**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 40 TO TITLE 40 SO AS TO REQUIRE SECONDARY METALS RECYCLERS TO REGISTER WITH THE DEPARTMENT OF LABOR, LICENSING AND REGULATION, TO PROVIDE REGISTRATION AND RENEWAL REQUIREMENTS, TO PROVIDE CRIMINAL PENALTIES FOR FAILING TO REGISTER, AND TO AUTHORIZE SANCTIONS AND ADMINISTRATIVE PENALTIES FOR VIOLATIONS OF THE CHAPTER OR ORDERS OF THE DEPARTMENT.

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

SECTION 1. 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 department shall promulgate regulations establishing registration and renewal fees and such other fees as may be necessary and as are adequate to cover the administrative costs associated with the registration program.

(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;

(2) shall declare, on a form provided by the department, that:

(a) 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;

(b) as a registrant renewing, he is in compliance with the purchase, recordkeeping, and hold notice requirements of Section 16‑17‑680;

(3) must not have been convicted of, or pled guilty or nolo contendere to, a violation of Section 16‑17‑680 or Section 16‑17‑685 or a criminal offense of larceny, burglary, or vandalism, where the offense involved nonferrous metals, for five years prior to the date of registration;

(4) shall declare on a form provided by the department, under penalty of perjury, as to whether the person has ever been convicted of, or pled guilty or nolo contendere to, any of the offenses provided for in item (3).

(C) The department may conduct criminal records checks of an applicant for registration or a registrant renewing to verify information provided in the application or renewal process. If a criminal records check is to be conducted, the department may charge the applicant or registrant a fee, not to exceed the amount charged by the State Law Enforcement Division or the Federal Bureau of Investigation for performing these record checks.

(D) If a person submits a false statement to the department for the purpose of unlawfully registering under this section, the person is disqualified for life from registering as a secondary metals recycler under this section.

Section 40‑40‑40. (A) The department may deny, suspend, revoke, or refuse to renew a registration if a person is found to have:

(1) failed to comply with the purchase, recordkeeping, or hold notice requirements of Section 16‑17‑680, whether or not the person was prosecuted for such violation;

(2) failed to comply with the provisions of this chapter or an order or regulations promulgated pursuant to this chapter.

(B) A person aggrieved by an action of the department pursuant to subsection (A) may appeal the action to an Administrative Law Judge in accordance with the Administrative Procedures Act.

Section 40‑40‑50. A person who fails to register as required by this chapter is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars and not more than one thousand dollars for the first offense. For each subsequent offense, the person is guilty of a felony and, upon conviction, must be imprisoned for not more than three years, and fined not more than five thousand dollars, or both.

Section 40‑40‑60. If the department finds a person to be in violation of this chapter or regulations promulgated pursuant to this chapter, the department may:

(1) issue a cease and desist order against the secondary metals recycler or other purchaser alleged to be in violation of this chapter, directing the person or persons to cease and desist from further illegal activity;

(2)(a) issue an order against any secondary metals recycler or other purchaser for a violation of this chapter, imposing an administrative fine up to a maximum of one thousand dollars for each offense. Each violation is considered a separate offense in a single proceeding or a series of related proceedings. An administrative fine, plus reimbursement for all costs and expenses incurred in the investigation of the violation and any administrative proceedings, must be paid to the department;

(b) for the purpose of determining the amount or extent of an administrative fine, if any, to be imposed pursuant to item (2)(a), the department shall consider, among other factors, the frequency, persistence, and wilfulness of the conduct constituting the violation, the number of persons adversely affected by the conduct; and the resources of the person committing the violation;

(3) bring an action to enjoin the acts or practices complained of to enforce compliance with this chapter or a regulation promulgated or an order issued pursuant to this chapter. Upon a proper showing, a permanent or temporary injunction or restraining order must be granted and a receiver or conservator may be appointed for the defendant or the defendant’s assets. In addition, upon a proper showing by the department, the court may enter an order requiring restitution by a person who has engaged in any act constituting a violation of any provision of this chapter or a regulation promulgated or an order issued pursuant to this chapter, or the court may impose a civil penalty up to a maximum of one thousand dollars for each offense, and each violation is considered a separate offense in a single proceeding or a series of related proceedings. The court may not require the department to post a bond.

Section 40‑40‑70. The department immediately shall report any suspected criminal violation accompanied by all pertinent records to the appropriate circuit solicitor.

Section 40‑40‑80. The department shall promulgate such regulations as are necessary to carry out its responsibilities under this chapter.”

SECTION 2. This act takes effect July 1, 2010.

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