

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

D

HOUSE BILL 323
PROPOSED COMMITTEE SUBSTITUTE H323-PCS10883-RO-15

Short Title: Prevent the Theft of Scrap Metals.

(Public)

Sponsors:

Referred to:

March 2, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO STRENGTHEN THE REQUIREMENTS REGARDING SECONDARY
3 METALS RECYCLING OF REGULATED METALS PROPERTY IN ORDER TO
4 PREVENT THE THEFT OF THIS PROPERTY.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 66-11 reads as rewritten:

7 "§ 66-11. Dealing in regulated metals property; penalties.

8 (a) Definitions. – As used in this section:

9 (1) "Law enforcement officer" means any duly constituted law enforcement
10 officer of the State or of any municipality or county.

11 (2) "Regulated metals property" means all ferrous and nonferrous metals.

12 (3) "Secondary metals recycler" means any person, firm, or corporation in the
13 State:

14 a. That, from a fixed location or otherwise, is engaged in the business
15 of gathering or obtaining ferrous or nonferrous metals that have
16 served their original economic purpose or is in the business of
17 performing the manufacturing process by which ferrous metals or
18 nonferrous metals are converted into raw material products
19 consisting of prepared grades and having an existing or potential
20 economic value; or

21 b. That has facilities for performing the manufacturing process by
22 which ferrous metals or nonferrous metals are converted into raw
23 material products consisting of prepared grades and having an
24 existing or potential economic value, by methods including, but not
25 limited to, the processing, sorting, cutting, classifying, cleaning,
26 baling, wrapping, shredding, shearing, or changing the physical form
27 or chemical content of the metals, but not including the exclusive use
28 of hand tools.

29 (4) "Fixed location" means any site occupied by a secondary metals recycler as
30 the owner of the site or as a lessee of the site under a lease or other rental
31 agreement providing for occupation of the site by the secondary metals
32 recycler for a total duration of not less than 364 days.

33 (a1) Receipt Required. – A secondary metals recycler shall issue a receipt to the person
34 delivering the regulated metals property for all purchase transactions in which the secondary



* H 3 2 3 - P C S 1 0 8 8 3 - R O - 1 5 *

1 metals recycler purchases regulated metals property. This receipt shall be signed by the person
2 delivering the materials, and the secondary metals recycler shall be able to provide
3 documentation regarding the employee who completed the transaction.

4 (b) Records Required. –

5 (1) A secondary metals recycler shall maintain a record of all purchase
6 transactions in which the secondary metals recycler purchases regulated
7 metals property.

8 (2) The following information shall be maintained for transactions in which a
9 secondary metals recycler purchases regulated metals property:

10 a. The name and address of the secondary metals recycler.

11 b. The name, initials, or other identification of the individual entering
12 the information.

13 c. The date of the transaction.

14 d. The weight of the regulated metals property purchased.

15 e. The description made in accordance with the custom of the trade of
16 the type of regulated metals property purchased and the physical
17 address where the regulated metals were obtained by the seller, and a
18 statement signed by the seller or the seller's agent certifying that the
19 seller or the seller's agent has the lawful right to sell and dispose of
20 the property.

21 f. The amount of consideration given for the regulated metals property.

22 g. The name and address of the vendor of the regulated metals property
23 and the license plate number of the vehicle used to deliver the
24 regulated metals.

25 h. A photocopy or electronic scan of the drivers license or state or
26 federally issued photo identification card of the person delivering the
27 regulated metals property to the secondary metals recycler. If the
28 secondary metals recycler has a copy of the valid photo identification
29 of the person delivering the regulated metals property on file, the
30 secondary metals recycler must examine the photo identification, but
31 may reference the photo identification that is on file without making
32 a separate photocopy or electronic scan for each subsequent
33 transaction. If the person delivering the regulated metals property
34 does not have a drivers license or a state or federally issued photo
35 identification card, the secondary metals recycler shall not complete
36 the transaction.

37 i. A copy of the receipt required under subsection (a1) of this section
38 when all the information required under subsection (a1) of this
39 section is clear and legible, or in the event the copy of the receipt is
40 not clear or not legible, the original receipt.

41 j. In transactions involving catalytic converters that are not attached to
42 a vehicle, and central air conditioner evaporator coils or condensers,
43 the person delivering the materials shall place next to that person's
44 signature on the receipt required under subsection (a1) of this
45 section, a clear impression of that person's index finger that is in ink
46 and free of any smearing. A secondary metals recycler may elect to
47 obtain the fingerprint electronically. If the secondary metals recycler
48 has a copy of the fingerprint of the person delivering the nonferrous
49 metal on file, the secondary metals recycler must examine the photo
50 identification but may reference the fingerprint that is on file without
51 making a separate fingerprint for each subsequent transaction.

