

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 199
Committee Substitute Favorable 3/31/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H199-PCS70301-RV-53

Short Title: Metal Theft Prevention Act of 2012.

(Public)

Sponsors:

Referred to:

March 2, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO RECODIFY THE PROVISIONS OF THE GENERAL STATUTES THAT
3 REGULATE PRECIOUS METALS BUSINESSES, PAWNBROKERS AND CASH
4 CONVERTERS, AND SECONDARY METALS RECYCLERS, AND TO
5 STRENGTHEN METALS THEFT PREVENTION BY REQUIRING PERMITTING OF
6 NONFERROUS METALS PURCHASERS, MAKING IT A CRIME TO CUT,
7 MUTILATE, DEFACE, OR OTHERWISE INJURE THE PROPERTY OF ANOTHER TO
8 OBTAIN NONFERROUS METALS, CREATING RELATED CRIMINAL OFFENSES,
9 AND MAKING OTHER RELATED CHANGES TO THE GENERAL STATUTES.

10 The General Assembly of North Carolina enacts:

11 **SECTION 1.** Chapter 66 of the General Statutes is amended by adding a new
12 Article to read:

13 "Article 45.

14 "Pawnbrokers, Metal Dealers, and Scrap Dealers."

15 **SECTION 2.** Chapter 91A of the General Statutes is recodified as Part 1 of Article
16 45 of Chapter 66 of the General Statutes, G.S. 66-385 through G.S. 66-399.

17 **SECTION 3.** The title of Part 1 of Article 45 of Chapter 66 of the General Statutes,
18 as enacted by Section 2 of this act, reads as rewritten:

19 "Part 1. Pawnbrokers and Cash ~~Converters Modernization Act.~~Converters."

20 **SECTION 4.** G.S. 91A-1, as recodified by Section 2 of this act, reads as rewritten:

21 "**§ 66-385. Short title.**

22 This ~~Chapter~~Part shall be known and may be cited as the Pawnbrokers and Cash
23 Converters Modernization Act."

24 **SECTION 5.** G.S. 91A-2, as recodified by Section 2 of this act, reads as rewritten:

25 "**§ 66-386. Purpose.**

26 The making of pawn loans and the acquisition and disposition of tangible personal property
27 by and through pawnshops and cash converters vitally affects the general economy of this State
28 and the public interest and welfare of its citizens. In recognition of these facts, it is the policy of
29 this State and the purpose of the Pawnbrokers and Cash Converters Modernization Act to do all
30 of the following:

- 31 (1) Ensure a sound system of making loans and acquiring and disposing of
32 tangible personal property by and through pawnshops, and to prevent



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1 unlawful property transactions, particularly in stolen property, through
2 licensing and regulating pawnbrokers.

3 ~~(1a)~~(2) Ensure a sound system of acquiring and disposing of tangible personal
4 property by and through cash converters and to prevent unlawful property
5 transactions, particularly in stolen property, by requiring record keeping by
6 cash converters.

7 ~~(2)~~(3) Provide for pawnbroker licensing fees and investigation fees of licensees.

8 ~~(3)~~(4) Ensure financial responsibility to the State and the general public.

9 ~~(4)~~(5) Ensure compliance with federal and State laws.

10 ~~(5)~~(6) Assist local governments in the exercise of their police authority."

11 **SECTION 6.** G.S. 91A-3, as recodified by Section 2 of this act, reads as rewritten:

12 **"§ 66-387. Definitions.**

13 The following definitions apply in this ~~Chapter~~Part:

14 ...

15 (2) Cash converter. – A person engaged in the business of purchasing goods
16 from the public for cash at a permanently located retail store who holds
17 himself or herself out to the public by signs, advertising, or other methods as
18 engaging in that business. The term does not include any of the following:

19 a. Pawnbrokers.

20 b. Persons whose goods purchases are made directly from
21 manufacturers or wholesalers for their inventories.

22 c. Precious metals dealers, to the extent that their transactions are
23 regulated under ~~Article 25 of Chapter 66 of the General Statutes~~Part
24 2 of this Article.

25 d. Purchases by persons primarily in the business of obtaining from the
26 public, either by purchase or exchange, used clothing, children's
27 furniture, and children's products, provided the amount paid for the
28 individual item purchased is less than fifty dollars (\$50.00).

29 e. Purchases by persons primarily in the business of obtaining from the
30 public, either by purchase or exchange, sporting goods and sporting
31 equipment, provided the amount paid for the individual item
32 purchased is less than fifty dollars (\$50.00).

33"

34 **SECTION 7.** G.S. 91A-5, as recodified by Section 2 of this act, reads as rewritten:

35 **"§ 66-389. License required.**

36 It is unlawful for any person, firm, or corporation to establish or conduct a business of
37 pawnbroker unless such person, firm, or corporation has procured a license to conduct business
38 in compliance with the requirements of this ~~Chapter~~Part."

39 **SECTION 8.** G.S. 91A-6(c) and (d), as recodified by Section 2 of this act, read as
40 rewritten:

41 "(c) Licenses shall be granted under this ~~Chapter~~Part by the city if the pawnshop is to be
42 operated within the corporate limits of a city as defined by G.S. 160A-1, and by a county if it is
43 to be operated outside the corporate limits of any city as defined by G.S. 160A-1.

44 (d) Any license granted under this ~~Chapter~~Part may be revoked by the county or city
45 issuing it, after a hearing, for substantial abuses of this ~~Chapter~~Part by the licensee."

46 **SECTION 9.** G.S. 91A-7(e), as recodified by Section 2 of this act, reads as
47 rewritten:

48 "(e) Except as otherwise provided in this ~~Chapter~~Part, any person presenting a pawn
49 ticket to a pawnbroker is presumed to be entitled to redeem the pledged goods described on the
50 ticket."

