~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

February 22, 2012

**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, Rose and Lourie

S. Printed 2/22/12--S.

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:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Section 16‑11‑523 of the 1976 Code is amended to read:

“Section 16‑11‑523. (A) For purposes of this section, ‘nonferrous metals’ means metals not containing significant quantities of iron or steel, including, but not limited to, copper wire, copper clad steel wire, copper pipe, copper bars, copper sheeting, aluminum other than aluminum cans, a product that is a mixture of aluminum and copper, catalytic converters, lead-acid batteries, and stainless steel beer kegs or containers.

(B) It is unlawful for a person to wilfully and maliciously cut, mutilate, deface, or otherwise injure any personal or real property, including any fixtures or improvements, for the purpose of obtaining nonferrous metals in any amount.

(C) A person who violates a provision of this section is guilty of a:

(1) misdemeanor, and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three 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 less than five thousand dollars; or

(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 five thousand dollars or more.

(D)(1) A person who violates the provisions of this section and the violation results in great bodily injury to another person is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years. For purposes of this subsection, ‘great bodily injury’ means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(2) A person who violates the provisions of this section and the violation results in the death of another person is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.

(E) A person who violates the provisions of this section and the violation results in disruption of communication or electrical service to critical infrastructure or more than ten customers of the communication or electrical service is guilty of a misdemeanor, and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

(F) If a person is convicted of violating the provisions of this section and the person has been issued a permit pursuant to Section 16-17-680, the permit must be revoked.

~~(F)(1)~~(G)(1) A public or private owner of personal or real property is not civilly liable to a person who is injured during the theft or attempted theft, by the person or a third party, of nonferrous metals in any amount.

(2) A public or private owner of personal or real property is not civilly liable for a person’s injuries caused by a dangerous condition created as a result of the theft or attempted theft of nonferrous metals in any amount, of the owner when the owner of personal or real property did not know and could not have reasonably known of the dangerous condition.

(3) This subsection does not create or impose a duty of care upon a owner of personal or real property that would not otherwise exist under common law.”

SECTION 2. Section 16‑17‑680 of the 1976 Code is amended to read:

“Section 16‑17‑680. (A) For purposes of this section:

(1) ‘Fixed site’ means ~~any~~ a 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.

(2) ‘Nonferrous metals’ means metals not containing significant quantities of iron or steel, including, but not limited to, copper wire, cooper clad steel wire, copper pipe, copper bars, copper sheeting, aluminum other than aluminum cans, a product that is a mixture of aluminum and copper, catalytic converters, lead-acid batteries, and stainless steel beer kegs or containers.

(3) ‘Secondary metals recycler’ means ~~any~~ a person or entity who is engaged, from a fixed site or otherwise, 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.

~~(4)~~ ~~‘Vehicle used in the ordinary course of business for the purpose of transporting nonferrous metals’ includes, but is not limited to, vehicles used by gas, electric, communications, water, plumbing, electrical, and climate conditioning service providers, and their employees, agents, and contractors, in the course of providing these services.~~

(B)(1) A secondary metals recycler shall obtain a permit to purchase nonferrous metals. A secondary metals recycler’s employee is not required to obtain a separate permit to purchase nonferrous metals provided that the employee is acting within the scope and duties of their employment with the secondary metals recycler. A secondary metals recycler’s employee who intends to purchase nonferrous metals on behalf of the secondary metals recycler at a location other than a fixed site shall have a copy of the secondary metals recycler’s permit readily available for inspection.

(2) If a secondary metals recycler intends to purchase nonferrous metals at a fixed site or fixed sites, the secondary metals recycler shall obtain a permit from the sheriff of the county in which each of the secondary metals recycler’s fixed sites are located. The sheriff ~~shall~~ may issue the permit to the secondary metals recycler, if the secondary metals recycler:

~~(1)~~(a) has a fixed site or fixed sites located in the sheriff’s county; ~~and~~

(b) has not been convicted of a violation of Section 16-11-523 or this section; and

~~(2)~~(c) declares on ~~a form~~ an application provided by the sheriff that the secondary metals recycler is informed of and will comply with the provisions of this section.

