

1 HB353
2 136820-1
3 By Representative Greer
4 RFD: Commerce and Small Business
5 First Read: 16-FEB-12

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8 SYNOPSIS: Under existing law, a secondary metals
9 recycler is required to maintain certain
10 information regarding purchases of metal property.
11 Also under existing law, a secondary metals
12 recycler is subject to certain criminal penalties
13 for the failure to comply with the record-keeping
14 requirements, as well as other laws regulating the
15 sale of these metals.

16 This bill would require certain persons
17 selling nonferrous metals, as well as secondary
18 metals recyclers purchasing nonferrous metals, to
19 obtain a permit from the sheriff of the county in
20 which the secondary metals recycler's business is
21 located, and would provide for a fee for the
22 issuance of a permit to secondary metals recyclers.

23 This bill would require a secondary metals
24 recycler to maintain certain records and additional
25 information with regard to purchases of metal
26 property when the person delivering the metal

1 property is not the same person receiving
2 consideration for the metal property.

3 This bill would create criminal penalties
4 for obtaining a permit for the purpose of
5 transporting or selling stolen nonferrous metals,
6 as well as criminal penalties for transporting,
7 selling, or purchasing nonferrous metals without a
8 permit.

9 This bill would restrict the business hours
10 of secondary metals recyclers and would require
11 secondary metals recyclers to post certain
12 notification regarding permitting requirements of
13 sellers of metal property.

14 This bill would prohibit certain metal
15 property from being sold to or purchased by a
16 secondary metals recycler unless written
17 documentation is provided that the seller is the
18 owner of the metal property or is authorized to
19 sell the metal property on behalf of the owner.

20 This bill would prohibit a secondary metals
21 recycler from purchasing metal property from a
22 person younger than age 18.

23 This bill would require that the secondary
24 metals recycler pay by check for the purchase of
25 metals regulated by this act.

26 This bill would provide criminal penalties
27 for cutting, mutilating, defacing, or otherwise

1 injuring real or personal property for the purpose
2 of obtaining nonferrous metals.

3 This bill would provide additional criminal
4 penalties.

5 Amendment 621 of the Constitution of Alabama
6 of 1901, now appearing as Section 111.05 of the
7 Official Recompilation of the Constitution of
8 Alabama of 1901, as amended, prohibits a general
9 law whose purpose or effect would be to require a
10 new or increased expenditure of local funds from
11 becoming effective with regard to a local
12 governmental entity without enactment by a 2/3 vote
13 unless: it comes within one of a number of
14 specified exceptions; it is approved by the
15 affected entity; or the Legislature appropriates
16 funds, or provides a local source of revenue, to
17 the entity for the purpose.

18 The purpose or effect of this bill would be
19 to require a new or increased expenditure of local
20 funds within the meaning of the amendment. However,
21 the bill does not require approval of a local
22 governmental entity or enactment by a 2/3 vote to
23 become effective because it comes within one of the
24 specified exceptions contained in the amendment.

25
26 A BILL
27 TO BE ENTITLED

1 AN ACT

2
3 Relating to secondary metals recyclers; to add
4 Section 13A-8-30.1 to the Code of Alabama 1975, to require
5 certain secondary metals recyclers and sellers of metal
6 property to obtain a permit from the sheriff; to amend
7 Sections 13A-8-31, 13A-8-35, and 13A-8-37, Code of Alabama
8 1975; to provide further for the information that must be
9 maintained by the secondary metals recycler; to require
10 notification to law enforcement of the business location and
11 to authorize inspection by law enforcement; to limit certain
12 purchases by a secondary metals recycler; to require purchases
13 of metal be paid by check; to prohibit purchases from persons
14 under a certain age; to provide criminal penalties for
15 cutting, mutilating, defacing, or otherwise injuring real or
16 personal property for the purpose of obtaining nonferrous
17 metals; and to provide criminal penalties; and in connection
18 therewith would have as its purpose or effect the requirement
19 of a new or increased expenditure of local funds within the
20 meaning of Amendment 621 of the Constitution of Alabama of
21 1901, now appearing as Section 111.05 of the Official
22 Recompilation of the Constitution of Alabama of 1901, as
23 amended.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. Section 13A-8-30.1 is added to the Code
26 of Alabama 1975, to read as follows:

27 §13A-8-30.1.