1 **SECTION 10.** G.S. 91A-10(a), as recodified by Section 2 of this act, reads as
2 rewritten:

3 **"§ 66-395. Prohibitions.**

4 (a) A pawnbroker shall not:

- 5 (1) Accept a pledge from a person under the age of 18 years.
6 (2) Make any agreement requiring the personal liability of a pledgor in
7 connection with a pawn transaction.
8 (3) Accept any waiver, in writing or otherwise, of any right or protection
9 accorded a pledgor under this ~~Chapter, Part.~~
10 (4) Fail to exercise reasonable care to protect pledged goods from loss or
11 damage.
12 (5) Fail to return pledged goods to a pledgor upon payment of the full amount
13 due the pawnbroker on the pawn transaction. In the event such pledged
14 goods are lost or damaged while in the possession of the pawnbroker, it shall
15 be the responsibility of the pawnbroker to replace the lost or damaged goods
16 with merchandise of like kind and equivalent value. In the event the pledgor
17 and pawnbroker cannot agree as to replacement, the pawnbroker shall
18 reimburse the pledgor in the amount of the value agreed upon pursuant to
19 ~~G.S. 91A-7(b).~~ G.S. 66-391(b).
20 (6) Take any article in pawn, pledge, or as security from any person, which is
21 known to such pawnbroker to be stolen, unless there is a written agreement
22 with local or State law enforcement.
23 (7) Sell, exchange, barter, or remove from the pawnshop any goods pledged,
24 pawned, or purchased before the earlier of seven days after the date the pawn
25 ticket record is electronically reported in accordance with
26 ~~G.S. 91A-7(d)~~ G.S. 66-391(d) or 30 days after the transaction, except in case
27 of redemption by pledgor or items purchased for resale from wholesalers.
28 (8) Operate more than one pawnshop under one license, and such shop must be
29 at a permanent place of business.
30 (9) Take as pledged goods any manufactured mobile home, recreational vehicle,
31 or motor vehicle other than a motorcycle."

32 **SECTION 11.** G.S. 91A-11, as recodified by Section 2 of this act, reads as
33 rewritten:

34 **"§ 66-396. Penalties.**

35 (a) Every person, firm, or corporation, their guests or employees, who shall knowingly
36 violate any of the provisions of this ~~Chapter, Part,~~ shall, on conviction thereof, be deemed guilty
37 of a Class 2 misdemeanor. If the violation is by an owner or major stockholder or managing
38 partner of the pawnshop and the violation is knowingly committed by the owner, major
39 stockholder, or managing partner of the pawnshop, then the license of the pawnshop may be
40 suspended at the discretion of the court.

41 (b) The provision of subsection (a) of this section shall not apply to violations of
42 ~~G.S. 91A-10(a)(6)~~ G.S. 66-395(a)(6) or G.S. 66-395(b) which shall be prosecuted under the
43 North Carolina criminal statutes.

44 (c) Any contract of pawn the making or collecting of which violates any provision of
45 this ~~Chapter, Part,~~ except as a result of accidental or bona fide error of computation, shall be
46 void, and the licensee shall have no right to collect, receive or retain any interest or fee
47 whatsoever with respect to such pawn."

48 **SECTION 12.** G.S. 91A-12, as recodified by Section 2 of this act, reads as
49 rewritten:

50 **"§ 66-397. Municipal or county authority.**

1 All of the counties and cities as defined by G.S. 160A-1 may by ordinance adopt the
2 provisions of this ~~Chapter-Part~~ and may adopt such further rules and regulations as the
3 governing bodies of the counties and cities deem appropriate; provided, however, no county or
4 city may regulate:

- 5 (1) Interest, fees, or recovery charges;
- 6 (2) Hours of operation, unless such regulation applies to businesses generally;
- 7 (3) The nature of the business or type of pawn transaction; or
- 8 (4) License fees in excess of rates set by the State."

9 **SECTION 13.** G.S. 91A-13, as recodified by Section 2 of this act, reads as
10 rewritten:

11 "**§ 66-398. License renewal.**

12 Notwithstanding any provision of this ~~Chapter-Part~~ to the contrary, any person, firm, or
13 corporation licensed as a pawnbroker on or before October 1, 1989, shall continue in force until
14 the natural expiration thereof and all other provisions of this ~~Chapter-Part~~ shall apply to such
15 license. Such pawnbroker shall be eligible for renewal of his license upon its expiration or
16 subsequent renewals, provided such license complies with the requirements for renewal that
17 were in effect immediately prior to October 1, 1989."

18 **SECTION 14.** G.S. 91A-14, as recodified by Section 2 of this act, reads as
19 rewritten:

20 "**§ 66-399. Bond.**

21 Every person, firm, or corporation licensed under this ~~Chapter-Part~~ shall, at the time of
22 receiving the license, file with the city or county issuing the license a bond payable to such city
23 or county in the sum of five thousand dollars (\$5,000), to be executed by the licensee, and by
24 two responsible sureties or a surety company licensed to do such business in this State, to be
25 approved by the city or county, which shall be for the faithful performance of the requirements
26 and obligations pertaining to the business so licensed. The city or county may sue for forfeiture
27 of the bond upon a breach thereof. Any person who obtains a judgment against a pawnbroker
28 and upon which judgment execution is returned unsatisfied may maintain an action in his own
29 name upon the bond, to satisfy the judgment."

30 **SECTION 15.** Article 25 of Chapter 66 of the General Statutes is recodified as Part
31 2 of Article 45 of Chapter 66 of the General Statutes, G.S. 66-405 through G.S. 66-414.