(3) If a secondary metals recycler intends to purchase nonferrous metals at a location other than a fixed site, the secondary metals recycler shall obtain a permit from the sheriff of each county in which the secondary metals recycler intends to purchase nonferrous metals. The sheriff may issue the permit to the secondary metals recycler if the secondary metals recycler:

(a) can sufficiently demonstrate to the sheriff the secondary metals recycler’s ability to comply with the provisions of this section;

(b) has not been convicted of a violation of Section 16-11-523 or this section; and

(c) declares on an application provided by the sheriff that the secondary metals recycler is informed of and will comply with the provisions of this section.

(4) The South Carolina Law Enforcement Division shall develop the application and permit in consultation with the state’s sheriffs and representatives from the secondary metals recyclers’ industry.

(5) A sheriff may investigate a secondary metals recycler’s background prior to issuing a permit for purposes of determining if the secondary metals recycler qualifies to be issued a permit.

(6) ~~The~~ A sheriff may charge and retain a two hundred dollar fee for ~~the~~ each permit.

(7) ~~The~~ A sheriff shall keep a record of all permits issued ~~pursuant to this subsection~~ containing, at a minimum, the date of issuance, and the name and address of the ~~permit holder~~ secondary metals recycler.

(8) ~~The~~ A permit is valid for twenty‑four months.

(9) A permit may be denied, suspended, or revoked at any time if a sheriff discovers that the information on an application is inaccurate, a secondary metals recycler does not comply with the requirements of this section, or a secondary metals recycler is convicted of a violation of Section 16-11-523 or this section.

(C)(1) A person or entity ~~other than a holder of a retail license, an authorized wholesaler, a contractor licensed pursuant to Article 1, Chapter 11, Title 40, or a gas, electric, communications, water, plumbing, electrical, or climate conditioning service provider,~~ who wants to transport or sell nonferrous metals to a secondary metals recycler shall obtain a permit to transport and sell the nonferrous metals. An entity’s employee is not required to obtain a separate permit to transport or sell nonferrous metals provided that the employee is acting within the scope and duties of their employment with the entity. An entity’s employee who intends to transport and sell nonferrous metals on behalf of an entity shall have a copy of the entity’s permit readily available for inspection.

(2) If a person is a resident of South Carolina or an entity is located in South Carolina, the person or entity shall obtain a permit from the sheriff of the county in which the person resides or has a secondary residence or in which the entity is located or has a secondary business. The sheriff ~~shall~~ may issue the permit to the person or entity if the:

(a) person resides or has a secondary residence or the entity is located or has a secondary business in the sheriff’s county~~, or, if the person is not a resident of or the entity is not located in South Carolina, secondary metals recycler purchasing the nonferrous metals is located in the sheriff’s county~~; ~~and~~

(b) person or entity has not been convicted of a violation of Section 16-11-523 or this section; and

~~(b)~~(c) person or entity declares on ~~a form~~ an application provided by the sheriff that the person or entity is informed of and will comply with the provisions of this section.

(3) If ~~the~~ a person is not a resident of South Carolina or ~~the~~ an entity is not located in South Carolina, the person or entity shall obtain a permit ~~to transport and sell nonferrous metals~~ from ~~the~~ any sheriff of ~~the~~ any county ~~in which the secondary metals recycler purchasing the nonferrous metals is located~~. The sheriff may issue the permit to the person or entity if the:

(a) person is not a resident of South Carolina or the entity is not located in South Carolina;

(b) person or entity has not been convicted of a violation of Section 16-11-523 or this section; and

(c) person or entity declares on an application provided by the sheriff that the person or entity is informed of and will comply with the provisions of this section.

(4) The South Carolina Law Enforcement Division shall develop the application and permit in consultation with the state’s sheriffs and representatives of the secondary metals recyclers’ industry.

(5) A sheriff may investigate a person or entity’s background prior to issuing a permit for purposes of determining if the person or entity qualifies to be issued a permit.

