

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 367*
Committee Substitute Favorable 4/11/07
Senate Judiciary I (Civil) Committee Substitute Adopted 7/3/07

Short Title: Increase Criminal Penalty/Theft of Metals.

(Public)

Sponsors:

Referred to:

February 27, 2007

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LAW REGULATING THE SALE OF CERTAIN METALS BY SECONDARY METALS RECYCLERS, TO ADD WIRELESS AND CABLE TELECOMMUNICATIONS EQUIPMENT TO THE STATUTE PROVIDING PENALTIES FOR THE INJURY OR DESTRUCTION OF WIRES, PHONE, TELEGRAPH, AND ELECTRICAL FIXTURES, TO INCREASE THE CRIMINAL PENALTIES FOR VIOLATIONS OF THOSE REGULATIONS OF THE INJURY OR DESTRUCTION OF WIRES, PHONE, TELEGRAPH, AND ELECTRICAL FIXTURES, AND TO PROVIDE FOR FORFEITURE OF VEHICLES USED IN FELONIOUS THEFT OF METALS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-11 reads as rewritten:

"§ 66-11. Dealing in regulated metals property; ~~violations of section Class 1 misdemeanor penalties.~~

(a) Definitions. – As used in this section:

(1) "Law enforcement officer" means any duly constituted law enforcement officer of the State or of any municipality or county.

(2) "Regulated metals property" means all ferrous and nonferrous metals.

(3) "Secondary metals recycler" means any person, firm, or corporation in the State:

a. That, from a fixed location or otherwise, is predominately engaged in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or

- 1 b. That has facilities for performing the manufacturing process by
2 which ferrous metals or nonferrous metals are converted into
3 raw material products consisting of prepared grades and having
4 an existing or potential economic value, by methods including,
5 but not limited to, the processing, sorting, cutting, classifying,
6 cleaning, baling, wrapping, shredding, shearing, or changing the
7 physical form or chemical content of the metals, but not
8 including the exclusive use of hand tools.
- 9 (4) "Fixed location" means any site occupied by a secondary metals
10 recycler as the owner of the site or as a lessee of the site under a lease
11 or other rental agreement providing for occupation of the site by the
12 secondary metals recycler for a total duration of not less than 364 days.
- 13 (b) Records Required. –
- 14 (1) A secondary metals recycler shall maintain a record of all purchase
15 transactions in which the secondary metals recycler purchases
16 regulated metals property.
- 17 (2) The following information shall be maintained for transactions in
18 which a secondary metals recycler purchases regulated metals
19 property:
- 20 a. The name and address of the secondary metals recycler.
- 21 b. The name, initials, or other identification of the individual
22 entering the information.
- 23 c. The date of the transaction.
- 24 d. The weight of the regulated metals property purchased.
- 25 e. The description made in accordance with the custom of the
26 trade of the type of regulated metals property
27 ~~purchased~~purchased and the physical address where the
28 regulated metals were obtained by the seller, and a statement
29 signed by the seller or the seller's agent certifying that the seller
30 or the seller's agent has the lawful right to sell and dispose of
31 the property.
- 32 f. The amount of consideration given for the regulated metals
33 property.
- 34 g. The name and address of the vendor of the regulated metals
35 ~~property~~property and the license plate number of the vehicle
36 used to deliver the regulated metals.
- 37 h. ~~The~~A photocopy or electronic scan of the drivers license
38 ~~number~~or state or federally issued photo identification card
39 ~~number issued by the Division of Motor Vehicles~~of the person
40 delivering the regulated metals property to the secondary metals
41 ~~recycler, or, if recycler. If the secondary metals recycler has a~~
42 copy of the valid photo identification of the person delivering
43 the regulated metals property on file, the secondary metals
44 recycler must examine the photo identification, but may

1 reference the photo identification that is on file without making
2 a separate photocopy or electronic scan for each subsequent
3 transaction. If the person delivering the regulated metals
4 property does not have a drivers license or an a state or
5 federally issued photo identification card, eard issued by the
6 Division of Motor Vehieles, a signed written statement that the
7 delivery person does not have a drivers license or an
8 identification card issued by the Division of Motor Vehieles.
9 the secondary metals recycler shall not complete the
10 transaction.

