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Indicates New Matter

AMENDED

March 10, 2022

**H. 4534**

Introduced by Rep. Rutherford

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Read the first time January 11, 2022.

**A** **BILL**

TO AMEND SECTION 16‑17‑680, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PERMITS TO PURCHASE NONFERROUS METALS, TRANSPORTATION AND SALE OF NONFERROUS METALS, AND VARIOUS OFFENSES ASSOCIATED WITH NONFERROUS METALS, SO AS TO RESTRUCTURE THE VARIOUS OFFENSES TO INCLUDE INTENT AND CLARIFY CERTAIN ASPECTS OF THE VIOLATIONS.

Amend Title To Conform

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

SECTION 1. Section 16‑17‑680 of the 1976 Code, as last amended by Act 80 of 2021, is further amended to read:

“Section 16‑17‑680. (A) For purposes of this section:

(1) ‘Coil’ means a copper, aluminum, or aluminum‑copper condensing coil or evaporation coil. The term includes, but is not limited to, coil from a commercial or residential heating or air‑conditioning system. The term does not include coil from a window air‑conditioning system, if the coil is contained within the system, or coil from an automobile condenser.

(2) ‘Fixed site’ 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 sixty‑four days.

(3) ‘Nonferrous metals’ means metals not containing significant quantities of iron or steel~~,~~ including, but not limited to, copper wire, cooper clad steel wire, copper pipe, copper bars, copper sheeting, aluminum other than aluminum cans, a product that is a mixture of aluminum and copper, catalytic converters, lead‑acid batteries, steel propane gas tanks, and stainless steel beer kegs or containers.

(4) ‘Secondary metals recycler’ means a person or entity who is engaged, from a fixed site or otherwise, in the business of paying compensation for nonferrous metals that have served their original economic purpose, whether or not the person is engaged in the business of performing the manufacturing process by which nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value.

(B)(1) A secondary metals recycler shall obtain a permit to purchase nonferrous metals. A secondary metals recycler’s employee is not required to obtain a separate permit to purchase nonferrous metals provided that the employee is acting within the scope and duties of their employment with the secondary metals recycler. A secondary metals recycler’s employee who intends to purchase nonferrous metals on behalf of the secondary metals recycler at a location other than a fixed site shall have a copy of the secondary metals recycler’s permit readily available for inspection. There is a presumption that an employee or agent of a secondary metals recycler who violates the provisions of this section is engaging in activity outside the normal course and scope of his employment. A secondary metals recycler employer or owner may not be criminally charged under this subsection for illegal activities of an employee or agent absent evidence the secondary metals recycler employer or owner knew or should have known the employee or agent was conducting illegal activity to benefit the secondary metals recycler employer or owner.

(2) If a secondary metals recycler intends to purchase nonferrous metals at a fixed site or fixed sites, the secondary metals recycler shall obtain a permit from the sheriff of the county in which each of the secondary metals recycler’s fixed sites are located. The sheriff ~~may~~ must issue the permit to the secondary metals recycler, if the secondary metals recycler:

(a) has a fixed site or fixed sites located in the sheriff’s county;

(b) has not been convicted of a violation of Section 16‑11‑523 or this section; and

(c) declares on an application provided by the sheriff that the secondary metals recycler is informed of and will comply with the provisions of this section.

(3) If a secondary metals recycler intends to purchase nonferrous metals at a location other than a fixed site, the secondary metals recycler shall obtain a permit from the sheriff of each county in which the secondary metals recycler intends to purchase nonferrous metals. The sheriff ~~may~~ must issue the permit to the secondary metals recycler if the secondary metals recycler:

(a) ~~can sufficiently demonstrate to the sheriff the secondary metals recycler’s ability to comply with the provisions of this section;~~

~~(b)~~ has not been convicted of a violation of Section 16‑11‑523 or this section; and

~~(c)~~(b) declares on an application provided by the sheriff that the secondary metals recycler is informed of and will comply with the provisions of this section.

(4) The South Carolina Law Enforcement Division shall develop the application and permit in consultation with the state’s sheriffs and representatives from the secondary metals recyclers’ industry.

(5) A sheriff may investigate a secondary metals recycler’s background prior to issuing a permit for purposes of determining if the secondary metals recycler qualifies to be issued a permit.