32 **SECTION 16.** The title of Part 2 of Article 45 of Chapter 66 of the General
33 Statutes, as enacted by Section 15 of this act, reads as rewritten:

34 "Part 2. ~~Regulation of~~ Precious Metal Businesses."

35 **SECTION 17.** G.S. 66-164, as recodified by Section 15 of this act, reads as
36 rewritten:

37 "**§ 66-406. Definitions.**

38 The following definitions apply in this ~~Article-Part~~:

- 39 (1) Dealer. – A person who purchases precious metals from the public, other
40 than by an exempted transaction, in the form of jewelry, flatware, silver
41 services, or other forms and holds himself or herself out to the public by
42 signs, advertising, or other methods as engaging in such purchases, including
43 any independent contractor purchasing precious metals under any
44 arrangement in any department store. An exempted transaction is one that is
45 (i) not considered in determining whether a person is a dealer under this
46 ~~Article-Part~~ and (ii) not subject to the requirements of this ~~Article-Part~~, even
47 if it is entered into by a person otherwise defined and regulated as a dealer.
48 Exempted transactions are:
 - 49 a. Purchases directly from manufacturers or wholesalers of precious
50 metals by permanently located retail merchants for their inventories.

- 1 b. Pawns, pledges, or purchases of items made of precious metals, if the
2 transaction is entered into by a licensed pawnbroker and the
3 transaction is regulated under the provisions of ~~Chapter 91A of the~~
4 ~~General Statutes.~~ Part 1 of this Article.
5 c. The acquisition of precious metals by a permanently located retail
6 merchant through barter or exchange for other items sold in the
7 ordinary course of the merchant's business, provided that the seller
8 does not receive, as part of the transaction, any sum of money or any
9 gift card or stored-value card, unless the card is redeemable only at
10 that merchant's business.

11 "

12 **SECTION 18.** G.S. 66-165, as recodified by Section 15 of this act, reads as
13 rewritten:

14 **"§ 66-407. Permits.**

15 ...

16 (b) Employee Requirements. – Every employee engaged in the precious metals
17 purchasing business shall, within two business days of being so engaged, register his or her
18 name and address with the local law enforcement agency and have his or her photograph taken
19 by the agency. The employee also shall consent to a criminal history record check, which shall
20 be performed by the local law enforcement agency. A person who refuses to consent to a
21 criminal history record check shall not be employed by a dealer required to be licensed under
22 this section. A person who has been convicted of a felony involving a crime of moral turpitude,
23 larceny, receiving stolen goods, or of similar charges shall not be employed by a dealer
24 required to be licensed under this section, unless the person has had his or her rights of
25 citizenship restored pursuant to Chapter 13 of the General Statutes for five years or longer
26 immediately preceding the date of registration. The agency shall issue to the employee a
27 certificate of compliance with this section upon the applicant's payment of the sum of ten
28 dollars (\$10.00) to the agency. The certificate shall be renewed annually for a three-dollar
29 (\$3.00) fee and shall be posted in the work area of the registered employee. An employee is not
30 subject to the requirements of this subsection if the employee is engaged in the precious metals
31 purchasing business only incidentally to his or her main job responsibilities, and each precious
32 metals transaction with which the employee is involved is overseen by a licensed dealer or
33 registered employee. All records of transactions must be signed by the licensed dealer or
34 registered employee at the time of the transaction, as required under
35 ~~G.S. 66-169(a).~~ G.S. 66-410(a).

36 The Department of Justice may provide a criminal history record check to the local law
37 enforcement agency for an employee engaged in the precious metals business. The agency shall
38 provide to the Department of Justice, along with the request, the fingerprints of the employee,
39 any additional information required by the Department of Justice, and a form signed by the
40 employee consenting to the check of the criminal record and to the use of the fingerprints and
41 other identifying information required by the State or national repositories. The employee's
42 fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's
43 criminal history record file, and the State Bureau of Investigation shall forward a set of the
44 fingerprints to the Federal Bureau of Investigation for a national criminal history record check.
45 The agency shall keep all information pursuant to this subsection privileged, in accordance with
46 applicable State law and federal guidelines, and the information shall be confidential and shall
47 not be a public record under Chapter 132 of the General Statutes.

48 The Department of Justice may charge each employee a fee for conducting the checks of
49 criminal history records authorized by this subsection.

50 (c) Special Occasion Permit. – A special occasion permit authorizes the permittee to
51 purchase precious metals as a dealer participating in any trade shows, antique shows, and crafts

1 shows conducted within the State. A special occasion permit shall be issued by any local law
2 enforcement agency; provided, however, that a permittee under subsection (a) of this section
3 shall apply for a special occasion permit with the local law enforcement agency that issued the
4 dealer's permit. The Department of Public Safety shall approve the forms for both the
5 application and the permit. The application shall be given under oath and notarized. A 30-day
6 waiting period from the date of filing of the application is required prior to initial issuance of a
7 permit.

8 Any dealer applying to a local law enforcement agency for a special occasion permit shall
9 furnish the local law enforcement agency with the information required in an application for a
10 dealer's permit as set forth in subsection (a) of this section. In addition, the applicant shall
11 provide a physical address where any item included in a dealer purchase will be held for the
12 period required under ~~G.S. 66-170~~G.S. 66-411. The physical address shall be the location
13 where the purchase was made, unless another physical address within the law enforcement
14 jurisdiction where the purchase was made is approved by the law enforcement agency that
15 issues the permit. The items shall be available at all reasonable times for inspection on the
16 premises by law enforcement agencies.

