

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 323
Committee Substitute Favorable 4/27/09
PROPOSED COMMITTEE SUBSTITUTE H323-PCS10927-RL-26

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.



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1 (a1) Receipt Required. – A secondary metals recycler shall issue a receipt to the person
2 delivering the regulated metals property for all purchase transactions in which the secondary
3 metals recycler purchases regulated metals property. This receipt shall be signed by the person
4 delivering the materials, and the secondary metals recycler shall be able to provide
5 documentation regarding the employee who completed the transaction.

6 (b) Records Required. –

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

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

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

13 b. The name, initials, or other identification of the individual entering
14 the information.

15 c. The date of the transaction.

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

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

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

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

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

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

43 j. In transactions involving catalytic converters that are not attached to
44 a vehicle, and central air conditioner evaporator coils or condensers,
45 the person delivering the materials shall place next to that person's
46 signature on the receipt required under subsection (a1) of this
47 section, a clear impression of that person's index finger that is in ink
48 and free of any smearing. A secondary metals recycler may elect to
49 obtain the fingerprint electronically. If the secondary metals recycler
50 has a copy of the fingerprint of the person delivering the nonferrous
51 metal on file, the secondary metals recycler must examine the photo

1 identification but may reference the fingerprint that is on file without
2 making a separate fingerprint for each subsequent transaction.

- 3 (3) A secondary metals recycler shall keep and maintain the information
4 required under this subsection for not less than two years from the date of
5 the purchase of the regulated metals property. Records shall be securely
6 maintained at all times and shall be destroyed in a manner that protects the
7 identity of the owner of the property, the seller of the property, and the
8 purchaser of the property.

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

- 12 (1) Any and all purchased regulated metals property in the possession of the
13 secondary metals recycler.
14 (2) Any and all records required to be maintained under subsection (b) of this
15 section.

16 A secondary metals recycler shall make receipts for the purchase of regulated metals property
17 available for pickup each regular workday if requested by the sheriff or chief of police of the
18 county or the chief of police of the municipality in which the secondary metals recycler is
19 located. The sheriff or the chief of police may request these receipts to be electronically
20 transferred directly to the law enforcement agency. Records retained by a law enforcement
21 agency shall be securely retained as required by law and destroyed in a manner that protects the
22 identity of the owner of the property, the seller of the property, and the purchaser of the
23 property.

24 (c1) Records submitted to any public law enforcement agency pursuant to this section
25 are records of criminal investigations or records of criminal intelligence information as defined
26 in G.S. 132-1.4 and are not public records as defined by G.S. 132-1.

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

- 28 (1) ~~Purchase regulated metals property for cash consideration from other than a~~
29 ~~fixed location.~~
30 (2) ~~Purchase or receive regulated metals property from minors from other than a~~
31 ~~fixed location, provided that this provision does not apply to the purchase of~~
32 ~~aluminum in the form of beverage or food cans.~~
33 (3) Purchase any central air conditioner evaporator coils or condensers, or
34 catalytic converters that are not attached to a vehicle, except that a secondary
35 metals recycler may purchase these items from a company, contractor, or
36 individual that is in the business of installing, replacing, maintaining, or
37 removing these items, provided the secondary metals recycler is prohibited
38 from paying cash or making payment of any kind for any central air
39 conditioner evaporator coil or condenser in whole or in part or a catalytic
40 converter that is not attached to a vehicle. The payment for these metals is to
41 be made by check or money order made out to the company, contractor, or
42 individual. Payment for these metals may also be made using a cash card
43 system that captures the photograph of the person selling these metals if the
44 secondary metals recycler maintains the photograph for 90 days.
45 (4) Purchase other nonferrous metal property not listed in subdivision (5) of this
46 subsection for any cash consideration greater than one hundred dollars
47 (\$100.00) per transaction. The secondary metals recycler may purchase other
48 nonferrous metal property for an amount in excess of one hundred dollars
49 (\$100.00) if the payment is made by check, money order, or a cash card
50 system that captures the photograph of the person selling the nonferrous
51 metal if the secondary metals recycler maintains the photograph for 90 days.

- 1 (5) Except as provided in subsection (g) of this section, purchase:
2 a. Any regulated metal marked with the initials or other identification
3 of a telephone, cable, electric, water, or other public utility, or any
4 brewer.
5 b. Any utility access cover.
6 c. Any street light pole or fixture.
7 d. Any road or bridge guard rail.
8 e. Any highway or street sign.
9 f. Any water meter cover.
10 g. Any metal beer keg, including any made of stainless steel that is
11 clearly marked as being the property of the beer manufacturer.
12 h. Any traffic directional or control sign.
13 i. Any traffic light signal.
14 j. Any regulated metal marked with the name of a government entity.
15 k. Any property owned by a railroad and marked and otherwise
16 identified as such.
17 l. Any historical marker or any grave marker or burial vase.

18 (d1) Retain Metals for Seven Days Before Selling or Altering. – Any secondary metals
19 recycler owner convicted of a felonious violation of this Chapter, G.S. 14-71, 14-71.1, or 14-72
20 shall hold and retain any regulated metals product, except for iron and steel products, for seven
21 days from the date of purchase before selling, dismantling, defacing, or in any manner altering
22 or disposing of the regulated metals property.

23 (e) Right to Restitution. – The court may order a defendant to make restitution to the
24 secondary metals recycler for any damage or loss caused by the defendant arising out of an
25 offense committed by the defendant.

26 (f) Violations. – Unless the conduct is covered by some other provision of law
27 providing greater punishment, any person knowingly and willfully violating any of the
28 provisions of this section shall be guilty of a Class 1 misdemeanor for a first offense. A second
29 or subsequent violation of this section is a Class I felony.

30 (g) Exemptions. – This section does not apply to:

31 (1) ~~This section shall not apply to purchases~~ Purchases of regulated metals
32 property from a manufacturing, industrial, government, or other commercial
33 vendor that generates or sells regulated metals property in the ordinary
34 course of its business.

35 (2) Purchases of regulated metals property that involve only beverage
36 containers.

37 (h) Preemption. – A county or municipality shall not enact any local law, ordinance, or
38 regulation regulating secondary metals recyclers or regulated metals property that conflicts
39 with this section, and this law preempts all existing laws, ordinances, or regulations."

40 **SECTION 2.** This act becomes effective October 1, 2009, and applies to purchases
41 and offers of purchase that occur on or after that date.