**South Carolina General Assembly**

119th Session, 2011-2012

**H. 4129**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. Hodges

Document Path: l:\council\bills\nbd\11503ac11.docx

Companion/Similar bill(s): 732, 3660

Introduced in the House on April 26, 2011

Currently residing in the House Committee on **Judiciary**

Summary: Secondary metal recyclers to register with LLR

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

4/26/2011 House Introduced and read first time ([House Journal‑page 75](file:///h:\hj%20archive\2011\04-26-11.docx))

4/26/2011 House Referred to Committee on **Judiciary** ([House Journal‑page 75](file:///h:\hj%20archive\2011\04-26-11.docx))

**VERSIONS OF THIS BILL**

[4/26/2011](file:///p:\pprever\2011-12\4129_20110426.docx)

**A** **BILL**

TO AMEND SECTION 16‑11‑523, AS AMENDED, RELATING TO THE CRIMINAL OFFENSE OF DAMAGING REAL OR PERSONAL PROPERTY FOR THE PURPOSE OF OBTAINING NONFERROUS METALS, SO AS TO INCLUDE FERROUS METALS IN THIS CRIMINAL OFFENSE, TO ELIMINATE A MISDEMEANOR OFFENSE WITH TWO THOUSAND DOLLARS AS THE MAXIMUM AMOUNT OF PROPERTY DAMAGE INVOLVED IN THE OFFENSE, AND TO REVISE PROPERTY DAMAGE AMOUNTS FOR THE REMAINING FELONY PENALTIES; TO AMEND SECTION 16‑17‑680, AS AMENDED, RELATING TO PURCHASING, RECORDKEEPING, AND HOLD NOTICE REQUIREMENTS FOR PURCHASERS OF NONFERROUS METALS AND CRIMINAL PENALTIES FOR VIOLATIONS, SO AS TO INCLUDE THE PURCHASE OF FERROUS METALS IN THESE REQUIREMENTS, TO REQUIRE THESE PURCHASES TO BE MADE FROM A FIXED LOCATION, TO APPLY THE CRIMINAL PENALTIES TO VIOLATIONS PERTAINING TO FERROUS METALS, TO INCREASE CRIMINAL FINES, AND TO MAKE TECHNICAL CORRECTIONS; AND BY ADDING CHAPTER 40, TITLE 40 SO AS TO REQUIRE SECONDARY METALS RECYCLERS TO REGISTER WITH THE DEPARTMENT OF LABOR, LICENSING AND REGULATION, TO ESTABLISH REGISTRATION AND ELIGIBILITY REQUIREMENTS, TO PROVIDE CRIMINAL PENALTIES FOR FAILING TO REGISTER, AND TO AUTHORIZE SANCTIONS AND ADMINISTRATIVE PENALTIES FOR VIOLATIONS OF THE CHAPTER OR ORDERS OF THE DEPARTMENT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 16‑11‑523 of the 1976 Code, as last amended by Act 273 of 2010, is further amended to read:

“Section 16‑11‑523. (A) For purposes of this section~~,~~:

(1) ‘Ferrous metals’ means metals containing significant quantities of iron or steel including, but not limited to, stainless steel beer kegs and containers.

(2) ‘Nonferrous metals’ means metals not containing significant quantities of iron or steel, including copper wire, copper clad steel wire, copper pipe, copper bars, copper sheeting, aluminum, a product that is a mixture of aluminum and copper, and catalytic converters~~, 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 ferrous metals or nonferrous metals, or a combination of both, in any amount.

(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 than two thousand dollars but~~ less than ~~ten~~ five 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.

(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~~ that creates a substantial risk of death or ~~which~~ that 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)(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 ferrous metals or nonferrous metals, or both, or an item containing both, 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 ferrous metals or nonferrous metals, or both, or an item containing both, in any amount, of the owner when the owner of the 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, as last amended by Act 26 of 2009, is further amended to read:

“Section 16‑17‑680. (A)~~(1)~~ It is unlawful to purchase ferrous metals or nonferrous metals, or both, or an item containing both, 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 of the seller~~ registered pursuant to Chapter 40, Title 40. 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 ferrous metals or nonferrous metals, or both, or an item containing both, purchased, amount paid for ~~it~~ each, and a signed statement from the seller stating that he is the rightful owner or is entitled to sell the ferrous metals or nonferrous metals, or both, or an item containing both, being sold. All ferrous metals and all nonferrous metals, and all items containing both, 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~~ These records must be maintained for two years from the date of purchase.

(B)(1) A secondary metals recycler ~~may only~~ must purchase ferrous metals and nonferrous metals, and items containing both, ~~for cash consideration~~ from a fixed location, and the secondary metals recycler must not have more than one fixed location from which he purchases these metals.

(2) A secondary metals recycler may purchase ferrous metals and nonferrous metals, and items containing both, excluding copper, for cash consideration and only may purchase copper by check or other similar written instrument.

(C)(1) ~~Whenever~~ If a law enforcement officer has reasonable cause to believe that any item of ferrous metal or nonferrous metal, or both, or an item containing both, 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 ferrous metal or nonferrous metal, or both, or an item containing both, 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 ferrous metal or nonferrous metal, or both, or an item containing both, identified in the notice, or any portion ~~thereof~~ of these items, from the secondary ~~metal~~ metals 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~~ is an extended hold notice. The extended hold notice must be in writing, be delivered to the secondary metals recycler, specifically identify those items of ferrous metal or nonferrous metal, or both, or an item containing both, 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 ferrous metal or nonferrous metal, or both, or an item containing both, identified in the notice, or any portion ~~thereof~~ of these items, 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 items of ferrous metal or nonferrous ~~metals~~ metal, or both, or any item containing both, 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 or more than three hundred dollars or imprisoned not more than thirty days ~~for a first offense. This offense is triable in magistrates court~~;

(2) ~~misdemeanor and, upon conviction,~~ for a second or subsequent offense must be fined not less than four hundred dollars or 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) ‘Ferrous metals’ means metals containing significant quantities of iron or steel including, but not limited to, stainless steel beer kegs or containers.