(6) A sheriff may charge and retain a two hundred dollar fee for each permit.

(7) A sheriff shall keep a record of all permits issued containing, at a minimum, the date of issuance, and the name and address of the secondary metals recycler.

(8) A permit is valid for twenty‑four months.

(9) A permit may be denied, suspended, or revoked at any time if a sheriff discovers that the information on an application is intentionally inaccurate, a secondary metals recycler does not comply with the requirements of this section, or a secondary metals recycler is convicted of a violation of Section 16‑11‑523 or this section.

(10) A sheriff shall issue permits during regular business hours.

(C)(1) A person or entity who wants to transport or sell nonferrous metals to a secondary metals recycler shall obtain a permit to transport and sell the nonferrous metals. An entity’s employee is not required to obtain a separate permit to transport or sell nonferrous metals provided that the employee is acting within the scope and duties of their employment with the entity. An entity’s employee who intends to transport and sell nonferrous metals on behalf of an entity shall have a copy of the entity’s permit readily available for inspection. There is a presumption that an employee or agent of a secondary metals recycler who violates the provisions of this section is engaging in activity outside the normal course and scope of his employment. A secondary metals recycler employer or owner may not be criminally charged under this subsection for illegal activities of an employee or agent absent evidence the secondary metals recycler employer or owner knew or should have known the employee or agent was conducting illegal activity to benefit the secondary metals recycler employer or owner.

(2) If a person is a resident of South Carolina or an entity is located in South Carolina, the person or entity shall obtain a permit from the sheriff of the county in which the person resides or has a secondary residence or in which the entity is located or has a secondary business. The sheriff ~~may~~ must issue the permit to the person or entity if the:

(a) person resides or has a secondary residence or the entity is located or has a secondary business in the sheriff’s county;

(b) person or entity has not been convicted of a violation of Section 16‑11‑523 or this section; and

(c) person or entity declares on an application provided by the sheriff that the person or entity is informed of and will comply with the provisions of this section.

(3) If a person is not a resident of South Carolina or an entity is not located in South Carolina, the person or entity shall obtain a permit from any sheriff of any county. The sheriff ~~may~~ must issue the permit to the person or entity if the:

(a) person is not a resident of South Carolina or the entity is not located in South Carolina;

(b) person or entity has not been convicted of a violation of Section 16‑11‑523 or this section; and

(c) person or entity declares on an application provided by the sheriff that the person or entity is informed of and will comply with the provisions of this section.

(4) The South Carolina Law Enforcement Division shall develop the application and permit in consultation with the state’s sheriffs and representatives of the secondary metals recyclers’ industry.

(5) A sheriff may investigate a person or entity’s background prior to issuing a permit for purposes of determining if the person or entity qualifies to be issued a permit.

(6) A sheriff may not charge a fee for a permit. A sheriff may charge a ten dollar fee to replace a permit that has been lost or destroyed. If the original permit is later found by the person or entity, the person or entity must turn the original permit into the sheriff or destroy the original permit.

(7) A sheriff shall keep a record of all permits issued containing, at a minimum, the date of issuance, the name and address of the person or entity, a photocopy of the person’s identification or of the employee’s identification, and the person’s photograph or the entity’s employee’s photograph.

(8) A permit is valid statewide and expires on the person’s birth date on the second calendar year after the calendar year in which the permit is issued, or, if the permittee is an entity, the permit expires on the date of issuance on the second calendar year after the calendar year in which the permit is issued.

(9) A permit may be denied, suspended, or revoked at any time if a sheriff discovers that the information on an application is intentionally inaccurate, a person or entity does not comply with the requirements of this section, or a person or entity is convicted of a violation of Section 16‑11‑523 or this section.

(10)(a) It is unlawful for a person or entity to obtain a permit to transport and sell nonferrous metals for the purpose of transporting or selling stolen nonferrous metals.

(b) A person who violates a provision of this subitem is guilty of a felony~~,~~ and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both. The person or entity’s permit must be revoked.

(11) A sheriff shall issue permits during regular business hours.

