

1 HB298
2 116123-2
3 By Representative Wood
4 RFD: Judiciary
5 First Read: 14-JAN-10

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8 SYNOPSIS: Existing law makes it a crime for a person
9 to sell stolen metal property to a secondary metals
10 recycler. Existing law requires a secondary metals
11 recycler to keep a record of certain purchase
12 transactions of metal property.

13 This bill would specify that certain
14 recording requirements and limits of cash
15 transactions apply only to purchase transactions of
16 metal property that has served its original
17 economic purpose.

18 This bill would subject a person to an
19 additional criminal penalty if the person sells
20 stolen metal property to a secondary metals
21 recycler and the theft causes or may cause an
22 imminent danger to the public.

23 This bill would also include within the
24 value of the transaction for purposes of
25 determining the severity of the offense the costs
26 of repairing any damage to the victim's property
27 caused during the theft of the metal property.

1 Existing law provides that for three years
2 following September 1, 2007, a secondary metals
3 recycler may not enter into any cash transaction in
4 excess of \$100 for copper and \$1,000 for other
5 metals. Effective September 2, 2010, a secondary
6 metals recycler may not enter into a cash
7 transaction for any metals in excess of \$1,000.

8 This bill would delete the change in the law
9 effective September 2, 2010, so that cash
10 transactions for copper in excess of \$100 would
11 continue to be prohibited.

12 This bill would also provide that Article
13 1A, Chapter 8 of Title 13A, Code of Alabama 1975,
14 takes precedence over local ordinances governing
15 purchase transactions by a secondary metals
16 recycler.

17 Amendment 621 of the Constitution of Alabama
18 of 1901, now appearing as Section 111.05 of the
19 Official Recompilation of the Constitution of
20 Alabama of 1901, as amended, prohibits a general
21 law whose purpose or effect would be to require a
22 new or increased expenditure of local funds from
23 becoming effective with regard to a local
24 governmental entity without enactment by a 2/3 vote
25 unless: it comes within one of a number of
26 specified exceptions; it is approved by the
27 affected entity; or the Legislature appropriates

1 funds, or provides a local source of revenue, to
2 the entity for the purpose.

3 The purpose or effect of this bill would be
4 to require a new or increased expenditure of local
5 funds within the meaning of the amendment. However,
6 the bill does not require approval of a local
7 governmental entity or enactment by a 2/3 vote to
8 become effective because it comes within one of the
9 specified exceptions contained in the amendment.

10
11 A BILL
12 TO BE ENTITLED
13 AN ACT
14

15 To amend Sections 13A-8-30, 13A-8-31, 13A-8-37, and
16 13A-8-39, Code of Alabama 1975, relating to the sale of
17 certain metal property to secondary metals recyclers and
18 providing penalties for sellers violating the act; to specify
19 that certain record keeping requirements and limitations on
20 purchase transactions apply only to metal property that has
21 served its original economic purpose; to provide further for
22 penalties where the theft of the metal property causes or may
23 cause imminent danger to the public; to include within the
24 value of the transaction for purposes of determining the
25 severity of the crime and the penalty the costs of repairing
26 any damage to the victim's property caused during the theft;
27 to remove the three-year limitation on prohibiting certain

1 cash transactions for copper purchases; to provide that
2 Article 1A, Chapter 8 of Title 13A shall take precedence over
3 local ordinances governing purchase transactions by a
4 secondary metals recycler; and in connection therewith would
5 have as its purpose or effect the requirement of a new or
6 increased expenditure of local funds within the meaning of
7 Amendment 621 of the Constitution of Alabama of 1901, now
8 appearing as Section 111.05 of the Official Recompilation of
9 the Constitution of Alabama of 1901, as amended.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. Sections 13A-8-30, 13A-8-31, 13A-8-37,
12 and 13A-8-39, Code of Alabama 1975, are amended to read as
13 follows:

14 "§13A-8-30.

15 "As used in this article, the following terms have
16 the following meanings:

17 "(1) FERROUS METALS. Any metals containing
18 significant quantities of iron or steel.

19 "(2) LAW ENFORCEMENT OFFICER. A duly constituted and
20 certified peace officer of the State of Alabama or of any
21 county or municipality within the state.

22 "(3) METAL PROPERTY. Metals as defined in this
23 section as either ferrous or nonferrous metals.

24 "(4) NONFERROUS METALS. Metals not containing
25 significant quantities of iron or steel, including, without
26 limitation, copper, brass, aluminum other than aluminum cans,

1 bronze, lead, zinc, nickel, stainless steel, and alloys
2 thereof, including stainless steel beer kegs.

3 "(5) PERSON. An individual, partnership,
4 corporation, joint venture, trust, association, or any other
5 legal entity.

6 "(6) PERSONAL IDENTIFICATION CARD. A driver's
7 license or identification card issued by the Department of
8 Public Safety or a similar card issued by another state, a
9 military identification card, a passport, or an appropriate
10 work authorization issued by the U.S. Citizenship and
11 Immigration Services of the Department of Homeland Security.

12 "(7) PURCHASE TRANSACTION. A transaction in which a
13 secondary metals recycler gives consideration in exchange for
14 regulated metal property.

15 "(8) SECONDARY METALS RECYCLER. Any person who is
16 engaged, from a fixed location or otherwise, in the business
17 of paying compensation for ferrous or nonferrous metals ~~that~~
18 ~~have served their original economic purpose~~, whether or not
19 engaged in the business of performing the manufacturing
20 process by which ferrous metals or nonferrous metals are
21 converted into raw material products consisting of prepared
22 grades and having an existing or potential economic value. The
23 term does not include a pawnbroker licensed pursuant to
24 Chapter 19A of Title 5.

