

1 SB35  
2 133773-1  
3 By Senators Brooks and Ward  
4 RFD: Judiciary  
5 First Read: 07-FEB-12  
6 PFD: 08/18/2011

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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 This bill would require a secondary metals  
12 recycler upon request of the sheriff or chief of  
13 police to provide notice and identifying  
14 information to law enforcement of the municipality  
15 or county in which a transaction is conducted and  
16 maintain certain records and additional information  
17 with regard to purchases of metal property when the  
18 person delivering the metal property is not the  
19 same person receiving consideration for the metal  
20 property.

21 This bill would require a secondary metals  
22 recycler to notify law enforcement of the  
23 municipality or county in which the secondary  
24 metals recycler intends to conduct business of  
25 certain information concerning the business and  
26 would authorize law enforcement of the municipality  
27 or county to inspect the proposed business site.

1                   This bill would prohibit certain metal  
2 property from being sold to or purchased by a  
3 secondary metals recycler unless written  
4 documentation is provided that the seller is the  
5 owner of the metal property or is authorized to  
6 sell the metal property on behalf of the owner.

7                   This bill would prohibit a secondary metals  
8 recycler from purchasing metal property from a  
9 person younger than age 18.

10                   This bill would require that the secondary  
11 metals recycler pay by check for the purchase of  
12 metals regulated by this act.

13                   This bill would provide criminal penalties.

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

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

9   A BILL  
10    TO BE ENTITLED  
11    AN ACT  
12

13                   Relating to secondary metals recyclers; to amend  
14                   Sections 13A-8-31, 13A-8-35, and 13A-8-37, Code of Alabama  
15                   1975; to provide further for the information that must be  
16                   maintained by the secondary metals recycler; to require  
17                   notification to law enforcement of the business location and  
18                   to authorize inspection by law enforcement; to limit certain  
19                   purchases by a secondary metals recycler; to require purchases  
20                   of metal be paid by check; to prohibit purchases from persons  
21                   under a certain age; to provide criminal penalties; and in  
22                   connection therewith would have as its purpose or effect the  
23                   requirement of a new or increased expenditure of local funds  
24                   within the meaning of Amendment 621 of the Constitution of  
25                   Alabama of 1901, now appearing as Section 111.05 of the  
26                   Official Recompilation of the Constitution of Alabama of 1901,  
27                   as amended.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Sections 13A-8-31, 13A-8-35, and  
3 13A-8-37, Code of Alabama 1975, are amended to read as  
4 follows:

5 "§13A-8-31.

6 "(a) A secondary metals recycler shall maintain a  
7 legible record of all purchase transactions of ferrous or  
8 nonferrous metals that have served their original economic  
9 purpose to which the secondary metals recycler is a party. The  
10 record shall include all of the following information:

11 "(1) The name and address of the secondary metals  
12 recycler.

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

14 "(3) The weight, quantity, or volume and a  
15 description of the type of metal property purchased in a  
16 purchase transaction. For purposes of this subdivision, the  
17 term type of metal property shall include a general physical  
18 description, such as wire, tubing, extrusions, or casting.

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

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

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

1           "(7) The distinctive number from, and type of, the  
2 personal identification card of the person delivering the  
3 metal property to the secondary metals recycler and a video or  
4 photographic copy of the identification card.

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

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

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

1           "(b) A secondary metals recycler shall pay by check  
2 any person delivering metal property regulated by this  
3 article. The check shall be mailed to the current address of  
4 the person selling the metal property.

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

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

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

1           "~~(c)~~(e) A secondary metals recycler shall maintain  
2 or cause to be maintained the information required by  
3 subsection (a) for not less than two years from the date of  
4 the purchase transaction.

5           "§13A-8-35.

6           This article shall not apply to purchases of metal  
7 property from any of the following:

8           "(1) A law enforcement officer acting in an official  
9 capacity unless the law enforcement officer is investigating a  
10 compliance issue pursuant to this article and is presenting  
11 metal for sale.

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

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

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

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

24           "§13A-8-37.

25           "(a) Any person selling metal property to a  
26 secondary metals recycler in violation of this article shall  
27 be guilty of:

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

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

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

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

22           "(c) Any secondary metals recycler who knowingly and  
23 intentionally engages in any practice which constitutes a  
24 violation of this article shall be guilty of a misdemeanor,  
25 provided that if a secondary metals recycler knowingly and  
26 intentionally engages in a pattern of practices which  
27 constitutes a violation of this article and the transactions

1 included in this pattern are in an aggregate amount which  
2 exceeds five hundred dollars (\$500), the secondary metals  
3 recycler shall be guilty of a Class C felony."

4 Section 2. (a) It is unlawful for a person to  
5 knowingly damage, destroy, or pull down any of the following:

6 (1) Telecommunications, cable communications, or  
7 electric power transmission pedestal or pole owned or operated  
8 by a telecommunications, cable, or electric power company.