(D)(1) It is unlawful to purchase nonferrous metals in any amount for the purpose of recycling the nonferrous metals from a seller unless the purchaser is a secondary metals recycler who has a valid permit to purchase nonferrous metals issued pursuant to subsection (B) and the seller has a valid permit to transport and sell nonferrous metals issued pursuant to subsection (C). A secondary metals recycler may hold a seller’s nonferrous metals while the seller obtains a permit to transport and sell nonferrous metals pursuant to subsection (C).

(2) A secondary metals recycler shall maintain a record containing, at a minimum, the date of purchase, the name and address of the seller, a photocopy of the seller’s identification, a photocopy of the seller’s permit to transport and sell nonferrous metals, if applicable, the license plate number of the seller’s motor vehicle, if available, the seller’s photograph, the weight and size or other description of the nonferrous metals purchased, the amount paid for the nonferrous metals, and a signed statement from the seller stating that the seller is the rightful owner or is entitled to sell the nonferrous metals being sold. If the secondary metals recycler has the seller’s photograph on file, the secondary metals recycler may reference the photograph on file without making a photograph for each transaction; however, the secondary metals recycler shall update the seller’s photograph on an annual basis. A secondary metals recycler may use a video of the seller in lieu of a photograph provided the secondary metals recycler maintains the video for at least one hundred twenty days. A secondary metals recycler may maintain a record in an electronic database provided that the information is legible and can be accessed by law enforcement upon request.

(3) All nonferrous metals 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 upon twenty‑four hours notice to the secondary metals recycler and during regular business hours. The records must be maintained for one year from the date of purchase. Failure to maintain documentation required by this section may result in suspension of the licensed metal recycler’s permit for up to ten days for a first offense and up to thirty days for a second or subsequent offense. Failure to maintain documentation must not result in a criminal charge absent corroborating evidence that the secondary metals recycler is in possession of a used, detached catalytic converter or any nonferrous part of a used, detached catalytic converter in violation of applicable law.

(4) A secondary metals recycler shall not enter into a cash transaction in payment for the purchase of copper, catalytic converters, or beer kegs, which totals twenty‑five dollars or more. Payment for the purchase of copper, catalytic converters, or beer kegs, which totals twenty‑five dollars or more must be made by check alone issued and made payable to the seller. A secondary metals recycler shall neither cash a check issued pursuant to this item nor use an automated teller machine (ATM) or other cash card system in lieu of a check. A secondary metals recycler shall not enter into more than one cash transaction per day per seller in payment for the purchase of copper, catalytic converters, or beer kegs.

(5) A secondary metals recycler shall prominently display a twenty‑inch by thirty‑inch sign in the secondary metals recycler’s fixed site that states: ‘NO NONFERROUS METALS, INCLUDING COPPER, MAY BE PURCHASED BY A SECONDARY METALS RECYCLER FROM A SELLER UNLESS THE SELLER IS A HOLDER OF A RETAIL LICENSE, AN AUTHORIZED WHOLESALER, A CONTRACTOR LICENSED PURSUANT TO ARTICLE 1, CHAPTER 11, TITLE 40, CODE OF LAWS OF SOUTH CAROLINA, 1976, A GAS, ELECTRIC, COMMUNICATIONS, WATER, PLUMBING, ELECTRICAL, OR CLIMATE CONDITIONING SERVICE PROVIDER, OR THE SELLER PRESENTS THE SELLER’S VALID PERMIT TO TRANSPORT AND SELL NONFERROUS METALS ISSUED PURSUANT TO SECTION 16‑17‑680, CODE OF LAWS OF SOUTH CAROLINA, 1976.’

(6) A purchaser who violates a provision of this subsection:

(a) for a first offense, is guilty of a misdemeanor~~,~~ and, upon conviction, must be fined not less than two hundred dollars nor more than three hundred dollars or imprisoned not more than thirty days;

(b) for a second offense, is guilty of a misdemeanor~~,~~ and, upon conviction, must be fined not less than four hundred dollars nor more than five hundred dollars or imprisoned not more than one year, or both; and

(c) for a third offense or subsequent offense, is guilty of a misdemeanor~~,~~ and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than three years, or both. For an offense to be considered a third or subsequent offense, only those offenses that 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 subsection.

If the purchaser obtained a permit to purchase nonferrous metals pursuant to subsection (B), the permit must be revoked.