25 "§13A-8-31.

26 "(a) A secondary metals recycler shall maintain a
27 legible record of all purchase transactions of ferrous or

1 nonferrous metals that have served their original economic
2 purpose to which the secondary metals recycler is a party. The
3 record shall include all of the following information:

4 "(1) The name and address of the secondary metals
5 recycler.

6 "(2) The date of the transaction.

7 "(3) The weight, quantity, or volume and a
8 description of the type of metal property purchased in a
9 purchase transaction. For purposes of this subdivision, the
10 term "type of metal property" shall include a general physical
11 description, such as wire, tubing, extrusions, or casting.

12 "(4) The amount of consideration given in a purchase
13 transaction for the metal property.

14 "(5) A signed statement from the person receiving
15 consideration in the purchase transaction stating that he or
16 she is the rightful owner of the metal property or is entitled
17 to sell the metal property being sold.

18 "(6) The name and address of the person delivering
19 the metal property to the secondary metals recycler.

20 "(7) The distinctive number from, and type of, the
21 personal identification card of the person delivering the
22 metal property to the secondary metals recycler.

23 "(8) The vehicle license tag number, state of issue,
24 and the type of vehicle, if available, used to deliver the
25 metal property to the secondary metals recycler. For purposes
26 of this subdivision, the term "type of vehicle" shall mean an
27 automobile, pickup truck, van, or truck.

1 " (b) (1) ~~For three years following September 1, 2007,~~
2 ~~the~~ The secondary metal recycler shall not enter into any cash
3 transactions in excess of one hundred dollars (\$100) for
4 copper or in excess of one thousand dollars (\$1,000) for all
5 other metals in payment for the purchase of the metal
6 property. Payment shall be made by check issued to the seller
7 of the metal. The check shall be payable to the name and
8 address of the seller of the metal and mailed to the recorded
9 address of the seller or picked up in person by the seller. ~~At~~
10 ~~the end of three years, this subdivision shall be repealed and~~
11 ~~subdivision (2) shall apply. When payment is made by check,~~
12 the secondary metals recycler may not hold the check. The
13 secondary metals recycler, at his or her discretion, may make
14 payment by either cash or check or transactions of one hundred
15 dollars (\$100) or less for copper or one thousand dollars
16 (\$1,000) or less for all other metals.

17 "~~(2) Commencing three years and one day following~~
18 ~~September 1, 2007, the secondary metal recycler shall not~~
19 ~~enter into any cash transactions in excess of one thousand~~
20 ~~dollars (\$1,000) for any metals in payment for the purchase of~~
21 ~~the metal property. Payment shall be made by check issued to~~
22 ~~the seller of the metal. The check shall be payable to the~~
23 ~~name and address of the seller or picked up in person by the~~
24 ~~seller.~~

25 "(c) A secondary metals recycler shall maintain or
26 cause to be maintained the information required by subsection

1 (a) for not less than two years from the date of the purchase
2 transaction.

3 "§13A-8-37.

4 "(a) Any person selling metal property to a
5 secondary metals recycler in violation of this article shall
6 be guilty of ~~a Class A misdemeanor unless the transaction or~~
7 ~~transactions in violation of this article are in an aggregate~~
8 ~~amount which exceeds two hundred fifty dollars (\$250), in~~
9 ~~which case the person shall be guilty of a Class C felony. :~~

10 "(1) A Class A misdemeanor if the value of the
11 transaction or transactions in an aggregate amount plus the
12 cost of repairing any damage caused during the commission of
13 the theft of the metal property is less than two hundred fifty
14 dollars (\$250).

15 "(2) A Class C felony if the value of the
16 transaction or transactions in an aggregate amount plus the
17 cost of repairing any damage caused during the commission of
18 the theft of the property is two hundred fifty dollars (\$250)
19 or more.

20 "(b) At the time of sentencing of any person
21 convicted under this article, the judge shall order
22 restitution in an amount determined by the court; provided,
23 however, the amount shall not be less than the value of the
24 metal property determined to have been stolen, plus the cost
25 to repair any and all damage caused during the commission of
26 the crime for which the person is convicted.

1 "~~(b)~~(c) Any secondary metals recycler who knowingly
2 and intentionally engages in any practice which constitutes a
3 violation of this article shall be guilty of a misdemeanor,
4 provided that if a secondary metals recycler knowingly and
5 intentionally engages in a pattern of practices which
6 constitutes a violation of this article and the transactions
7 included in this pattern are in an aggregate amount which
8 exceeds five hundred dollars (\$500), the secondary metals
9 recycler shall be guilty of a Class C felony.

10 "§13A-8-39.

11 "This article shall apply to all businesses
12 regulated under this article without regard to the location
13 within the State of Alabama and shall take precedence over any
14 and all local ordinances ~~to the contrary~~ governing purchase
15 transactions of metal property by a secondary metals recycler.

16 Section 2. Although this bill would have as its
17 purpose or effect the requirement of a new or increased
18 expenditure of local funds, the bill is excluded from further
19 requirements and application under Amendment 621, now
20 appearing as Section 111.05 of the Official Recompilation of
21 the Constitution of Alabama of 1901, as amended, because the
22 bill defines a new crime or amends the definition of an
23 existing crime.

24 Section 3. This act shall become effective on the
25 first day of the third month following its passage and
26 approval by the Governor, or its otherwise becoming law.