1 (3) A secondary metals recycler shall keep and maintain the information
2 required under this subsection for not less than two years from the date of
3 the purchase of the regulated metals property.

4 (c) Inspection of Regulated Metals Property and Records. – During the usual and
5 customary business hours of a secondary metals recycler, a law enforcement officer shall have
6 the right to inspect ~~either~~ all of the following:

7 (1) Any and all purchased regulated metals property in the possession of the
8 secondary metals recycler.

9 (2) Any and all records required to be maintained under subsection (b) of this
10 section.

11 A secondary metals recycler shall make receipts for the purchase of regulated metals property
12 available for pickup each regular workday if requested by the sheriff or chief of police of the
13 county or the chief of police of the municipality in which the secondary metals recycler is
14 located. The sheriff or the chief of police may request these receipts to be electronically
15 transferred directly to the law enforcement agency.

16 (d) Purchase Limitations. – No secondary metals recycler shall do any of the following:

17 ~~(1) Purchase regulated metals property for cash consideration from other than a~~
18 ~~fixed location.~~

19 ~~(2) Purchase or receive regulated metals property from minors from other than a~~
20 ~~fixed location, provided that this provision does not apply to the purchase of~~
21 ~~aluminum in the form of beverage or food cans.~~

22 (3) Purchase any central air conditioner evaporator coils or condensers, or
23 catalytic converters that are not attached to a vehicle, except that a secondary
24 metals recycler may purchase these items from a company, contractor, or
25 individual that is in the business of installing, replacing, maintaining, or
26 removing these items, provided the secondary metals recycler is prohibited
27 from paying cash or making payment of any kind for any central air
28 conditioner evaporator coil or condenser in whole or in part or a catalytic
29 converter that is not attached to a vehicle. The payment for these metals is to
30 be made by check or money order made out to the company, contractor, or
31 individual.

32 (4) Purchase other nonferrous metal property not listed in subdivision (5) of this
33 subsection for any cash consideration greater than one hundred dollars
34 (\$100.00) per transaction. The secondary metals recycler may purchase other
35 nonferrous metal property for an amount in excess of one hundred dollars
36 (\$100.00) if the payment is made by check, money order, or in accordance
37 with subdivision (g)(3) of this section.

38 (5) Except as provided in subsection (g) of this section, purchase:

39 a. Any regulated metal marked with the initials or other identification
40 of a telephone, cable, electric, water, or other public utility, or any
41 brewer.

42 b. Any utility access cover.

43 c. Any street light pole or fixture.

44 d. Any road or bridge guard rail.

45 e. Any highway or street sign.

46 f. Any water meter cover.

47 g. Any metal beer keg, including any made of stainless steel that is
48 clearly marked as being the property of the beer manufacturer.

49 h. Any traffic directional or control sign.

50 i. Any traffic light signal.

51 j. Any regulated metal marked with the name of a government entity.

- 1 k. Any property owned by a railroad and marked and otherwise
2 identified as such.
- 3 l. Any historical marker or any grave marker or burial vase.
- 4 (d1) Retain Metals for Seven Days Before Selling or Altering. – Any secondary metals
5 recycler owner convicted of a felonious violation of this Chapter, G.S. 14-71, 14-71.1, or 14-72
6 shall hold and retain any regulated metals product, except for iron and steel products, for seven
7 days from the date of purchase before selling, dismantling, defacing, or in any manner altering
8 or disposing of the regulated metals property.
- 9 (e) Right to Restitution. – The court may order a defendant to make restitution to the
10 secondary metals recycler for any damage or loss caused by the defendant arising out of an
11 offense committed by the defendant.
- 12 (f) Violations. – Unless the conduct is covered by some other provision of law
13 providing greater punishment, any person knowingly and willfully violating any of the
14 provisions of this section shall be guilty of a Class 1 misdemeanor for a first offense. A second
15 or subsequent violation of this section is a Class I felony.
- 16 (g) Exemptions. – This section does not apply to:
- 17 (1) ~~This section shall not apply to purchases~~ Purchases of regulated metals
18 property from a manufacturing, industrial, government, or other commercial
19 vendor that generates or sells regulated metals property in the ordinary
20 course of its business.
- 21 (2) Purchases of regulated metals property that involve only beverage
22 containers.
- 23 (3) Any secondary metals recycler that uses a cash card system that captures the
24 photograph of the person selling nonferrous metal only with regard to the
25 requirement to pay by check or money order, if the secondary metals
26 recycler maintains the photograph for 90 days.
- 27 (h) Preemption. – A county or municipality shall not enact any local law, ordinance, or
28 regulation regulating secondary metals recyclers or regulated metals property that conflicts
29 with this section, and this law preempts all existing laws, ordinances, or regulations."
- 30 **SECTION 2.** This act becomes effective October 1, 2009, and applies to purchases
31 and offers of purchase that occur on or after that date.