(E)(1)(a) It is unlawful to sell nonferrous metals in any amount to a secondary metals recycler unless the secondary metals recycler has a valid permit to purchase nonferrous metals issued pursuant to subsection (B) and the seller has a valid permit to transport and sell nonferrous metals issued pursuant to subsection (C).

(b) A seller who violates a provision of this subitem:

(i) for a first offense, is guilty of a misdemeanor~~,~~ and, upon conviction, must be fined in the discretion of the court or imprisoned not more than one year, or both;

(ii) for a second offense, is guilty of a misdemeanor~~,~~ and, upon conviction, must be fined not less than five hundred dollars or imprisoned not more than three years, or both; and

(iii) for a third or subsequent offense, is guilty of a felony~~,~~ and, upon conviction, must be fined not less than one thousand dollars or imprisoned not more than five years, or both.

If the seller obtained a permit to transport and sell nonferrous metals pursuant to subsection (C), the permit must be revoked.

(2)(a) It is unlawful to purchase or otherwise acquire nonferrous metals in any amount from a seller who does not have a valid permit to transport and sell nonferrous metals issued pursuant to subsection (C) with the intent to resell the nonferrous metals in any amount to a secondary metals recycler using the purchaser’s valid permit to transport and sell nonferrous metals issued pursuant to subsection (C).

(b) A purchaser who violates a provision of this subitem is guilty of a felony~~,~~ and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both. The purchaser’s permit must be revoked.

(F)(1) When a law enforcement officer has reasonable cause to believe that any item of nonferrous metal 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 nonferrous metal 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 nonferrous metal identified in the notice, or any portion thereof, from the secondary metal recycler’s fixed site 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 an extended hold notice. The extended hold notice must be in writing, be delivered to the secondary metals recycler, specifically identify those items of nonferrous metal 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 nonferrous metal identified in the notice, or any portion thereof, from the secondary metals recycler’s fixed site 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 nonferrous metals unless other disposition has been ordered by a court of competent jurisdiction.

(4) A secondary metals recycler who intentionally violates a provision of this subsection:

(a) for a first offense, is guilty of a misdemeanor~~,~~ and, upon conviction, must be fined not less than two hundred dollars nor more than three hundred dollars or imprisoned not more than thirty days;

(b) for a second offense, is guilty of a misdemeanor~~,~~ and, upon conviction, must be fined not less than four hundred dollars nor more than five hundred dollars or imprisoned not more than one year, or both; and

(c) for a third or subsequent offense, is guilty of a misdemeanor~~,~~ and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than three years, or both. For an offense to be considered a third or subsequent offense, only those offenses that 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 subsection.

The secondary metals recycler’s permit to purchase nonferrous metals issued pursuant to subsection (B) must be revoked.

(G)(1) It is unlawful to transport nonferrous metals in a vehicle or have nonferrous metals in a person’s possession.

(2) Subsection (G)(1) does not apply if:

(a) the person can present a valid permit to transport and sell nonferrous metals issued pursuant to subsection (C); or

(b) the person can present a valid bill of sale for the nonferrous metals.

(3) If a law enforcement officer determines that one or more of the exceptions listed in subsection (G)(2) applies, or the law enforcement officer determines that the nonferrous metals are not stolen goods and are in the rightful possession of the person, the law enforcement officer shall not issue a citation for a violation of this subsection.

(4) A person who violates a provision of subsection (G)(1):

(a) for a first offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days;

(b) for a second offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than one year, or both; and

(c) for a third or subsequent offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than three years, or both. For an offense to be considered a third or subsequent offense, only those offenses that 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 subsection.

(5) If a person transports nonferrous metals that the person knows are stolen in a vehicle or has in the person’s possession nonferrous metals that the person knows are stolen, is operating a vehicle used in the ordinary course of business to transport nonferrous metals that the person knows are stolen, presents a valid or falsified permit to transport and sell nonferrous metals that the person knows are stolen, or presents a valid or falsified bill of sale for nonferrous metals that the person knows to be stolen, the person is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both. If the person obtained a permit to transport and sell nonferrous metals pursuant to subsection (C), the permit must be revoked.