17 If the applicant for a special occasion permit is a partnership or association, all persons
18 owning a ten percent (10%) or more interest in the partnership or association shall comply with
19 the provisions of this subsection. Any such permits shall be issued in the name of the
20 partnership or association.

21 If the applicant for a special occasion permit is a corporation, each officer, director and
22 stockholder owning ten percent (10%) or more of the corporation's stock, of any class, shall
23 comply with the provisions of this subsection. Any such permits shall be issued in the name of
24 the corporation.

25 No permit shall be issued to an applicant who has been convicted of a felony involving a
26 crime of moral turpitude, or larceny, or receiving stolen goods or of similar charges in any
27 federal court or a court of this or any other state, unless the applicant has had his or her rights
28 of citizenship restored pursuant to Chapter 13 of the General Statutes for five years or longer
29 immediately preceding the date of application. In the case of a partnership, association, or
30 corporation, no permit shall be issued to any applicant with an officer, partner, or director who
31 has been convicted of a felony involving a crime of moral turpitude, or larceny, or receiving
32 stolen goods or of similar charges in any federal court or a court of this or any other state,
33 unless that person has had his or her rights of citizenship restored pursuant to Chapter 13 of the
34 General Statutes for five years or longer immediately preceding the date of application.

35 The Department of Justice may provide a criminal history record check to the local law
36 enforcement agency for a person who has applied for a permit through the agency. The agency
37 shall provide to the Department of Justice, along with the request, the fingerprints of the
38 applicant, any additional information required by the Department of Justice, and a form signed
39 by the applicant consenting to the check of the criminal record and to the use of the fingerprints
40 and other identifying information required by the State or national repositories. The applicant's
41 fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's
42 criminal history record file, and the State Bureau of Investigation shall forward a set of the
43 fingerprints to the Federal Bureau of Investigation for a national criminal history record check.
44 The agency shall keep all information pursuant to this subsection privileged, in accordance with
45 applicable State law and federal guidelines, and the information shall be confidential and shall
46 not be a public record under Chapter 132 of the General Statutes.

47 The Department of Justice may charge each applicant a fee for conducting the checks of
48 criminal history records authorized by this subsection.

49 The filing fee for a special occasion permit application is one hundred eighty dollars
50 (\$180.00) to provide for the administrative cost of the local law enforcement agency including
51 purchase of required forms and the cost of conducting the criminal history record check of the

1 applicant. The fee is not refundable even if the permit is denied or is later suspended or
2 revoked. A special occasion permit is in addition to and not in lieu of other business licenses
3 and is not transferable. No person other than the dealer named on the permit and that dealer's
4 employees may engage in the business of purchasing precious metals under the authority of the
5 permit.

6 A special occasion permit is valid for 12 months from the date issued, unless earlier
7 surrendered, suspended, or revoked. Application for renewal of a permit for an additional 12
8 months shall be on a form approved by the Department of Public Safety and shall be
9 accompanied by a nonrefundable renewal fee of one hundred eighty dollars (\$180.00).

10 Each special occasion permit shall be posted in a prominent place on the premises of any
11 show at which the permittee purchases precious metals."

12 **SECTION 19.** G.S. 66-167, as recodified by Section 15 of this act, reads as
13 rewritten:

14 **"§ 66-408. Perjury; punishment.**

15 Any person who shall willfully commit perjury in any application for a permit or exemption
16 filed pursuant to this ~~Article-Part~~ shall be guilty of a Class 2 misdemeanor."

17 **SECTION 20.** G.S. 66-168, as recodified by Section 15 of this act, reads as
18 rewritten:

19 **"§ 66-409. Bond or trust account required.**

20 Before any permit shall be issued to a dealer pursuant to ~~G.S. 66-165~~, G.S. 66-407, the
21 dealer shall execute a satisfactory cash or surety bond or establish a trust account with a
22 licensed and insured bank or savings institution located in the State of North Carolina in the
23 sum of ten thousand dollars (\$10,000). The bond or trust account shall be in favor of the State
24 of North Carolina. A surety bond is to be executed by the dealer and by two responsible
25 sureties or a surety company licensed to do business in the State of North Carolina and shall be
26 on a form approved by the Department of Public Safety. Any bond shall be kept in full force
27 and effect and shall be delivered to the law-enforcement agency which first issued a current
28 permit to the dealer. A bond or trust account shall be for the faithful performance of the
29 requirements and obligations of the dealer's business in conformity with this ~~Article-Part~~. Any
30 law-enforcement agency shall have full power and authority to revoke the permit and sue for
31 forfeiture of the bond or trust account upon a breach thereof. Any person who shall have
32 suffered any loss or damage by any act of the permittee that constitutes a violation of this
33 ~~Article-Part~~ shall have the right to institute an action to recover against such permittee and the
34 surety or trust account. Upon termination of the bond or trust account the permit shall become
35 void."

36 **SECTION 21.** G.S. 66-169(a), as recodified by Section 15 of this act, reads as
37 rewritten:

38 **"§ 66-410. Records to be kept.**

39 (a) Every dealer to whom a permit has been issued pursuant to ~~G.S. 66-165~~ G.S. 66-407
40 shall maintain consecutively numbered records of each precious metals transaction. Each
41 consecutively numbered record shall be made at the time of the transaction and shall contain a
42 clear and accurate description of the transaction. A valid description shall include each of the
43 following applicable and available items of information: the manufacturer's name, the model,
44 the model number, the serial number, and any engraved numbers or initials found on the items;
45 the date of the transaction; the name, sex, race, residence, telephone number and driver's license
46 number of the person selling the items purchased; and the signature of both the dealer or
47 registered employee and the seller. In the event the seller cannot furnish valid, unexpired
48 photographic identification in the form of a drivers license, State-issued identification card,
49 passport, or military identification card, the dealer shall require two forms of positive
50 identification."