(2) ‘Fixed location’ means 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.

(3) ‘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, and catalytic converters~~, and stainless steel beer kegs or containers~~.

~~(2)~~(4) ‘Secondary metals recycler’ means ~~any~~ a person who is engaged in the business of paying compensation for ferrous metals and nonferrous metals, and items containing both, that have served their original economic purpose, whether or not the person is engaged in the business of performing the manufacturing process by which ferrous metals and 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 ferrous metals and nonferrous metals in any amount, except to the extent that ~~such~~ the ordinances pertain to zoning or business license fees. This section ~~shall~~ does 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. 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) ‘Ferrous metals’ means metals containing significant quantities of iron or steel including, but not limited to, stainless steel beer kegs or containers.

(3) ‘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, and catalytic converters.

(4) ‘Secondary metals recycler’ means a person who is engaged in the business of paying compensation for ferrous metals and nonferrous metals, and items containing both, that have served their original economic purpose, whether or not the person is engaged in the business of performing the manufacturing process by which ferrous metals and 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 regulation and shall renew the registration every two years. The department shall promulgate regulations establishing registration and renewal fees and such other fees as may be necessary and as are adequate to cover the administrative costs associated with the registration program.

(B) To be eligible to register and renew registration under this section, a secondary metals recycler:

(1) must have an address of a fixed location 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;

(2) shall declare, on a form provided by the department, that:

(a) 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;

(b) as a registrant renewing, he is in compliance with the purchase, recordkeeping, and hold notice requirements of Section 16‑17‑680;

(3) must not have been convicted of, or pled guilty or nolo contendere to, a violation of Section 16‑17‑680 or Section 16‑17‑685 or the criminal offense of larceny, burglary, or vandalism, if the offense involved ferrous metals or nonferrous metals, or both, or an item containing both, for five years prior to the date of registration;

(4) shall declare on a form provided by the department, under penalty of perjury, as to whether the person has ever been convicted of, or pled guilty or nolo contendere to, any of the offenses provided for in item (3).

(C) The department may conduct criminal records checks of an applicant for registration or a registrant renewing to verify information provided in the application or renewal process. If a criminal records check is to be conducted, the department may charge the applicant or registrant a fee, not to exceed the amount charged by the State Law Enforcement Division or the Federal Bureau of Investigation for performing these records checks.

(D) If a person submits a false statement to the department for the purpose of unlawfully registering under this section, the person is disqualified for life from registering as a secondary metals recycler under this section.

Section 40‑40‑40. (A) The department may deny, suspend, revoke, or refuse to renew a registration if a person is found to have:

(1) failed to comply with the purchase, recordkeeping, or hold notice requirements of Section 16‑17‑680, whether or not the person was prosecuted for the violation;

(2) failed to comply with the provisions of this chapter or an order or regulations promulgated pursuant to this chapter.

(B) A person aggrieved by an action of the department pursuant to subsection (A) may appeal the action to an administrative law judge in accordance with the Administrative Procedures Act.

Section 40‑40‑50. A person who fails to register as required by this chapter is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars and not more than one thousand dollars for the first offense. For each subsequent offense, the person is guilty of a felony and, upon conviction, must be imprisoned for not more than three years, and fined not more than five thousand dollars, or both.

Section 40‑40‑60. If the department finds a person to be in violation of this chapter or regulations promulgated pursuant to this chapter, the department may:

(1) issue a cease and desist order against the secondary metals recycler or other purchaser alleged to be in violation of this chapter, directing the person or persons to cease and desist from further illegal activity;

(2)(a) issue an order against any secondary metals recycler or other purchaser for a violation of this chapter, imposing an administrative fine up to a maximum of one thousand dollars for each offense. Each violation is considered a separate offense in a single proceeding or a series of related proceedings. An administrative fine, plus reimbursement for all costs and expenses incurred in the investigation of the violation and any administrative proceedings, must be paid to the department;

(b) for the purpose of determining the amount or extent of an administrative fine, if any, to be imposed pursuant to item (2)(a), the department shall consider, among other factors, the frequency, persistence, and wilfulness of the conduct constituting the violation, the number of persons adversely affected by the conduct; and the resources of the person committing the violation;

(3) bring an action to enjoin the acts or practices complained of to enforce compliance with this chapter or a regulation promulgated or an order issued pursuant to this chapter. Upon a proper showing, a permanent or temporary injunction or restraining order must be granted and a receiver or conservator may be appointed for the defendant or the defendant’s assets. In addition, upon a proper showing by the department, the court may enter an order requiring restitution by a person who has engaged in any act constituting a violation of any provision of this chapter or a regulation promulgated or an order issued pursuant to this chapter, or the court may impose a civil penalty up to a maximum of one thousand dollars for each offense, and each violation is considered a separate offense in a single proceeding or a series of related proceedings. The court may not require the department to post a bond.

Section 40‑40‑70. The department immediately shall report any suspected criminal violation accompanied by all pertinent records to the appropriate law enforcement agency.

Section 40‑40‑80. The department shall promulgate regulations as are necessary to carry out its responsibilities under this chapter.”

SECTION 4. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