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COMMITTEE REPORT

May 4, 2011

**S. 732**

Introduced by Senators Pinckney, Knotts, Scott, Peeler, Fair, Cleary, Ford, Nicholson, Williams, Hutto, Elliott, Alexander, Matthews, Land, Setzler, Campbell, Hayes, McConnell, Davis, Thomas and Rose

S. Printed 5/4/11--S. [SEC 5/5/11 4:10 PM]

Read the first time March 24, 2011.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 732) to amend Section 16‑11‑523, as amended, Code of Laws of South Carolina, 1976, relating to obtaining nonferrous metals unlawfully, so as to revise the penalties, etc., respectfully

**REPORT:**

Has polled the Bill out majority favorable.

**A** **BILL**

TO AMEND SECTION 16‑11‑523, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO OBTAINING NONFERROUS METALS UNLAWFULLY, SO AS TO REVISE THE PENALTIES FOR VIOLATIONS OF THIS PROVISION; TO AMEND SECTION 16‑17‑680, AS AMENDED, RELATING TO THE PURCHASE OF NONFERROUS METALS, PROCEDURES AND REQUIREMENTS FOR PURCHASE OF NONFERROUS METALS, AND EXCEPTIONS, SO AS TO PROVIDE ADDITIONAL RESTRICTIONS RELATED TO THE SALE OF COPPER; TO AMEND SECTION 16‑17‑685, RELATING TO THE UNLAWFUL TRANSPORTATION OF NONFERROUS METALS, SO AS TO INCREASE THE PENALTIES FOR CERTAIN VIOLATIONS OF THIS PROVISION; AND BY ADDING CHAPTER 40 TO TITLE 40 SO AS TO REQUIRE SECONDARY METALS RECYCLERS TO REGISTER WITH THE DEPARTMENT OF LABOR, LICENSING AND REGULATION, AND TO PROVIDE REGISTRATION AND RENEWAL REQUIREMENTS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 16‑11‑523(C) of the 1976 Code, as last amended by Act 273 of 2010, is further amended to read:

“(C) A person who violates the provisions of this section is guilty of a:

(1) ~~misdemeanor under the jurisdiction of magistrates or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than thirty days, or both, if the direct injury to the property, the amount of loss in value to the property, the amount of repairs necessary to return the property to its condition before the act, or the property loss, including fixtures or improvements, is two thousand dollars or less;~~

~~(2)~~ felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both, if the direct injury to the property, the amount of loss in value to the property, the amount of repairs necessary to return the property to its condition before the act, or the property loss, including fixtures or improvements, is ~~more~~ less than ~~two~~ five thousand dollars ~~but less than ten thousand dollars~~; or

~~(3)~~(2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the direct injury to the property, the amount of loss in value to the property, the amount of repairs necessary to return the property to its condition before the act, or the property loss, including fixtures or improvements, is ~~ten~~ five thousand dollars or more.”

SECTION 2. Section 16‑17‑680 of the 1976 Code, as last amended by Act 26 of 2009, is further amended to read:

“Section 16‑17‑680. (A)(1) It is unlawful to purchase nonferrous metals in any amount from a person who is not a holder of a retail license or an authorized wholesaler unless the purchaser is a secondary metals recycler and obtains ~~and can verify~~ the name ~~and~~ address, and permit to sell of the seller. A secondary metals recycler shall maintain a record containing the date of purchase, name and address of the seller, a photocopy of the seller’s identification, the license plate number of the seller’s motor vehicle, the seller’s photograph, weight or length, and size or other description of the nonferrous metals purchased, amount paid for it, and a signed statement from the seller stating that he is the rightful owner or is entitled to sell the nonferrous metals being sold. All nonferrous metals that are purchased by and are in the possession of a secondary metals recycler and all records required to be kept by this section must be maintained and kept open for inspection by law enforcement officials or local and state governmental agencies during regular business hours. The records must be maintained for two years from the date of purchase.

(2) A person may not sell copper to another person or entity without first receiving a permit issued by the sheriff of the county in which the seller resides pursuant to Section 16‑17‑685. A permit is valid for the calendar year in which it was issued. The sheriff shall keep a record of all permits issued containing the date of issue, name and address of the permit holder, a photocopy of the permit holder’s identification, the license plate number of the permit holder’s motor vehicle, and the permit holder’s photograph.

(B) A secondary metals recycler may ~~only~~ not purchase ~~nonferrous metals~~ copper for cash consideration from a fixed location and only may purchase copper by check or other similar written instrument, a record of which must be maintained by the secondary metals recycler for the same period of time as other identifying information is required to be maintained by the provisions of subsection (A)(1).

(C) A secondary metals recycler must display in a prominent location in his place of business, a sign, twenty inches by thirty inches that states ‘NO COPPER MAY BE PURCHASED BY THIS OR ANY OTHER SECONDARY METAL RECYCLER FROM ANY PERSON UNLESS THE PERSON PRESENTS THE PERMIT TO SELL NONFERROUS METALS PURSUANT TO SECTION 16‑17‑680 OF THE SOUTH CAROLINA CODE OF LAWS.’

(D)(1) ~~Whenever~~ When a law enforcement officer has reasonable cause to believe that any item of nonferrous metal in the possession of a secondary metals recycler has been stolen, the law enforcement officer may issue a hold notice to the secondary metals recycler. The hold notice must be in writing, be delivered to the secondary metals recycler, specifically identify those items of nonferrous metal that are believed to have been stolen and that are subject to the notice, and inform the secondary metals recycler of the information contained in this subsection. Upon receipt of the notice, the secondary metals recycler must not process or remove the items of nonferrous metal identified in the notice, or any portion thereof, from the secondary metal recycler’s place of business for fifteen calendar days after receipt of the notice unless released prior to the fifteen‑day period by the law enforcement officer.