1 **SECTION 22.** G.S. 66-170, as recodified by Section 15 of this act, reads as
2 rewritten:

3 **"§ 66-411. Items not to be modified.**

4 No item included in a dealer purchase shall be sold, traded or otherwise disposed of,
5 melted, cut or otherwise changed in form nor shall any item be removed from the licensed
6 premises, or other location specified on the application for a special occasion permit, for a
7 period of seven days from the date the transaction was reported in accordance with
8 ~~G.S. 66-169~~G.S. 66-410."

9 **SECTION 23.** G.S. 66-172, as recodified by Section 15 of this act, reads as
10 rewritten:

11 **"§ 66-413. Penalties.**

12 Any dealer who violates the provisions of this ~~Article-Part~~ shall be deemed guilty of a Class
13 2 misdemeanor. In addition any dealer so convicted shall be ineligible for a dealer's permit for a
14 period of three years from the date of conviction. Each and every violation shall constitute a
15 separate and distinct offense."

16 **SECTION 24.** G.S. 25-9-201(b) reads as rewritten:

17 "(b) Applicable consumer laws and other law. – A transaction subject to this Article is
18 subject to any applicable rule of law which establishes a different rule for consumers, to any
19 other statute, rule, or regulation of this State that regulates the rates, charges, agreements, and
20 practices for loans, credit sales, or other extensions of credit, and to any consumer-protection
21 statute, rule, or regulation of this State, including Chapter 24 of the General Statutes, the Retail
22 Installment Sales Act (Chapter 25A of the General Statutes), the North Carolina Consumer
23 Finance Act (Article 15 of Chapter 53 of the General Statutes), and the Pawnbrokers and Cash
24 Converters Modernization Act (~~Chapter 91A~~Part 1 of Article 45 of Chapter 66 of the General
25 Statutes)."

26 **SECTION 25.** G.S. 105-88(a)(3) reads as rewritten:

27 **"§ 105-88. Loan agencies.**

28 (a) Every person, firm, or corporation engaged in any of the following businesses must
29 pay for the privilege of engaging in that business an annual tax of two hundred fifty dollars
30 (\$250.00) for each location at which the business is conducted:

- 31 (1) The business of making loans or lending money, accepting liens on, or
32 contracts of assignments of, salaries or wages, or any part thereof, or other
33 security or evidence of debt for repayment of such loans in installment
34 payment or otherwise.
- 35 (2) The business of check cashing regulated under Article 22 of Chapter 53 of
36 the General Statutes.
- 37 (3) The business of pawnbroker regulated under ~~Chapter 91A~~Part 1 of Article
38 45 of Chapter 66 of the General Statutes."

39 **SECTION 26.** G.S. 66-11 and G.S. 66-11.1 are repealed.

40 **SECTION 27.** G.S. 66-11.2 is recodified as G.S. 66-426 under Part 3 of Article 45
41 of Chapter 66 of the General Statutes, as enacted by Section 28 of this act.

42 **SECTION 28.** Chapter 66 of the General Statutes is amended by adding a new Part
43 to read:

44 "Part 3. Regulation of Sales and Purchases of Metals.

45 **"§ 66-415. Definitions.**

46 The following definitions apply in this Article:

- 47 (1) Cash card system. – A system of payment that captures a photograph of a
48 payment recipient and that provides payment in cash or in a form other than
49 cash.
- 50 (2) Fixed site. – A site occupied by a secondary metals recycler as the owner of
51 the site or as a lessee of the site under a lease or other rental agreement

1 providing for occupation of the site by a nonferrous metals purchaser for a
2 total duration of not less than 364 days.

3 (3) Law enforcement officer. – Any duly constituted law enforcement officer of
4 the State or of any municipality or county.

5 (4) Nonferrous metals. – Metals not containing significant quantities of iron or
6 steel, including, but not limited to, copper wire, copper clad steel wire,
7 copper pipe, copper bars, copper sheeting, aluminum other than aluminum
8 cans, a product that is a mixture of aluminum and copper, catalytic
9 converters, lead-acid batteries, and stainless steel beer kegs or containers.

10 (5) Nonferrous metals purchaser. – A secondary metals recycler who purchases,
11 gathers, or obtains nonferrous metals.

12 (6) Permit. – A permit issued pursuant to G.S. 66-421(a).

13 (7) Regulated metals property. – All ferrous and nonferrous metals.

14 (8) Secondary metals recycler. – Any person, firm, or corporation in the State:

15 a. That is engaged in the business of gathering or obtaining ferrous or
16 nonferrous metals that have served their original economic purpose
17 or is in the business of performing the manufacturing process by
18 which ferrous metals or nonferrous metals are converted into raw
19 material products consisting of prepared grades and having an
20 existing or potential 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 **"§ 66-416. Required records and receipts for regulated metals transactions.**

30 (a) Receipt Required. – A secondary metals recycler shall issue a receipt for all
31 purchase transactions in which the secondary metals recycler purchases regulated metals
32 property. This receipt shall be issued to and signed by the person delivering the property, and
33 the secondary metals recycler shall be able to provide documentation regarding the employee
34 who completed the transaction.

35 (b) Records Required. –

36 (1) A secondary metals recycler shall maintain a record of all purchase
37 transactions in which the secondary metals recycler purchases regulated
38 metals property.

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

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

42 b. The name, initials, or other identification of the individual entering
43 the information.

44 c. The date of the transaction.