1 (a) For purposes of this section, fixed site means
2 any site occupied by a secondary metals recycler as the owner
3 of the site or as a lessee of the site under a lease or other
4 rental agreement providing for occupation of the site by a
5 secondary metals recycler for a total duration of not less
6 than 364 days.

7 (b) (1) A secondary metals recycler shall obtain a
8 permit to purchase nonferrous metals from the sheriff of the
9 county in which each of the secondary metals recycler's fixed
10 sites are located. The sheriff shall issue the permit to the
11 secondary metals recycler if the secondary metals recycler:

12 a. Has a fixed site located in the sheriff's county.

13 b. Declares on a form provided by the sheriff that
14 the secondary metals recycler is informed of and will comply
15 with the provisions of this section.

16 (2) The sheriff may charge and retain a two hundred
17 dollar (\$200) fee for the permit. The sheriff shall keep a
18 record of all permits issued under this subsection containing,
19 at a minimum, the following information:

20 a. Date of issuance.

21 b. Name and address of the permit holder.

22 (3) The permit is valid for 24 months.

23 (c) (1) A person other than a holder of a retail
24 license, an authorized wholesaler, a contractor licensed under
25 the laws of this state, or a gas, electric, communications,
26 water, plumbing, electrical, or climate conditioning service
27 provider, who transports or sells nonferrous metals to a

1 secondary metals recycler shall obtain a permit to transport
2 and sell nonferrous metals from the sheriff of the county in
3 which the person resides or where the business entity is
4 located. If the person is not a resident of or the entity is
5 not located in this state, the person shall obtain a permit to
6 transport and sell nonferrous metals from the sheriff of the
7 county in which the secondary metals recycler purchasing the
8 nonferrous metals is located. The sheriff shall issue the
9 permit to the person if both of the following are satisfied:

10 a. The person resides or the entity is located in
11 the sheriff's county, or, if the person is not a resident of
12 or the entity is not located in this state, the secondary
13 metals recycler purchasing the nonferrous metals is located in
14 the sheriff's county.

15 b. The person declares on a form provided by the
16 sheriff that the person or entity is informed of and will
17 comply with this section.

18 (2) The sheriff may not charge a fee for the permit.
19 The sheriff shall keep a record of all permits issued pursuant
20 to this subsection containing, at a minimum, the following
21 information:

22 a. Date of issuance.

23 b. The name and address of the permit holder.

24 c. A photocopy of the permit holder's
25 identification.

26 d. The license plate number of the permit holder's
27 motor vehicle.

1 e. The permit holder's photograph.

2 (3) The permit is valid for 12 months. If a person
3 only sells or transports nonferrous metals a maximum of two
4 times in a 12-month period, the person can obtain a 48-hour
5 permit from the sheriff's office pursuant to this subsection,
6 except that the person shall only be required to call the
7 sheriff's office, provide the required information, and obtain
8 a permit number. A person may only request such a permit two
9 times in a 12-month period.

10 (d) A secondary metals recycler shall prominently
11 display a 20-inch by 30-inch sign in the secondary metals
12 recycler's fixed site that states: "No nonferrous metals,
13 including copper, may be purchased by a secondary metals
14 recycler from a seller unless the seller is a holder of a
15 retail license, an authorized wholesaler, a contractor
16 licensed under the laws of this state, a gas, electric,
17 communications, water, plumbing, electrical, or climate
18 conditioning service provider, or the seller presents the
19 seller's valid permit to transport and sell nonferrous metals
20 issued pursuant to the laws of this state.

21 (e) A secondary metals recycler shall not engage in
22 the purchase or sale of metal property between the hours of 9
23 p.m. and 6 a.m.

24 Section 2. Sections 13A-8-31, 13A-8-35, and
25 13A-8-37, Code of Alabama 1975, are amended to read as
26 follows:

27 "§13A-8-31.