(2) No later than the expiration of the fifteen‑day period, a law enforcement officer may issue a second hold notice to the secondary metals recycler, which shall be an extended hold notice. The extended hold notice must be in writing, be delivered to the secondary metals recycler, specifically identify those items of nonferrous metal that are believed to have been stolen and that are subject to the extended hold notice, and inform the secondary metals recycler of the information contained in this subsection. Upon receipt of the extended hold notice, the secondary metals recycler must not process or remove the items of nonferrous metal identified in the notice, or any portion thereof, from the secondary metals recycler’s place of business for thirty calendar days after receipt of the extended hold notice unless released prior to the thirty‑day period by the law enforcement officer.

(3) At the expiration of the hold period or, if extended, at the expiration of the extended hold period, the hold is automatically released and the secondary metals recycler may dispose of the nonferrous metals unless other disposition has been ordered by a court of competent jurisdiction.

~~(D)~~(E) A person who violates the provisions of this section ~~is guilty of a~~:

(1) ~~misdemeanor and, upon conviction,~~ for a first offense must be fined not ~~more~~ less than two hundred dollars nor more than three hundred dollars or imprisoned not more than thirty days ~~for a first offense. This offense is triable in magistrates court~~; and

(2) ~~misdemeanor and, upon conviction,~~ for a second or subsequent offense must be fined not less than four hundred dollars nor more than five hundred dollars or imprisoned not more than ~~one year~~ thirty days, or both~~,~~ ~~for a second offense;~~ .

~~(3) misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than three years, or both, for a third or subsequent offense. For an offense to be considered a third or subsequent offense, only those offenses which occurred within a period of ten years, including and immediately preceding the date of the last offense shall constitute a prior offense within the meaning of this section.~~

~~(E)~~(F) For purposes of this section, the only identification acceptable is a:

(1) valid South Carolina driver’s license;

(2) South Carolina identification card issued by the Department of Motor Vehicles;

(3) valid driver’s license from another state that contains the licensee’s picture on the face of the license; or

(4) valid military identification card.

~~(F)~~(G) For purposes of this section:

(1) ‘Nonferrous metals’ means metals not containing significant quantities of iron or steel, including copper wire, cooper clad steel wire, copper pipe, copper bars, copper sheeting, aluminum, a product that is a mixture of aluminum and copper, catalytic converters, and stainless steel beer kegs or containers.

(2) ‘Secondary metals recycler’ means any person who is engaged in the business of paying compensation for nonferrous metals that have served their original economic purpose, whether or not the person is engaged in the business of performing the manufacturing process by which nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value.

(3) ‘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 a secondary metals recycler for a total duration of not less than three hundred ~~and~~ sixty‑four days.

~~(G)~~(H) The provisions of this section do not apply to the purchase or sale of aluminum cans.

~~(H)~~(I) This section preempts local ordinances and regulations governing the purchase or sale of nonferrous metals in any amount, except to the extent that such ordinances pertain to zoning or business license fees. This section shall not preempt the ability of a political subdivision of the State to enact ordinances or regulations pertaining to zoning or business license fees. Political subdivisions of the State may not enact ordinances or regulations more restrictive than those contained in this section.”

SECTION 3. Section 16‑17‑685(B) of the 1976 Code, as added by Act 26 of 2009, is amended to read:

“(B) It is unlawful for a person to transport or have in the person’s possession on the highways of this State nonferrous metals of an aggregate weight of more than ~~twenty‑five~~ ten pounds in a vehicle other than a vehicle used in the ordinary course of business for the purpose of transporting nonferrous metals, unless the person:

(1) has in the person’s possession a bill of sale signed by:

(a) a holder of a retail license for a business engaged in the sale of nonferrous metals or a mixture of nonferrous metals;

(b) an authorized wholesaler engaged in the sale of nonferrous metals or a mixture of nonferrous metals; or

(c) a registered dealer of scrap metals; or

(2) can present~~, either orally or~~ in writing~~,~~ a valid transportation permit number provided by the sheriff of the county in which the person resides.”

SECTION 4. Title 40 of the 1976 Code is amended by adding:

“CHAPTER 40

Secondary Metals Recyclers

Section 40‑40‑10. A person who is a secondary metals recycler shall register with the Department of Labor, Licensing and Regulation in accordance with this chapter.

Section 40‑40‑20. For purposes of this chapter:

(1) ‘Department’ means the Department of Labor, Licensing and Regulation.

(2) ‘Nonferrous metals’ means metals not containing significant quantities of iron or steel, including copper wire, cooper clad steel wire, copper pipe, copper bars, copper sheeting, aluminum, a product that is a mixture of aluminum and copper, catalytic converters, and stainless steel beer kegs or containers.

(3) ‘Secondary metals recycler’ means a person who is engaged in the business of paying compensation for nonferrous metals that have served their original economic purpose, whether or not the person is engaged in the business of performing the manufacturing process by which nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value.

Section 40‑40‑30. (A) A secondary metals recycler shall register with the department in the manner as may be prescribed by the department in regulations and shall renew the registration every two years. The biennial registration cost is two hundred dollars.

(B) To be eligible to register and renew registration under this section, a secondary metals recycler:

(1) must have an address of a fixed site which must be occupied by the 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 three hundred ~~and~~ sixty-four days, and this site must be the only site at which the secondary metals recycler purchases nonferrous metals; and

(2) shall declare, on a form provided by the department, that as an applicant for registration, he is informed of and will comply with the purchase, recordkeeping, and hold notice requirements of Section 16‑17‑680.

Section 40‑40‑40. The department shall promulgate such regulations as are necessary to carry out its responsibilities under this chapter.”

SECTION 5. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 6. This act takes effect one hundred twenty days after its approval by the Governor.

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