(6) ~~The~~ A sheriff may not charge a fee for ~~the~~ a permit. A sheriff may charge a ten dollar fee to replace a permit that has been lost or destroyed. If the original permit is later found by the person or entity, the person or entity must turn the original permit into the sheriff or destroy the original permit.

(7) ~~The~~A sheriff shall keep a record of all permits issued ~~pursuant to this subsection~~ containing, at a minimum, the date of issuance, the name and address of the ~~permit holder~~ person or entity, a photocopy of the ~~permit holder’s~~ person’s identification or of the employee’s identification, ~~the license plate number of the permit holder’s person’s motor vehicle or the entity’s motor vehicle,~~ and the ~~permit holder’s~~ person’s photograph or the entity’s employee’s photograph.

(8) ~~The~~A permit is valid ~~for twelve months~~ statewide and expires on the person’s birth date on the second calendar year after the calendar year in which the permit is issued, or, if the permittee is an entity, the permit expires on the date of issuance on the second calendar year after the calendar year in which the permit is issued. ~~If a person or entity only wants to sell or transport nonferrous metals a maximum of two times in a twelve month period, the person or entity can obtain a forty‑eight hour permit from the applicable sheriff’s office pursuant to this subsection, except that the person only needs to call the sheriff’s office, provide the required information, and obtain a permit number. A person or entity only may request such a permit two times in a twelve month period.~~

(9) A permit may be denied, suspended, or revoked at any time if a sheriff discovers that the information on an application is inaccurate, a person or entity does not comply with the requirements of this section, or a person or entity is convicted of a violation of Section 16-11-523 or this section.

~~(2)(a)~~(10)(a) It is unlawful for a person or entity to obtain a permit to transport and sell nonferrous metals for the purpose of transporting or selling stolen nonferrous metals.

(b) A person who violates a provision of this subitem is guilty of a felony, and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both. The person or entity’s permit must be revoked.

(D)(1) It is unlawful to purchase nonferrous metals in any amount for the purpose of recycling the nonferrous metals from a seller ~~who is not a holder of a retail license, an authorized wholesaler, a contractor licensed pursuant to Article 1, Chapter 11, Title 40, or a gas, electric, communications, water, plumbing, electrical, or climate conditioning service provider,~~ unless the purchaser is a secondary metals recycler who has a valid permit to purchase nonferrous metals issued pursuant to subsection (B) and the seller has a valid permit to transport and sell nonferrous metals issued pursuant to subsection (C). A secondary metals recycler may hold a seller’s nonferrous metals while the seller obtains a permit to transport and sell nonferrous metals pursuant to subsection (C).

(2) A secondary metals recycler shall maintain a record containing, at a minimum, the date of purchase, the name and address of the seller, a photocopy of the seller’s identification, a photocopy of the seller’s permit to transport and sell nonferrous metals, if applicable, the license plate number of the seller’s motor vehicle, if available, the seller’s photograph, the weight ~~or length,~~ and size or other description of the nonferrous metals purchased, the amount paid for ~~it~~ the nonferrous metals, and a signed statement from the seller stating that the seller is the rightful owner or is entitled to sell the nonferrous metals being sold. If the secondary metals recycler has the seller’s photograph on file, the secondary metals recycler may reference the photograph on file without making a photograph for each transaction; however, the secondary metals recycler shall update the seller’s photograph on an annual basis. A secondary metals recycler may use a video of the seller in lieu of a photograph provided the secondary metals recycler maintains the video for at least one hundred and twenty days. A secondary metals recycler may maintain a record in an electronic database provided that the information is legible and can be accessed by law enforcement upon request.

(3) 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~~ one year from the date of purchase.

~~(2)~~(4) ~~A secondary metals recycler shall purchase copper, catalytic converters, and beer kegs by check alone~~ A secondary metals recycler shall not enter into a cash transaction in excess of fifty dollars in payment for the purchase of copper, catalytic converters, and beer kegs. Payment in excess of fifty dollars for the purchase of copper, catalytic converters, and beer kegs must be made by check alone issued and made payable to the seller. A secondary metals recycler shall neither cash a check issued pursuant to this item nor use an automated teller machine (ATM) or other cash card system in lieu of a check.

