the regulation of a salvage vehicle dealer who holds an endorsement as a used vehicle parts dealer.

Effective Date Section 2309.102

- Requires the commission to adopt rules relating to licensing of used automotive parts recyclers and employees by January

Prevailing Clause

- Provides that, in a conflict between a provision of this bill and a provision of another Act of the 81st Legislature, Regular Session, 2009, that becomes law concerning the licensing or regulation of used automotive parts recyclers, this bill's provisions prevail.

Effective Dates

- Provides that used automotive parts recyclers and employees must be licensed by TDLR by September 1, 2010.
- Provides that provisions without a specific effective day are in effect on September 1, 2009.

Sources: SB 1095, 81st Legislature; Bill Analysis of House CSSB 1095, 81st Legislature