1 "(a) A secondary metals recycler shall maintain a
2 legible record of all purchase transactions of ferrous or
3 nonferrous metals that have served their original economic
4 purpose to which the secondary metals recycler is a party. The
5 record shall include all of the following information:

6 "(1) The name and address of the secondary metals
7 recycler.

8 "(2) The date and time of the transaction.

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

14 "(4) The amount of consideration given in a purchase
15 transaction for the metal property, including a photocopy of
16 the check written for the purchase transaction.

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

21 "(6) The name and address, including city, county,
22 and state, of the person delivering the metal property to the
23 secondary metals recycler.

24 "(7) The distinctive number from, and type of, the
25 personal identification card of the person delivering the
26 metal property to the secondary metals recycler and a video or
27 photographic copy of the identification card.

1 "(8) The vehicle license tag number, and state of
2 issue or the vehicle identification number if no vehicle
3 license tag, and the type of vehicle, ~~if available~~, including
4 make and color, used to deliver the metal property to the
5 secondary metals recycler. For purposes of this subdivision,
6 the term "type of vehicle" shall mean an automobile, pickup
7 truck, van, or truck.

8 "(9) A digital photograph of the person delivering
9 the metal property and a digital photograph of the property
10 being delivered to the secondary metals recycler.

11 ~~"(b) The secondary metals recycler shall not enter~~
12 ~~into any cash transactions in excess of one hundred dollars~~
13 ~~(\$100) for copper or in excess of one thousand dollars~~
14 ~~(\$1,000) for all other metals in payment for the purchase of~~
15 ~~the metal property. Payment shall be made by check issued to~~
16 ~~the seller of the metal. The check shall be payable to the~~
17 ~~name and address of the seller of the metal and mailed to the~~
18 ~~recorded address of the seller or picked up in person by the~~
19 ~~seller. The secondary metals recycler, at his or her~~
20 ~~discretion, may make payment by either cash or check for~~
21 ~~transactions of one hundred dollars (\$100) or less for copper~~
22 ~~or one thousand dollars (\$1,000) or less for all other metals.~~

23 "(b) A secondary metals recycler shall pay by check
24 any person delivering metal property regulated by this
25 article. The check shall be mailed to the current address of
26 the person selling the metal property.

1 "(c) If the person delivering the metal property is
2 not the person receiving consideration for that metal
3 property, the information required in subdivisions (6), (7),
4 and (9) of subsection (a) shall be maintained with respect to
5 the person receiving consideration for the metal property and
6 the person delivering the metal property.

7 "(d) (1) If requested by the sheriff of the county in
8 which the secondary metals recycler conducts business, or the
9 chief of police in the event the secondary metals recycler
10 conducts business within the municipality, a secondary metals
11 recycler shall enter all information required by this section
12 into a database and shall transmit electronically to the
13 sheriff or chief of police within 24 hours of the transaction.

14 "(2) A secondary metals recycler shall hold metal
15 property separate and identifiable from other purchases for
16 not less than three business days from the date of electronic
17 report to law enforcement. The purchaser shall permit any law
18 enforcement officer to make an inspection of the metal
19 property during the holding period, and to view all
20 photographs of the metal property. Any photograph of metal
21 property taken and maintained pursuant to this section shall
22 be admissible in any civil or criminal proceedings.

23 "(c)(e) A secondary metals recycler shall maintain
24 or cause to be maintained the information required by
25 subsection (a) for not less than two years from the date of
26 the purchase transaction.

27 "§13A-8-35.

1 This article shall not apply to purchases of metal
2 property from any of the following:

3 "(1) A law enforcement officer acting in an official
4 capacity unless the law enforcement officer is investigating a
5 compliance issue pursuant to this article and is presenting
6 metal for sale.

7 "(2) A trustee in bankruptcy, executor,
8 administrator, or receiver who has presented proof of such
9 status to the secondary metals recycler.

10 "(3) Any public official acting under a court order
11 who has presented proof of such status to the secondary metals
12 recycler.

13 "(4) A sale on the execution, or by virtue, of any
14 process issued by a court if proof thereof has been presented
15 to the secondary metals recycler.

16 "(5) A manufacturing, industrial, or other
17 commercial vendor that generates or sells regulated metal
18 property in the ordinary course of its business.