~~(3)~~(5) A secondary metals recycler shall prominently display a twenty‑inch by thirty‑inch sign in the secondary metals recycler’s fixed site that states: ‘NO NONFERROUS METALS, INCLUDING COPPER, MAY BE PURCHASED BY A SECONDARY METALS RECYCLER FROM A SELLER UNLESS THE SELLER IS A HOLDER OF A RETAIL LICENSE, AN AUTHORIZED WHOLESALER, A CONTRACTOR LICENSED PURSUANT TO ARTICLE 1, CHAPTER 11, TITLE 40, CODE OF LAWS OF SOUTH CAROLINA, 1976, A GAS, ELECTRIC, COMMUNICATIONS, WATER, PLUMBING, ELECTRICAL, OR CLIMATE CONDITIONING SERVICE PROVIDER, OR THE SELLER PRESENTS THE SELLER’S VALID PERMIT TO TRANSPORT AND SELL NONFERROUS METALS ISSUED PURSUANT TO SECTION 16‑17‑680, CODE OF LAWS OF SOUTH CAROLINA, 1976.’

~~(4)~~(6) A purchaser who violates a provision of this subsection:

(a) for a first offense, is guilty of a misdemeanor, and, upon conviction, must be fined not less than two hundred dollars nor more than three hundred dollars or imprisoned not more than thirty days;

(b) for a second offense, is guilty of a misdemeanor, and, upon conviction, must be fined not less than four hundred dollars nor more than five hundred dollars or imprisoned not more than one year, or both; and

(c) for a third offense or subsequent offense, is guilty of a misdemeanor, and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than three years, or both. For an offense to be considered a third or subsequent offense, only those offenses that 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 subsection.

If the purchaser obtained a permit to purchase nonferrous metals pursuant to subsection (B), the permit must be revoked.

(E)(1)(a) It is unlawful to sell nonferrous metals in any amount to a secondary metals recycler unless the secondary metals recycler has a valid permit to purchase nonferrous metals issued pursuant to subsection (B) and the seller ~~is a holder of a retail license, an authorized wholesaler, a contractor licensed pursuant to Article 1, Chapter 11, Title 40, or a gas, electric, communications, water, plumbing, electrical, or climate conditioning service provider, or the seller~~ has a valid permit to transport and sell nonferrous metals issued pursuant to subsection (C).

(b) A seller who violates a provision of this subitem:

(i) for a first offense, is guilty of a misdemeanor, and, upon conviction, must be fined in the discretion of the court or imprisoned not more than one year, or both;

(ii) for a second offense, is guilty of a misdemeanor, and, upon conviction, must be fined not less than five hundred dollars or imprisoned not more than three years, or both; and

(iii) for a third or subsequent offense, is guilty of a felony, and, upon conviction, must be fined not less than one thousand dollars or imprisoned not more than five years, or both.

If the seller obtained a permit to transport and sell nonferrous metals pursuant to subsection (C), the permit must be revoked.

(2)(a) It is unlawful to purchase or otherwise acquire nonferrous metals in any amount from a seller who does not have a valid permit to transport and sell nonferrous metals issued pursuant to subsection (C) with the intent to resell the nonferrous metals in any amount to a secondary metals recycler using the purchaser’s valid permit to transport and sell nonferrous metals issued pursuant to subsection (C).

(b) A purchaser who violates a provision of this subitem is guilty of a felony, and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both. The purchaser’s permit must be revoked.

(F)(1) 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 fixed site 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 fixed site 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.

(4) A secondary metals recycler who violates a provision of this subsection:

(a) for a first offense, is guilty of a misdemeanor, and, upon conviction, must be fined not less than two hundred dollars nor more than three hundred dollars or imprisoned not more than thirty days;

(b) for a second offense, is guilty of a misdemeanor, and, upon conviction, must be fined not less than four hundred dollars nor more than five hundred dollars or imprisoned not more than one year, or both; and

(c) for a third or subsequent offense, is guilty of a misdemeanor, and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than three years, or both. For an offense to be considered a third or subsequent offense, only those offenses that 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 subsection.