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

46 e. The description made in accordance with the custom of the trade of
47 the type of regulated metals property purchased and the physical
48 address where the regulated metals were obtained by the seller and
49 the date when purchased, and a statement signed by the seller or the
50 seller's agent certifying that the seller or the seller's agent has the
51 lawful right to sell and dispose of the property.

- 1 f. The amount of consideration given for the regulated metals property.
2 g. The name and address of the vendor of the regulated metals property
3 and the license plate number, make, model, and color of the vehicle
4 used to deliver the regulated metals.
5 h. A photocopy or electronic scan of the unexpired drivers license or
6 state or federally issued photo identification card of the person
7 delivering the regulated metals property to the secondary metals
8 recycler. If the secondary metals recycler has a copy of the valid
9 photo identification of the person delivering the regulated metals
10 property on file, the secondary metals recycler must examine the
11 photo identification and verify that it has not expired, but may
12 reference the photo identification that is on file without making a
13 separate photocopy or electronic scan for each subsequent
14 transaction. If the person delivering the regulated metals property
15 does not have an unexpired drivers license or an unexpired state or
16 federally issued photo identification card, the secondary metals
17 recycler shall not complete the transaction.
18 i. A copy of the receipt required under subsection (a) of this section
19 when all the information required under subsection (a) of this section
20 is clear and legible or, in the event the copy of the receipt is not clear
21 or not legible, the original receipt.
22 j. A video or digital photograph of the seller together with the seller's
23 vehicle and the regulated metals property. The video or photograph
24 required by this section shall be of a quality that is sufficient to allow
25 a person of ordinary faculties to identify the person recorded or
26 photographed.
27 k. In transactions involving catalytic converters that are not attached to
28 a vehicle, and central air conditioner evaporator coils or condensers,
29 the person delivering the materials shall place next to that person's
30 signature on the receipt required under subsection (a) of this section,
31 a clear impression of that person's index finger that is in ink and free
32 of any smearing. A secondary metals recycler may elect to obtain the
33 fingerprint electronically. If the secondary metals recycler has a copy
34 of the fingerprint of the person delivering the nonferrous metal on
35 file, the secondary metals recycler must examine the photo
36 identification, but may reference the fingerprint that is on file without
37 making a separate fingerprint for each subsequent transaction.

38 **"§ 66-417. Inspection of regulated metals property and records.**

39 (a) Retention of Records. – A secondary metals recycler shall keep and maintain the
40 information required under G.S. 66-416(b) for not less than two years from the date of the
41 purchase of the regulated metals property. Records shall be securely maintained at all times and
42 shall be destroyed in a manner that protects the identity of the owner of the property, the seller
43 of the property, and the purchaser of the property.

44 (b) Inspection of Regulated Metals Property and Records. – During the usual and
45 customary business hours of a secondary metals recycler, a law enforcement officer shall have
46 the right to inspect all of the following:

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

49 (2) Any and all records required to be maintained under G.S. 66-416(b).

50 (c) Making Receipts Available for Inspection by Law Enforcement. – A secondary
51 metals recycler shall make receipts for the purchase of regulated metals property available for

1 pickup each regular workday if requested by the sheriff or chief of police of the county or the
2 chief of police of the municipality in which the secondary metals recycler is located. The
3 sheriff or the chief of police may request these receipts to be electronically transferred directly
4 to the law enforcement agency. Records retained by a law enforcement agency shall be securely
5 retained as required by law and destroyed in a manner that protects the identity of the owner of
6 the property, the seller of the property, and the purchaser of the property.

7 (d) Records Are Not Public. – Records submitted to any public law enforcement agency
8 pursuant to this section are records of criminal investigations or records of criminal intelligence
9 information as defined in G.S. 132-1.4 and are not public records as defined by G.S. 132-1.

10 **"§ 66-418. Hold notices for nonferrous metals; retention of nonferrous metals.**

11 (a) Hold Notices. – When a law enforcement officer has reasonable suspicion to believe
12 that any item of nonferrous metal in the possession of a nonferrous metals purchaser has been
13 stolen, the law enforcement officer may issue a hold notice to the nonferrous metals purchaser.
14 The hold notice must be in writing, be delivered to the nonferrous metals purchaser,
15 specifically identify those items of nonferrous metal that are believed to have been stolen and
16 that are subject to the notice, and inform the nonferrous metals purchaser of the information
17 contained in this section. Upon receipt of the notice, the nonferrous metals purchaser must not
18 process or remove the items of nonferrous metal identified in the notice, or any portion thereof,
19 from the secondary metal recycler's fixed site for 15 calendar days after receipt of the notice
20 unless released prior to the 15-day period by the law enforcement officer. A hold notice may be
21 renewed for an additional 30 days by the law enforcement officer. A renewal must satisfy the
22 same requirements as an initial hold notice in order to be valid.

23 (b) Retention of Nonferrous Metals. – A secondary metals recycler shall hold and retain
24 any nonferrous metals as follows:

25 (1) Any secondary metals recycler owner convicted of a felonious violation of
26 this Article, G.S. 14-71, 14-71.1, or 14-72 shall hold and retain nonferrous
27 metals for seven days from the date of purchase before selling, dismantling,
28 crushing, defacing, or in any manner altering or disposing of the regulated
29 metals property.

30 (2) Any secondary metals recycler not described in subdivision (1) of this
31 subsection shall hold and retain nonferrous metals until the second calendar
32 day after the date of purchase before selling, dismantling, crushing, defacing,
33 or in any manner altering or disposing of the nonferrous metals.

34 **"§ 66-419. Prohibited activities and transactions.**

35 (a) A secondary metals recycler shall not do any of the following:

36 (1) Operate any business that cashes checks at a fixed site at which the
37 secondary metals recycler purchases regulated metals property.

