

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

**HOUSE BILL 323
RATIFIED BILL**

AN ACT TO STRENGTHEN THE REQUIREMENTS REGARDING SECONDARY METALS RECYCLING OF REGULATED METALS PROPERTY IN ORDER TO PREVENT THE THEFT OF THIS PROPERTY.

The General Assembly of North Carolina enacts:

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

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

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

- (1) "Law enforcement officer" means any duly constituted law enforcement officer of the State or of any municipality or county.
- (2) "Regulated metals property" means all ferrous and nonferrous metals.
- (3) "Secondary metals recycler" means any person, firm, or corporation in the State:
 - a. That, from a fixed location or otherwise, is engaged in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or
 - b. That has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, by methods including, but not limited to, the processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content of the metals, but not including the exclusive use of hand tools.
- (4) "Fixed location" means any site occupied by a secondary metals recycler as the owner of the site or as a lessee of the site under a lease or other rental agreement providing for occupation of the site by the secondary metals recycler for a total duration of not less than 364 days.

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

(b) Records Required. –

- (1) A secondary metals recycler shall maintain a record of all purchase transactions in which the secondary metals recycler purchases regulated metals property.
- (2) The following information shall be maintained for transactions in which a secondary metals recycler purchases regulated metals property:
 - a. The name and address of the secondary metals recycler.
 - b. The name, initials, or other identification of the individual entering the information.
 - c. The date of the transaction.
 - d. The weight of the regulated metals property purchased.



- e. The description made in accordance with the custom of the trade of the type of regulated metals property purchased and the physical address where the regulated metals were obtained by the seller, and a statement signed by the seller or the seller's agent certifying that the seller or the seller's agent has the lawful right to sell and dispose of the property.
 - f. The amount of consideration given for the regulated metals property.
 - g. The name and address of the vendor of the regulated metals property and the license plate number of the vehicle used to deliver the regulated metals.
 - h. A photocopy or electronic scan of the drivers license or state or federally issued photo identification card of the person delivering the regulated metals property to the secondary metals recycler. If the secondary metals recycler has a copy of the valid photo identification of the person delivering the regulated metals property on file, the secondary metals recycler must examine the photo identification, but may reference the photo identification that is on file without making a separate photocopy or electronic scan for each subsequent transaction. If the person delivering the regulated metals property does not have a drivers license or a state or federally issued photo identification card, the secondary metals recycler shall not complete the transaction.
 - i. A copy of the receipt required under subsection (a1) of this section when all the information required under subsection (a1) of this section is clear and legible or, in the event the copy of the receipt is not clear or not legible, the original receipt.
 - j. In transactions involving catalytic converters that are not attached to a vehicle, and central air conditioner evaporator coils or condensers, the person delivering the materials shall place next to that person's signature on the receipt required under subsection (a1) of this section, a clear impression of that person's index finger that is in ink and free of any smearing. A secondary metals recycler may elect to obtain the fingerprint electronically. If the secondary metals recycler has a copy of the fingerprint of the person delivering the nonferrous metal on file, the secondary metals recycler must examine the photo identification but may reference the fingerprint that is on file without making a separate fingerprint for each subsequent transaction.
- (3) A secondary metals recycler shall keep and maintain the information required under this subsection for not less than two years from the date of the purchase of the regulated metals property. Records shall be securely maintained at all times and shall be destroyed in a manner that protects the identity of the owner of the property, the seller of the property, and the purchaser of the property.

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

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

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

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

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

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

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

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

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

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

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

b. Any utility access cover.

c. Any street light pole or fixture.

d. Any road or bridge guard rail.

e. Any highway or street sign.

f. Any water meter cover.

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

h. Any traffic directional or control sign.

i. Any traffic light signal.

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

k. Any property owned by a railroad and marked and otherwise identified as such.

l. Any historical marker or any grave marker or burial vase.

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

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

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

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

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

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

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

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

In the General Assembly read three times and ratified this the 17th day of June, 2009.

Walter H. Dalton
President of the Senate

Joe Hackney
Speaker of the House of Representatives

Beverly E. Perdue
Governor

Approved _____m. this _____ day of _____, 2009