(H) For purposes of this section, the only acceptable identification is a valid:

(1) South Carolina driver’s license issued by the Department of Motor Vehicles;

(2) South Carolina identification card issued by the Department of Motor Vehicles;

(3) driver’s license from another state that contains the licensee’s picture on the face of the license; or

(4) military identification card.

(I)(1) A secondary metals recycler shall not purchase or otherwise acquire:

(a) an iron or steel manhole cover;

(b) an iron or steel drainage grate; or

(c) a coil, unless the seller is an exempted entity pursuant to subsection (J)(1)(e) or the seller presents a bill of sale from a company licensed pursuant to Chapter 11, Title 40 indicating that the seller acquired the coil as the result of a unit replacement or repair. The bill of sale is sufficient proof of ownership and serves the same purpose as a permit to transport and sell nonferrous metals. A person who presents a falsified bill of sale is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more three years, or both.

(2)(a) It is unlawful for any individual or entity other than a permitted secondary metals recycler to purchase, or to attempt to purchase, a used, detached catalytic converter or any nonferrous part of a catalytic converter.

(b) ~~Except as otherwise provided in item (3)(a)(iii)(aa), (bb), and (cc) for those businesses delineated in item (3)(a)(ii),~~ It is unlawful for any individual or entity to possess, obtain or otherwise acquire, transport, or sell a used, detached catalytic converter or any nonferrous part of a catalytic converter without a permit and without providing the following documentation to law enforcement and/or a permitted secondary metals recycler:

(i) the name of the person or company that removed the catalytic converter;

(ii) the name of the person for whom the work was completed;

(iii) the make and model of the vehicle from which the catalytic converter was removed;

(iv) the vehicle identification number of the vehicle from which the catalytic converter was removed;

(v) the part number or other identifying number of the catalytic converter that was removed; and

(vi) the certificate of title or certificate of registration showing the seller’s ownership interest in the vehicle.

(c) It is unlawful for a seller of a used, detached catalytic converter or any nonferrous part of a catalytic converter to intentionally provide ~~any~~ false, fraudulent, altered or counterfeit information or documentation as required by this subsection.

(d) An individual or entity who violates any provision of subsection (I)(2)~~, for a first offense, is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both; or for a second offense, is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both~~ is guilty of a:

(i) misdemeanor triable in 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, when the value of the prohibited items is less than two thousand dollars;

(ii) felony and, upon conviction, must be fined in the discretion of the court and imprisoned not more than five years if the value of the prohibited items is at least two thousand dollars but not more than ten thousand dollars;

(iii) felony and, upon conviction, must be fined in the discretion of the court and imprisoned not more than ten years if the value of the prohibited items is more than ten thousand dollars.

(e) ~~Each unlawfully obtained, possessed, or transported used, detached catalytic converter is a separate violation that subjects the individual or entity to a separate charge. Upon conviction, the court may order the individual or entity to pay restitution for the value of the repair and replacement of the catalytic converter or the individual or entity may be held liable as otherwise provided by law. A person in possession of a used, detached catalytic converter without identifying documentation is presumed to be in possession of contraband subject to forfeiture as otherwise provided by law.~~

~~(f)~~ For purposes of this section, a used, detached catalytic converter does not include a catalytic converter that has been tested, certified, and labeled for reuse in accordance with applicable U.S. Environmental Protection Agency Clean Air Act regulations, as may from time to time be amended.

(f) If a law enforcement officer determines that the used, detached catalytic converter or any nonferrous part of a used, detached catalytic converter are not stolen goods and are in the rightful possession of the person, the law enforcement officer shall not issue a citation for a violation of this subsection. Failure to maintain documentation required by this section must not result in a criminal charge absent corroborating evidence that the secondary metals recycler is in possession of a used, detached catalytic converter or any nonferrous part of a used, detached catalytic converter in violation of applicable law.

(g) There is a presumption that an employee or agent of a secondary metals recycler who violates the provisions of this section is engaging in activity outside the normal course and scope of his employment. A secondary metals recycler employer or owner may not be criminally charged under this subsection for illegal activities of an employee or agent absent evidence the secondary metals recycler employer or owner knew or should have known the employee or agent was conducting illegal activity to benefit the secondary metals recycler employer or owner.