38 (2) Purchase nonferrous metals for the purpose of recycling the nonferrous
39 metals, unless the nonferrous metals purchaser possesses a valid permit.

40 (3) Purchase any central air conditioner evaporator coils or condensers, or
41 catalytic converters that are not attached to a vehicle, except that a secondary
42 metals recycler may purchase these items from a company, contractor, or
43 individual that is in the business of installing, replacing, maintaining, or
44 removing these items.

45 (4) Purchase any regulated metals property that the secondary metals recycler
46 knows or reasonably should know to be stolen.

47 (b) It shall be unlawful to transport or possess on highways of this State an amount of
48 nonferrous metals weighing in the aggregate more than 25 pounds, unless at least one of the
49 following is true:

50 (1) The vehicle is used in the ordinary course of business for the purpose of
51 transporting nonferrous metals. This term includes vehicles used by gas,

1 electric, communications, water, plumbing, electrical, and climate
2 conditioning service providers, and their employees, agents, and contractors,
3 in the course of providing these services.

4 (2) The person transporting or possessing the nonferrous metals possesses, and
5 presents when requested, a valid bill of sale for the nonferrous metals.

6 (3) A law enforcement officer determines that the nonferrous metals are not
7 stolen goods and are in the rightful possession of the person.

8 (c) A secondary metals recycler shall not purchase any of the following:

9 (1) Any regulated metal marked with the initials or other identification of a
10 telephone, cable, electric, water, or other public utility, or any brewer.

11 (2) Any utility access cover.

12 (3) Any street light pole or fixture.

13 (4) Any road or bridge guard rail.

14 (5) Any highway or street sign.

15 (6) Any water meter cover.

16 (7) Any metal beer keg, including any made of stainless steel that is clearly
17 marked as being the property of the beer manufacturer.

18 (8) Any traffic directional or control sign.

19 (9) Any traffic light signal.

20 (10) Any regulated metal marked with the name of a government entity.

21 (11) Any spikes, plates, or other railroad track components or signs, and any
22 property owned by a railroad and marked and otherwise identified as such.

23 (12) Any historical marker or any grave marker or burial vase.

24 **"§ 66-420. Permissible payment methods for nonferrous metals purchasers.**

25 (a) Limitation on Cash Purchases. – No nonferrous metals purchaser shall enter into a
26 cash transaction for the purchase of copper, and no nonferrous metals purchaser shall purchase
27 any nonferrous metal property for any cash consideration greater than fifty dollars (\$50.00) per
28 transaction. Any payment in excess of fifty dollars (\$50.00) per transaction shall be made by
29 check or money order.

30 (b) Requirements for Cash Purchases. – Except as prohibited by subsection (a) of this
31 section, a nonferrous metals purchaser may make cash payment for the purchase of nonferrous
32 metal property subject to the following conditions:

33 1. Payment may be made on the date of purchase if using a cash card system,
34 but in all other cases the cash payment shall be made no sooner than three
35 business days after the sale.

36 2. A nonferrous metals purchaser shall not make more than one cash purchase
37 per day from any individual, business, corporation or partnership.

38 **"§ 66-421. Issuance of nonferrous metals purchase permits by Sheriff; form; fees;**
39 **recordkeeping.**

40 (a) Issuance of Permits. – The sheriff of each county shall issue a nonferrous metals
41 purchase permit to an applicant if the applicant (i) has a fixed site in the sheriff's county; (ii)
42 declares on a form provided by the sheriff that the applicant is informed of and will comply
43 with the provisions of this Part; (iii) does not have a permit that has been revoked pursuant to
44 G.S. 66-324(b) at the time of the application; and (iv) has not been convicted of more than
45 three violations of this Part. A permit shall be valid for 12 months and shall be valid only for
46 fixed sites in the county of issuance. A permit shall be obtained for each fixed site at which
47 nonferrous metals are purchased.

48 (b) Form. – The Attorney General shall prescribe a standard application form and a
49 standard permit form to be used by sheriffs. The permit form shall contain, at a minimum, the
50 date of issuance and the name and address of the permit holder.

1 (c) Fees; Record-Keeping Requirements. – The sheriff shall not charge a fee for a
2 permit, and shall retain a copy of any permit issued.

3 **"§ 66-422. Exemptions.**

4 This Part does not apply to:

- 5 (1) Purchases of regulated metals property from a manufacturing, industrial,
6 government, or other commercial vendor that generates or sells regulated
7 metals property in the ordinary course of its business.
8 (2) Purchases of regulated metals property that involve only beverage
9 containers, except that G.S. 66-418 shall apply in that case.

10 **"§ 66-423. Preemption.**

11 A county or municipality shall not enact any local law, ordinance, or regulation regulating
12 secondary metals recyclers or regulated metals property that conflicts with this Part, and this
13 Part preempts all existing laws, ordinances, or regulations that conflict with it.

14 **"§ 66-424. Violations.**

15 (a) Punishment Generally. – Unless the conduct is covered by some other provision of
16 law providing greater punishment, any person knowingly and willfully violating any of the
17 provisions of this Part shall be guilty of a Class 1 misdemeanor for a first offense. A second or
18 subsequent violation of this Part is a Class I felony.

19 (b) Revocation of Permits. – If the owner or the employees of a fixed site are convicted
20 of an aggregate of three or more violations of this Part, the permit associated with that fixed site
21 shall be immediately revoked by the sheriff for a period of six months. Any attempt to
22 circumvent this subsection by procuring a permit through a family member shall result in
23 extension of the revocation period for an additional 18 months.