9 (2) Telecommunications, cable communications, or  
10 electric power line, wire, fiber insulator, power supply  
11 transformer, transmission, or other apparatus, equipment, or  
12 fixture used in the transmission of telecommunications, cable  
13 communications, or electric power owned or operated by a  
14 telecommunications, cable, or electric power company.

15 (3) Equipment related to wireless communications  
16 that are regulated by the Federal Communications Commission.

17 (b) It is unlawful for a person to injure or  
18 destroy, steal, or remove any electric power line, gas line,  
19 water line, wire or fiber insulator, electric motor, or other  
20 apparatus connected to a farm shop, on-farm grain drying and  
21 storage complex, heating and cooling system or environmental  
22 control system, animal production facility, irrigation system,  
23 dwelling, or alteration that could result in physical injury.

24 (c) A violation of this section is a Class C felony.

25 Section 3. (a) A secondary metals recycler subject  
26 to Article 1A, Chapter 8 of Title 13A, Code of Alabama 1975,  
27 shall notify in writing the sheriff of the county in which the

1 secondary metals recycler intends to conduct business. The  
2 notification shall include the name of the business, address  
3 of the business, and the name of the owner or owners of the  
4 business. Along with the notification, the secondary metals  
5 recycler shall present to the sheriff of the county in which  
6 the secondary metals recycler conducts business a copy of the  
7 county business license or other regulatory license of the  
8 business. Upon receipt of the notification, the sheriff shall  
9 conduct an inspection at the proposed business site to insure  
10 that the business can adequately comply with all provisions of  
11 Article 1A.

12 (b) This section shall not apply to a secondary  
13 metals recycler who is operating a business or who has a  
14 current business license to operate a secondary metals  
15 recycling business on the effective date of this act.

16 Section 4. (a) It shall be a Class C felony,  
17 regardless of the value of the metal property for a person to  
18 sell or for a secondary a metals recycler to purchase any of  
19 the following metal property unless reasonable, written  
20 documentation is provided that the seller is the owner of the  
21 metal property or is an employee, agent, or other person  
22 authorized to sell the metal property on behalf of the owner:

23 (1) Any bronze vase, marker, memorial, statue,  
24 plaque, or other bronze object used at a cemetery or other  
25 location where deceased persons are interred or memorialized  
26 unless the source of the bronze is known by the secondary  
27 metals recycler and notice is provided to the municipal or

1 county law enforcement agency where the secondary metals  
2 recycler is located. The notice shall identify all names,  
3 letters, dates, and symbols on the bronze and a photograph of  
4 the bronze shall be attached thereto. The secondary metals  
5 recycler shall obtain written permission from the cemetery and  
6 the appropriate law enforcement agency before any type of  
7 bronze described in this subdivision may be purchased,  
8 processed, sold, or melted.

9 (2) Any manhole cover unless the source of the  
10 manhole is known by the secondary metals recycler and notice  
11 is provided to the sheriff of the county in which the  
12 secondary metals recycler is located. The notice shall  
13 identify all names, letters, dates, and symbols on the manhole  
14 cover and a photograph of the manhole cover shall be attached  
15 to the notice to the sheriff.

16 (3) Metal property marked with the initials of an  
17 electrical company, a telecommunications company, a cable  
18 company or other public utility or a brewer.

19 (4) A utility access cover.

20 (5) A street light pole and fixture.

21 (6) A road or bridge guard rail.

22 (7) A highway or street sign.

23 (8) A water meter cover.

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

27 (10) A traffic directional and control sign.

1 (11) A traffic light signal.

2 (12) Any scrap metal marked with the name of a  
3 government entity.

4 (13) Metal property owned by a telecommunications  
5 company, a cable company, an electric company, a water  
6 company, or other utility or owned by a railroad and marked or  
7 otherwise identified as such.

8 (14) Any unused and undamaged building construction  
9 or utility material consisting of copper, pipe, tubing or  
10 wiring, or aluminum wire.

11 (15) Any historical marker, grave marker, or bronze  
12 vase.

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

15 (17) Metal property that has been smelted, burned,  
16 or melted.

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

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

24 (b) It shall be a Class A misdemeanor for a scrap  
25 metals recycler or other purchaser to purchase metal property  
26 from a person younger than 18 years of age.

1                   Section 5. Although this bill would have as its  
2                   purpose or effect the requirement of a new or increased  
3                   expenditure of local funds, the bill is excluded from further  
4                   requirements and application under Amendment 621, now  
5                   appearing as Section 111.05 of the Official Recompilation of  
6                   the Constitution of Alabama of 1901, as amended, because the  
7                   bill defines a new crime or amends the definition of an  
8                   existing crime.

9                   Section 6. This act shall become effective 60 days  
10                  following its passage and approval by the Governor, or its  
11                  otherwise becoming law.