(3)(a) It is unlawful for a secondary metals recycler to purchase a used, detached catalytic converter or any nonferrous part of a used catalytic converter unless the secondary metals recycler has a permit from the local sheriff’s office, the sale occurs at the secondary metals recycler’s fixed site or the sale occurs at the seller’s fixed site but only if the seller is a licensed automotive repair service, a licensed demolisher, as defined in Section 56‑5‑5810, a licensed secondary metals recycler, or a licensed motor vehicle dealer and the purchase is made by a permitted secondary metals recycler who maintains a fixed site within the State, and the following requirements are followed:

(i) the catalytic converter or nonferrous part was purchased as part of a vehicle; or

(ii) the catalytic converter or nonferrous part was purchased from a secondary metals recycler, new or used motor vehicle dealer, automotive repair service, motor vehicle manufacturer, vehicle demolisher, or distributor of catalytic converters and a copy of the seller’s valid business license is received and maintained by the purchaser at the time of the transaction; or

(iii) the business selling the catalytic converter or nonferrous part provides a record or receipt showing:

(aa) the repair order number, when applicable;

(bb) the date of repair or the date on which the catalytic converter was removed from a vehicle, including the identity of the individual or entity that removed the catalytic converter, when applicable; and

(cc) the vehicle identification number of the vehicle from which the catalytic converter was removed; or

(iv) the individual selling the catalytic converter or nonferrous part provides the secondary metals recycler with the following information for the motor vehicle that the catalytic converter was taken from to include all of the following:

(aa) the name of the person or company that removed the catalytic converter;

(bb) the name of the person for whom the work was completed;

(cc) the make and model of the vehicle from which the catalytic converter was removed;

(dd) the vehicle identification number of the vehicle from which the catalytic converter was removed;

(ee) the part number or other identifying number of the catalytic converter that was removed; and

(ff) the certificate of title or certificate of registration showing the seller’s ownership interest in the vehicle.

Nothing in this item prevents an out‑of‑state secondary metals recycler who maintains a fixed site and who complies with all other provisions of this chapter from obtaining, purchasing, or otherwise acquiring a used, detached catalytic converter or any nonferrous part of a used catalytic converter.

(b) Before each purchase or acquisition of a used, detached catalytic converter, the secondary metals recycler, including an agent, employee, or representative of the secondary metals recycler, must:

(i) verify, with the applicable documentation that the person transferring or selling the used, detached catalytic converter acquired it legally and has the right to transfer or sell it; and

(ii) retain a record of the applicable verification and other information required pursuant to subsection (D)(2) and note in their records any obvious marking on the used, detached catalytic converter such as paint, labels, or engravings that would aid in the identification of the catalytic converter.

(c) A seller of used, detached catalytic converters or any nonferrous metal part of such is subject to the provisions of subsection (C) regarding the permitting of a person or entity to transport and sell nonferrous metals except for an automotive repair service who, in lieu of a permit, may produce a record or receipt showing:

(i) the repair order number, when applicable;

(ii) the date of repair or the date on which the catalytic converter was removed from a vehicle, including the identity of the individual or entity that removed the catalytic converter, when applicable; and

(iii) the vehicle identification number of the vehicle from which the catalytic converter was removed.

(d) It is unlawful for a secondary metals recycler to fail to collect ~~or retain~~ all required documentation from a seller of a used, detached catalytic converter or any nonferrous part of a catalytic converter as required by this subsection. A secondary metals recycler who obtains all documentation as required by this subsection is exempt from prosecution under this subsection unless they knew or had reason to believe that the documentation provided was false, fraudulent, altered or counterfeit, or knew or had reason to believe that the used, detached catalytic converter or any nonferrous part of a catalytic converter was stolen.