24 **"§ 66-425. Restitution.**

25 The court may order a defendant to make restitution to the secondary metals recycler or
26 property owner, as appropriate, for any damage or loss caused by the defendant and arising out
27 of a violation of this Part committed by the defendant.

28 **SECTION 29.** G.S. 66-11.2(a), as recodified by Section 27 of this act, reads as
29 rewritten:

30 **"§ 66-426. Forfeiture of vehicles used to transport unlawfully obtained regulated metals**
31 **property.**

32 (a) Vehicles which are used or intended for use to convey or transport, or in any manner
33 to facilitate the conveyance or transportation of unlawfully obtained regulated metals property,
34 as defined by this ~~Article~~Part, are subject to forfeiture, except that:

- 35 (1) No conveyance shall be forfeited under the provisions of this section by
36 reason of any act or omission, committed or omitted while such conveyance
37 was unlawfully in the possession of a person other than the owner in
38 violation of the criminal laws of the United States, or of any state;
39 (2) No conveyance shall be forfeited unless the violation involved is a felony;
40 (3) A forfeiture of a vehicle encumbered by a bona fide security interest is
41 subject to the interest of the secured party who had no knowledge of or
42 consented to the act or omission;
43 (4) No conveyance shall be forfeited under the provisions of this section unless
44 the owner knew or had reason to believe the vehicle was being used in the
45 commission of any violation that may subject the conveyance to forfeiture
46 under this section."

47 **SECTION 30.** G.S. 20-62.1(a) reads as rewritten:

48 **"§ 20-62.1. Purchase of vehicles for purposes of scrap or parts only.**

49 (a) Records for Scrap or Parts. – A secondary metals recycler, as defined in
50 ~~G.S. 66-11(a)(3)~~G.S. 66-415(8), and a salvage yard, as defined in G.S. 20-137.7(6), purchasing
51 motor vehicles solely for the purposes of dismantling or wrecking such motor vehicles for the

1 recovery of scrap metal or for the sale of parts only, must comply with the provision of
2 G.S. 20-61, provided, however, that a secondary metals recycler or salvage yard may purchase
3 a motor vehicle without a certificate of title, if the motor vehicle is 10 model years old or older
4 and the secondary metals recycler or salvage yard comply with the following requirements:

5"

6 **SECTION 31.** Article 22 of Chapter 14 of the General Statutes is amended by
7 adding a new section to read:

8 **"§ 14-159.4. Cutting, mutilating, defacing, or otherwise injuring property to obtain**
9 **nonferrous metals.**

10 (a) Definition of Nonferrous Metals. – For purposes of this section, the term
11 "nonferrous metals" means metals not containing significant quantities of iron or steel,
12 including, but not limited to, copper wire, copper clad steel wire, copper pipe, copper bars,
13 copper sheeting, aluminum other than aluminum cans, a product that is a mixture of aluminum
14 and copper, catalytic converters, lead-acid batteries, and stainless steel beer kegs or containers.

15 (b) Prohibited Act. – It is unlawful for a person to willfully and wantonly cut, mutilate,
16 deface, or otherwise injure any personal or real property of another, including any fixtures or
17 improvements, for the purpose of obtaining nonferrous metals in any amount.

18 (c) Punishment. – Violations of this section are punishable as follows:

19 (1) Default. – If the direct injury is to property, the amount of loss in value to
20 the property, the amount of repairs necessary to return the property to its
21 condition before the act, or the property loss (including fixtures or
22 improvements) is less than one thousand dollars (\$1,000), a violation shall
23 be punishable as a Class 1 misdemeanor. If the applicable amount is one
24 thousand dollars (\$1,000) or more, but less than ten thousand dollars
25 (\$10,000), a violation shall be punishable as a Class H felony. If the
26 applicable amount is ten thousand dollars (\$10,000) or more, a violation
27 shall be deemed an aggravated offense and shall be punishable as a Class F
28 felony.

29 (2) When person suffers serious injury. – A violation of this section that results
30 in a serious injury to another person is punishable as a Class A1
31 misdemeanor.

32 (3) When person suffers a serious bodily injury. – A violation of this section that
33 results in serious bodily injury to another person is punishable as a Class F
34 felony. For purposes of this subdivision, "serious bodily injury" is as defined
35 in G.S. 14-32.4.

36 (4) When person is killed. – A violation of this section that results in the death
37 of another person is punishable as a Class D felony.

38 (5) When critical infrastructure affected. – A violation of this section that results
39 in the disruption of communication or electrical service to critical
40 infrastructure or to more than 10 customers of the communication or
41 electrical service is guilty of a Class 1 misdemeanor.

42 (d) Liability. – This section does not create or impose a duty of care upon the owner of
43 personal or real property that would not otherwise exist under common law. A public or private
44 owner of personal or real property shall not be civilly liable:

45 (1) To a person who is injured while committing or attempting to commit a
46 violation of this section.

47 (2) To a person who is injured while a third party is committing or attempting to
48 commit a violation of this section.

49 (3) For a person's injuries caused by a dangerous condition created as a result of
50 a violation of this section, when the owner does not know and could not
51 have reasonably known of the dangerous condition."

1 **SECTION 32.** Notwithstanding any provision of this act to the contrary,
2 pawnbroker licenses and permits to engage as a dealer in the business of purchasing precious
3 metals that are valid on the effective date of this act shall continue in force until the natural
4 expiration thereof.

5 **SECTION 33.** This act becomes effective December 1, 2012, and applies to
6 offenses committed on or after that date. Prosecutions for offenses committed before the
7 effective date of this act are not abated or affected by this act, and the statutes that would be
8 applicable but for this act remain applicable to those prosecutions.