

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 323  
Committee Substitute Favorable 4/27/09  
Committee Substitute #2 Favorable 5/5/09

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  
35 metals recycler purchases regulated metals property. This receipt shall be signed by the person



1 delivering the materials, and the secondary metals recycler shall be able to provide  
2 documentation regarding the employee who completed the transaction.

3 (b) Records Required. –

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

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

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

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

12 c. The date of the transaction.

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

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

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

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

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

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

40 j. In transactions involving catalytic converters that are not attached to  
41 a vehicle, and central air conditioner evaporator coils or condensers,  
42 the person delivering the materials shall place next to that person's  
43 signature on the receipt required under subsection (a1) of this  
44 section, a clear impression of that person's index finger that is in ink  
45 and free of any smearing. A secondary metals recycler may elect to  
46 obtain the fingerprint electronically. If the secondary metals recycler  
47 has a copy of the fingerprint of the person delivering the nonferrous  
48 metal on file, the secondary metals recycler must examine the photo  
49 identification but may reference the fingerprint that is on file without  
50 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. Records shall be securely  
4 maintained at all times and shall be destroyed in a manner that protects the  
5 identity of the owner of the property, the seller of the property, and the  
6 purchaser of the property.

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

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

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

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

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

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

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

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

31 (3) Purchase any central air conditioner evaporator coils or condensers, or  
32 catalytic converters that are not attached to a vehicle, except that a secondary  
33 metals recycler may purchase these items from a company, contractor, or  
34 individual that is in the business of installing, replacing, maintaining, or  
35 removing these items, provided the secondary metals recycler is prohibited  
36 from paying cash or making payment of any kind for any central air  
37 conditioner evaporator coil or condenser in whole or in part or a catalytic  
38 converter that is not attached to a vehicle. The payment for these metals is to  
39 be made by check or money order made out to the company, contractor, or  
40 individual. Payment for these metals may also be made using a cash card  
41 system that captures the photograph of the person selling these metals if the  
42 secondary metals recycler maintains the photograph for 90 days.

43 (4) Purchase other nonferrous metal property not listed in subdivision (5) of this  
44 subsection for any cash consideration greater than one hundred dollars  
45 (\$100.00) per transaction. The secondary metals recycler may purchase other  
46 nonferrous metal property for an amount in excess of one hundred dollars  
47 (\$100.00) if the payment is made by check, money order, or a cash card  
48 system that captures the photograph of the person selling the nonferrous  
49 metal if the secondary metals recycler maintains the photograph for 90 days.

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

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

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

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

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

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

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

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

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