(e) A licensed secondary metals recycler, who is exempt from the provisions of subsection (I)(2), but who violates a provision of subsection (I)(3) is guilty of a:

(i) ~~for a first offense, is guilty of a~~ misdemeanor triable in 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 ~~two hundred~~ one thousand dollars or imprisoned not more than thirty days, or both, when the value of the prohibited items is less than two thousand dollars;

(ii) ~~for a second offense, is guilty of a misdemeanor~~ felony and, upon conviction, must be fined ~~not more than five hundred dollars or~~ in the discretion of the court and imprisoned not more than ~~one year, or both~~ five years if the value of the prohibited items is at least two thousand dollars but not more than ten thousand dollars; and

(iii) ~~for a third or subsequent offense, is guilty of a misdemeanor~~ felony and, upon conviction, must be fined ~~not more than one thousand dollars or~~ in the discretion of the court and imprisoned not more than ~~three~~ ten years~~, or both~~ if the value of the prohibited items is more than ten thousand dollars.

~~(iv)~~ ~~Each unlawfully obtained or possessed used, detached catalytic converter or part of a used catalytic converter is a separate violation and subjects the secondary metals recycler to a separate charge for each. Any unlawfully possessed used, detached catalytic converter is subject to forfeiture as otherwise provided for by law. Upon conviction, the court may order the secondary metals recycler to pay restitution for the value of the repair and replacement of the catalytic converter or the secondary metals recycler may be held liable as otherwise provided for by law.~~

(f) If a law enforcement officer determines that the used, detached catalytic converter or any nonferrous part of a used, detached catalytic converter are not stolen goods and are in the rightful possession of the licensed metal recycler, the law enforcement officer shall not issue a citation for a violation of this subsection.

(g) There is a presumption that an employee or agent of a secondary metals recycler who violates the provisions of this section is engaging in activity outside the normal course and scope of his employment. A secondary metals recycler employer or owner may not be criminally charged under this subsection for illegal activities of an employee or agent absent evidence the secondary metals recycler employer or owner knew or should have known the employee or agent was conducting illegal activity to benefit the secondary metals recycler employer or owner.

(h) Failure to maintain documentation required by this section may result in suspension of the licensed metal recycler’s permit for up to thirty days for a first offense and up to six months for a second offense. Failure to maintain documentation must not result in a criminal charge absent corroborating evidence that the secondary metals recycler is in possession of a used, detached catalytic converter or any nonferrous part of a used, detached catalytic converter in violation of applicable law.

(i) Law enforcement may inspect a permitted licensed metal recycler’s documentation upon twenty‑four hours notice to the licensed metal recycler unless law enforcement is in possession of a valid warrant or is acting upon a valid exception to the warrant requirement.

(J)(1) Except as provided in item (2), the provisions of this section do not apply to:

(a) the purchase or sale of aluminum cans;

(b) a transaction between a secondary metals recycler and another secondary metals recycler;

(c) a governmental entity;

(d) a manufacturing or industrial vendor that generates or sells regulated metals in the ordinary course of its business;

(e) a seller who is a holder of a retail license, an authorized wholesaler, an automobile demolisher as defined in Section 56‑5‑5810(d), a contractor licensed pursuant to Chapter 11, Title 40, a real estate broker or property manager licensed pursuant to Chapter 57, Title 40, a residential home builder licensed pursuant to Chapter 59, Title 40, a demolition contractor, a provider of gas service, electric service, communications service, water service, plumbing service, electrical service, climate conditioning service, appliance repair service, automotive repair service, or electronics repair service; or

(f) a seller that is an organization, a corporation, or an association registered with the State as a charitable organization or a nonprofit corporation.

(2) An exempted entity listed in item (1) is subject to the provisions of subsection (C)(10), subsection (G)(5), and subsection (I).

A secondary metals recycler shall maintain a record of transactions involving exempted entities listed in item (1) pursuant to subsection (D) ~~and is subject to the penalty provisions of subsection (D)(6)~~. Failure to maintain documentation required by this section may result in suspension of the licensed metal recycler’s permit for up to thirty days for a first offense and up to six months for a second offense. Failure to maintain documentation must not result in a criminal charge absent corroborating evidence that the secondary metals recycler is in possession of a used, detached catalytic converter or any nonferrous part of a used, detached catalytic converter in violation of applicable law. Any item of nonferrous metals acquired from an exempted entity listed in item (1) is subject to a hold notice pursuant to subsection (F).

(K) This section preempts local ordinances and regulations governing the purchase, sale, or transportation of nonferrous metals in any amount, except to the extent that such ordinances pertain 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 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 3. This act takes effect upon approval by the Governor.

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