

1 HB90
2 134098-1
3 By Representatives Greer, Johnson (W), Williams (D), Henry,
4 Johnson (K) and Rich
5 RFD: Commerce and Small Business
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8 SYNOPSIS: Under existing law, secondary metals
9 recyclers must maintain certain records relating to
10 all purchase transactions of ferrous or nonferrous
11 metals, including copper. Also under existing law,
12 a secondary metals recycler is subject to certain
13 criminal penalties for the failure to comply with
14 the record-keeping requirements, as well as other
15 laws regulating the 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 create criminal penalties
24 for obtaining a permit for the purpose of
25 transporting or selling stolen nonferrous metals,
26 as well as criminal penalties for transporting,

1 selling, or purchasing nonferrous metals without a
2 permit.

3 This bill would restrict the business hours
4 of secondary metals recyclers and would require
5 secondary metals recyclers to post certain
6 notification regarding permitting requirements of
7 sellers of metal property.

8 This bill would require a secondary metals
9 recycler to maintain additional records relating to
10 the purchase of ferrous and nonferrous metals,
11 including a photocopy of the check used to purchase
12 the metal property, a photocopy of the personal
13 identification card of the person selling the metal
14 property, and a photograph of the metal property.

15 This bill would provide that cash payments
16 for nonferrous metals could not be made earlier
17 than 24 hours after the metal property is provided
18 to the secondary metals recycler.

19 This bill would provide criminal penalties
20 for cutting, mutilating, defacing, or otherwise
21 injuring real or personal property for the purpose
22 of obtaining nonferrous metals.

23 Amendment 621 of the Constitution of Alabama
24 of 1901, now appearing as Section 111.05 of the
25 Official ReCompilation of the Constitution of
26 Alabama of 1901, as amended, prohibits a general
27 law whose purpose or effect would be to require a

1 new or increased expenditure of local funds from
2 becoming effective with regard to a local
3 governmental entity without enactment by a 2/3 vote
4 unless: it comes within one of a number of
5 specified exceptions; it is approved by the
6 affected entity; or the Legislature appropriates
7 funds, or provides a local source of revenue, to
8 the entity for the purpose.

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

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT
20

21 Relating to secondary metals recyclers; to add
22 Section 13A-8-30.1 to the Code of Alabama 1975, to authorize a
23 permitting process for secondary metals recyclers and sellers
24 of nonferrous metals; to provide for criminal penalties for
25 transporting, selling, or purchasing nonferrous metals without
26 a permit; to restrict business hours of secondary metals
27 recyclers and to require certain notification; to amend

1 Section 13A-8-31, Code of Alabama 1975, to require secondary
2 metals recyclers to maintain additional records relating to
3 the purchase of ferrous and nonferrous metals; to limit cash
4 payments for metal property to certain time frames; to amend
5 Section 13A-8-37, Code of Alabama 1975, to provide for
6 criminal penalties for transporting, selling, or purchasing
7 nonferrous metals without a permit; to provide criminal
8 penalties for obtaining a permit for the purpose of
9 transporting or selling stolen nonferrous metals; to provide
10 criminal penalties for cutting, mutilating, defacing, or
11 otherwise injuring real or personal property for the purpose
12 of obtaining nonferrous metals; and in connection therewith
13 would have as its purpose or effect the requirement of a new
14 or increased expenditure of local funds within the meaning of
15 Amendment 621 of the Constitution of Alabama of 1901, now
16 appearing as Section 111.05 of the Official Recompilation of
17 the Constitution of Alabama of 1901, as amended.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

21 §13A-8-30.1.

22 (a) For purposes of this section, fixed site means
23 any site occupied by a secondary metals recycler as the owner
24 of the site or as a lessee of the site under a lease or other
25 rental agreement providing for occupation of the site by a
26 secondary metals recycler for a total duration of not less
27 than 364 days.

1 (b) (1) A secondary metals recycler shall obtain a
2 permit to purchase nonferrous metals from the sheriff of the
3 county in which each of the secondary metals recycler's fixed
4 sites are located. The sheriff shall issue the permit to the
5 secondary metals recycler if the secondary metals recycler:

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

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

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

14 a. Date of issuance.

15 b. Name and address of the permit holder.

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

17 (c) (1) A person other than a holder of a retail
18 license, an authorized wholesaler, a contractor licensed under
19 the laws of this state, or a gas, electric, communications,
20 water, plumbing, electrical, or climate conditioning service
21 provider, who transports or sells nonferrous metals to a
22 secondary metals recycler shall obtain a permit to transport
23 and sell nonferrous metals from the sheriff of the county in
24 which the person resides or where the business entity is
25 located. If the person is not a resident of or the entity is
26 not located in this state, the person shall obtain a permit to
27 transport and sell nonferrous metals from the sheriff of the

1 county in which the secondary metals recycler purchasing the
2 nonferrous metals is located. The sheriff shall issue the
3 permit to the person if both of the following are satisfied:

4 a. The person resides or the entity is located in
5 the sheriff's county, or, if the person is not a resident of
6 or the entity is not located in this state, the secondary
7 metals recycler purchasing the nonferrous metals is located in
8 the sheriff's county.

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

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

16 a. Date of issuance.

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

18 c. A photocopy of the permit holder's
19 identification.

20 d. The license plate number of the permit holder's
21 motor vehicle.