19 "§13A-8-37.

20 "(a) Any person selling metal property to a
21 secondary metals recycler in violation of this article shall
22 be guilty of:

23 "(1) A Class A misdemeanor if the value of the
24 transaction or transactions in an aggregate amount plus the
25 cost of repairing any damage caused during the commission of
26 the theft of the metal property is less than ~~five hundred~~
27 ~~dollars (\$500)~~ two hundred fifty dollars (\$250).

1 "(2) A Class C felony if the value of the
2 transaction or transactions in an aggregate amount ~~exceeds~~
3 ~~five hundred dollars (\$500)~~ plus the cost of repairing any
4 damage caused during the commission of the theft if the
5 property is more than two hundred fifty dollars (\$250), but
6 does not exceed two thousand five hundred dollars (\$2,500) in
7 value.

8 "(3) A Class B felony if the value of the
9 transaction or transactions in an aggregate amount exceeds two
10 thousand five hundred dollars (\$2,500).

11 "(b) At the time of sentencing of any person
12 convicted under this article, the court ~~may~~ shall order
13 restitution in an amount determined by the court, which amount
14 shall not be less than the value of the metal property
15 determined to have been stolen, plus the cost to repair all
16 damage caused during the commission of the crime.

17 "(c) Any secondary metals recycler who knowingly and
18 intentionally engages in any practice which constitutes a
19 violation of this article shall be guilty of a misdemeanor,
20 provided that if a secondary metals recycler knowingly and
21 intentionally engages in a pattern of practices which
22 constitutes a violation of this article and the transactions
23 included in this pattern are in an aggregate amount which
24 exceeds five hundred dollars (\$500), the secondary metals
25 recycler shall be guilty of a Class C felony.

26 "(d) Any person that purchases nonferrous metals in
27 any amount from a seller that does not have the required

1 permit pursuant to Section 13A-8-30.1, with the intent to
2 resell the nonferrous metals in any amount to a secondary
3 metals recycler, shall be guilty of a Class C felony.

4 "(e) (1) Except as provided in subdivision (2), any
5 person that transports nonferrous metals in a vehicle or has
6 nonferrous metals in his or her possession in a vehicle on the
7 highways of this state shall be guilty of the following:

8 "a. A Class C misdemeanor for a first offense.

9 "b. A Class B misdemeanor for a second offense.

10 "c. A Class A misdemeanor for a third or subsequent
11 offense within a period of 10 years preceding the date of the
12 last offense.

13 "(2) Subdivision (1) does not apply to the following
14 persons:

15 "a. A person that is not required to obtain a valid
16 permit to transport and sell nonferrous metals pursuant to
17 Section 13A-8-30.1.

18 "b. A person that presents a valid permit to
19 transport and sell nonferrous metals issued pursuant to
20 Section 13A-8-30.1.

21 "c. A person that presents a valid bill of sale for
22 the nonferrous metals.

23 "(f) Any person that transports nonferrous metals in
24 a vehicle that the person knows are stolen or has in his or
25 her possession in a vehicle nonferrous metals that the person
26 knows are stolen and does any of the following is guilty of a
27 Class B felony:

1 "(1) Operates a vehicle used in the ordinary course
2 of business to transport the nonferrous metals.

3 "(2) Presents a valid or falsified permit to
4 transport and sell nonferrous metals.

5 "(3) Presents a valid or falsified bill of sale for
6 nonferrous metals.

7 "(g) Any person that obtains a permit to transport
8 and sell nonferrous metals pursuant to Section 13A-8-30.1 for
9 the purpose of transporting or selling stolen nonferrous
10 metals is guilty of a Class C felony.

11 "(h) Any person that wilfully and maliciously cuts,
12 mutilates, defaces, or otherwise injures any personal or real
13 property, including any fixtures or improvements, for the
14 purpose of obtaining nonferrous metals shall be guilty of the
15 following:

16 "(1) A Class A misdemeanor if the direct injury to
17 the property, the amount of loss in value to the property, the
18 amount of repairs necessary to return the property to its
19 condition before the unlawful act, or the property loss,
20 including fixtures or improvements is five hundred dollars
21 (\$500) or less.