The secondary metals recycler’s permit to purchase nonferrous metals issued pursuant to subsection (B) must be revoked.

(G)(1) It is unlawful to transport nonferrous metals in a vehicle or have nonferrous metals in a person’s possession in a vehicle on the highways of this State ~~nonferrous metals of an aggregate weight of more than ten pounds~~.

(2) Subsection (G)(1) does not apply if:

(a) ~~the vehicle is a vehicle used in the ordinary course of business for the purpose of transporting nonferrous metals;~~

~~(b)~~ the person can present a valid permit to transport and sell nonferrous metals issued pursuant to subsection (C); or

~~(c)~~(b) the person can present a valid bill of sale for the nonferrous metals.

(3) If a law enforcement officer determines that one or more of the exceptions listed in item (G)(2) applies, or the law enforcement officer determines that the nonferrous metals are not stolen goods and are in the rightful possession of the person, the law enforcement officer shall not issue a citation for a violation of this subsection.

(4) A person who violates a provision of item (G)(1):

(a) for a first offense, is guilty of a misdemeanor, and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days;

(b) for a second offense, is guilty of a misdemeanor, and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than one year, or both; and

(c) for a third or subsequent offense, is guilty of a misdemeanor, and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than three years, or both. For an offense to be considered a third or subsequent offense, only those offenses that 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 subsection.

(5) If a person transports nonferrous metals that the person knows are stolen in a vehicle or has in the person’s possession in a vehicle on the highways of this State nonferrous metals that the person knows are stolen, is operating a vehicle used in the ordinary course of business to transport nonferrous metals that the person knows are stolen, presents a valid or falsified permit to transport and sell nonferrous metals that the person knows are stolen, or presents a valid or falsified bill of sale for nonferrous metals that the person knows to be stolen, the person is guilty of a felony, and, upon conviction, must be must be fined in the discretion of the court or imprisoned not more than ten years, or both. If the person obtained a permit to transport and sell nonferrous metals pursuant to subsection (C), the permit must be revoked.

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

(1) ~~valid~~ South Carolina driver’s license issued by the Department of Motor Vehicles;

(2) ~~valid~~ 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.

(I) A secondary metals recycler must not purchase or otherwise acquire an iron or steel:

(1) manhole cover; or

(2) drainage grate.

~~(I)~~(J)(1) Except as provided in item (2), ~~The~~ the provisions of this section do not apply to:

(a) the purchase or sale of aluminum cans;

(b) a transaction between a secondary metals recycler and another secondary metals recycler;

(c) a governmental entity;

(d) a manufacturing or industrial vendor that generates or sells regulated metals in the ordinary course of its business;

(e) a holder of a retail license, an authorized wholesaler, an automobile demolisher as defined in Section 56-5-5810(d), a contractor licensed pursuant to Chapter 11, Title 40, a residential home builder licensed pursuant to Chapter 59, Title 40, a demolition contractor, a provider of gas service, electric service, communications service, water service, plumbing service, electrical service, climate conditioning service, core recycling service, appliance repair service, automotive repair service, or electronics repair service; or

(f) organizations, corporations, or associations registered with the State as charitable organizations or any nonprofit corporation.

(2) An exempted entity listed in item (1) is subject to the provisions of subsection (C)(10) and subsection (G)(5).

A secondary metals recycler shall maintain a record of transactions involving exempted entities listed in item (1) pursuant to subsection (D) and is subject to the penalty provisions of subsection (D)(6). Any item of nonferrous metals acquired from an exempted entity listed in item (1) is subject to a hold notice pursuant to subsection (F).

~~(J)~~(K) This section preempts local ordinances and regulations governing the purchase, sale, or transportation of nonferrous metals in any amount, except to the extent that such ordinances pertain 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. 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 4. This act takes effect ninety days after approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

C. BRADLEY HUTTO for Committee.

**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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