22 e. The permit holder's photograph.

23 (3) The permit is valid for 12 months. If a person
24 only sells or transports nonferrous metals a maximum of two
25 times in a 12-month period, the person can obtain a 48-hour
26 permit from the sheriff's office pursuant to this subsection,
27 except that the person shall only be required to call the

1 sheriff's office, provide the required information, and obtain
2 a permit number. A person may only request such a permit two
3 times in a 12-month period.

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

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

18 Section 2. Sections 13A-8-31 and 13A-8-37, Code of
19 Alabama 1975, are amended to read as follows:

20 "§13A-8-31.

21 "(a) A secondary metals recycler shall maintain a
22 legible record of all purchase transactions of ferrous or
23 nonferrous metals that have served their original economic
24 purpose to which the secondary metals recycler is a party. The
25 record shall include all of the following information:

26 "(1) The name and address of the secondary metals
27 recycler.

1 "(2) The date of the transaction.

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

7 "(4) The amount of consideration given in a purchase
8 transaction for the metal property, including a photocopy of
9 the check written for the purchase transaction.

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

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

16 "(7) ~~The distinctive number from, and type of, A~~
17 photocopy of the personal identification card of the person
18 delivering the metal property to the secondary metals
19 recycler.

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

25 "(9) A photograph of the metal property purchased.

26 "(b) The secondary metals recycler shall not enter
27 into any cash transactions in excess of one hundred dollars

1 (\$100) for copper or in excess of one thousand dollars
2 (\$1,000) for all other metals in payment for the purchase of
3 the metal property. Payment shall be made by check issued to
4 the seller of the metal. The check shall be payable to the
5 name and address of the seller of the metal and mailed to the
6 recorded address of the seller or picked up in person by the
7 seller. The secondary metals recycler, at his or her
8 discretion, may make payment by either cash or check for
9 transactions of one hundred dollars (\$100) or less for copper
10 or one thousand dollars (\$1,000) or less for all other metals.
11 Cash payments for nonferrous metals may be made no earlier
12 than 24 hours after the property is provided to the secondary
13 metals recycler.

14 "(c) A secondary metals recycler shall maintain or
15 cause to be maintained the information required by subsection
16 (a) for not less than two years from the date of the purchase
17 transaction.

18 "§13A-8-37.

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

22 "(1) A Class A misdemeanor if the value of the
23 transaction or transactions in an aggregate amount is less
24 than five hundred dollars (\$500).

25 "(2) A Class C felony if the value of the
26 transaction or transactions in an aggregate amount exceeds

1 five hundred dollars (\$500), but does not exceed two thousand
2 five hundred dollars (\$2,500) in value.

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

6 "(b) At the time of sentencing of any person
7 convicted under this article, the court may order restitution.

8 "(c) Any secondary metals recycler who knowingly and
9 intentionally engages in any practice which constitutes a
10 violation of this article shall be guilty of a misdemeanor,
11 provided that if a secondary metals recycler knowingly and
12 intentionally engages in a pattern of practices which
13 constitutes a violation of this article and the transactions
14 included in this pattern are in an aggregate amount which
15 exceeds five hundred dollars (\$500), the secondary metals
16 recycler shall be guilty of a Class C felony.

17 "(d) Any person that purchases nonferrous metals in
18 any amount from a seller that does not have the required
19 permit pursuant to Section 13A-8-30.1, with the intent to
20 resell the nonferrous metals in any amount to a secondary
21 metals recycler, shall be guilty of a Class C felony.

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

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

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

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

4 "(2) Subdivision (1) does not apply to the following
5 persons:

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

9 "b. A person that presents a valid permit to
10 transport and sell nonferrous metals issued pursuant to
11 Section 13A-8-30.1.

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

14 "(f) Any person that transports nonferrous metals in
15 a vehicle that the person knows are stolen or has in his or
16 her possession in a vehicle nonferrous metals that the person
17 knows are stolen and does any of the following is guilty of a
18 Class B felony:

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

21 (2) Presents a valid or falsified permit to
22 transport and sell nonferrous metals.

23 (3) Presents a valid or falsified bill of sale for
24 nonferrous metals.

25 "(g) Any person that obtains a permit to transport
26 and sell nonferrous metals pursuant to Section 13A-8-30.1 for

1 the purpose of transporting or selling stolen nonferrous
2 metals is guilty of a Class C felony.

3 "(h) Any person that wilfully and maliciously cuts,
4 mutilates, defaces, or otherwise injures any personal or real
5 property, including any fixtures or improvements, for the
6 purpose of obtaining nonferrous metals shall be guilty of the
7 following:

8 "(1) A Class A misdemeanor if the direct injury to
9 the property, the amount of loss in value to the property, the
10 amount of repairs necessary to return the property to its
11 condition before the unlawful act, or the property loss,
12 including fixtures or improvements is five hundred dollars
13 (\$500) or less.

14 "(2) A Class C felony if the direct injury to the
15 property, the amount of loss in value to the property, the
16 amount of repairs necessary to return the property to its
17 condition before the unlawful act, or the property loss,
18 including fixtures or improvements exceeds five hundred
19 dollars (\$500), but is less than two thousand five hundred
20 dollars (\$2,500).

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

1 Section 3. 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 4. This act shall become effective on the
10 first day of the third month following its passage and
11 approval by the Governor, or its otherwise becoming law.