22 "(2) A Class C felony if the direct injury to the
23 property, the amount of loss in value to the property, the
24 amount of repairs necessary to return the property to its
25 condition before the unlawful act, or the property loss,
26 including fixtures or improvements, exceeds five hundred

1 dollars (\$500), but is less than two thousand five hundred
2 dollars (\$2,500).

3 "(3) A Class B felony if the direct injury to the
4 property, the amount of loss in value to the property, the
5 amount of repairs necessary to return the property to its
6 condition before the unlawful act, or the property loss,
7 including fixtures or improvements, is two thousand five
8 hundred dollars (\$2,500) or more."

9 Section 3. (a) It shall be a Class C felony,
10 regardless of the value of the metal property for a person to
11 sell or for a secondary metals recycler to purchase any of the
12 following metal property unless reasonable, written
13 documentation is provided that the seller is the owner of the
14 metal property or is an employee, agent, or other person
15 authorized to sell the metal property on behalf of the owner:

16 (1) Any bronze vase, marker, memorial, statue,
17 plaque, or other bronze object used at a cemetery or other
18 location where deceased persons are interred or memorialized
19 unless the source of the bronze is known by the secondary
20 metals recycler and notice is provided to the municipal or
21 county law enforcement agency where the secondary metals
22 recycler is located. The notice shall identify all names,
23 letters, dates, and symbols on the bronze and a photograph of
24 the bronze shall be attached thereto. The secondary metals
25 recycler shall obtain written permission from the cemetery and
26 the appropriate law enforcement agency before any type of

1 bronze described in this subdivision may be purchased,
2 processed, sold, or melted.

3 (2) Any manhole cover unless the source of the
4 manhole is known by the secondary metals recycler and notice
5 is provided to the sheriff of the county in which the
6 secondary metals recycler is located. The notice shall
7 identify all names, letters, dates, and symbols on the manhole
8 cover and a photograph of the manhole cover shall be attached
9 to the notice to the sheriff.

10 (3) Metal property marked with the initials of an
11 electrical company, a telecommunications company, a cable
12 company, or other public utility or a brewer.

13 (4) A utility access cover.

14 (5) A street light pole and fixture.

15 (6) A road or bridge guard rail.

16 (7) A highway or street sign.

17 (8) A water meter cover.

18 (9) A metal beer keg, including a keg made of
19 stainless steel, that is clearly marked as being the property
20 of a beer manufacturer.

21 (10) A traffic directional and control sign.

22 (11) A traffic light signal.

23 (12) Any scrap metal marked with the name of a
24 government entity.

25 (13) Metal property owned by a telecommunications
26 company, a cable company, an electric company, a water

1 company, or other utility or owned by a railroad and marked or
2 otherwise identified as such.

3 (14) Any unused and undamaged building construction
4 or utility material consisting of copper, pipe, tubing or
5 wiring, or aluminum wire.

6 (15) Any historical marker, grave marker, or bronze
7 vase.

8 (16) A catalytic converter that is not part of an
9 entire motor vehicle.

10 (17) Metal property that has been smelted, burned,
11 or melted.

12 (18) Air conditioning parts unless the parts are
13 being sold by a contractor, plumber, or electrician with a
14 current and valid HVAC license provided at the time of the
15 sale and a copy of the HVAC license number is recorded by the
16 secondary metals recycler.

17 (19) Any metal property that has been brightly
18 painted or marked to deter theft of the scrap metal.

19 (b) It shall be a Class A misdemeanor for a
20 secondary metals recycler or other purchaser to purchase metal
21 property from a person younger than 18 years of age.

22 Section 4. Although this bill would have as its
23 purpose or effect the requirement of a new or increased
24 expenditure of local funds, the bill is excluded from further
25 requirements and application under Amendment 621, now
26 appearing as Section 111.05 of the Official Recompilation of
27 the Constitution of Alabama of 1901, as amended, because the

1 bill defines a new crime or amends the definition of an
2 existing crime.

3 Section 5. This act shall become effective 60 days
4 following its passage and approval by the Governor, or its
5 otherwise becoming law.