11 (3) A secondary metals recycler shall keep and maintain the information
12 required under this subsection for not less than two years from the date
13 of the purchase of the regulated metals property.

14 (c) Inspection of Regulated Metals Property and Records. – During the usual and
15 customary business hours of a secondary metals recycler, a law enforcement officer
16 shall have the right to inspect either of the following:

- 17 (1) Any and all purchased regulated metals property in the possession of
18 the secondary metals recycler.
19 (2) Any and all records required to be maintained under subsection (b) of
20 this section.

21 A secondary metals recycler shall make receipts for the purchase of regulated metals
22 property available for pickup each regular workday if requested by the sheriff or chief
23 of police of the county or the chief of police of the municipality in which the secondary
24 metals recycler is located.

25 (d) ~~Cash Transactions.~~Purchase Limitations. – No secondary metals recycler
26 shall ~~purchase~~ do any of the following:

- 27 (1) Purchase regulated metals property for cash consideration from other
28 than a fixed location.
29 (2) Purchase or receive regulated metals property from minors from other
30 than a fixed location, provided that this provision does not apply to the
31 purchase of aluminum in the form of beverage or food cans.

32 (d1) Retain Metals for Seven Days Before Selling or Altering. – Any secondary
33 metals recycler owner convicted of a felonious violation of this Chapter,
34 G.S. 14-71, 14-71.1, or 14-72 shall hold and retain any regulated metals product, except
35 for iron and steel products, for seven days from the date of purchase before selling,
36 dismantling, defacing, or in any manner altering or disposing of the regulated metals
37 property.

38 (e) Right to Restitution. – The court may order a defendant to make restitution to
39 the secondary metals recycler for any damage or loss caused by the defendant arising
40 out of an offense committed by the defendant.

41 (f) Violations. – Unless the conduct is covered by some other provision of law
42 providing greater punishment, any ~~Any~~ person knowingly and willfully violating any of
43 the provisions of this section shall be guilty of a Class 1 ~~misdemeanor~~ misdemeanor for
44 a first offense. A second or subsequent violation of this section is a Class I felony.

1 (g) Exemptions. – This section shall not apply to purchases of regulated metals
2 property from a manufacturing, industrial, or other commercial vendor that generates or
3 sells regulated metals property in the ordinary course of its business.

4 (h) Preemption. – A county or municipality shall not enact any local law,
5 ordinance, or regulation regulating secondary metals recyclers or regulated metals
6 property that conflicts with this section, and this law preempts all existing laws,
7 ordinances, or regulations."

8 **SECTION 2.** G.S. 14-154 reads as rewritten:

9 **"§ 14-154. Injuring wires and other fixtures of telephone, telegraph, and**
10 **electric-power companies.**

11 If any person shall willfully injure, destroy or pull down any telegraph, telephone,
12 cable telecommunications, or electric-power-transmission pedestal or pole, wire,
13 insulator or any other fixture or apparatus attached to a telegraph, telephone or
14 electric power transmission line or any telegraph, telephone, cable telecommunications,
15 or electric power line, wire or fiber insulator, power supply, transformer, transmission
16 or other apparatus, equipment or fixture used in the transmission of telegraph,
17 telephone, cable telecommunications, or electrical power service or any equipment
18 related to wireless communications regulated by the Federal Communications
19 Commission, that person shall be guilty of a Class I Felony. ~~Class 1 misdemeanor.~~"

20 **SECTION 3.** Article 1 of Chapter 66 of the General Statutes is amended by
21 adding the following new section to read:

22 **"§ 66-11.2. Forfeiture of vehicles used to transport unlawfully obtained regulated**
23 **metals property.**

24 (a) Vehicles which are used or intended for use to convey or transport, or in any
25 manner to facilitate the conveyance or transportation of unlawfully obtained regulated
26 metals property, as defined by this Article, are subject to forfeiture, except that:

27 (1) No conveyance shall be forfeited under the provisions of this section
28 by reason of any act or omission, committed or omitted while such
29 conveyance was unlawfully in the possession of a person other than
30 the owner in violation of the criminal laws of the United States, or of
31 any state;

32 (2) No conveyance shall be forfeited unless the violation involved is a
33 felony;

34 (3) A forfeiture of a vehicle encumbered by a bona fide security interest is
35 subject to the interest of the secured party who had no knowledge of or
36 consented to the act or omission;

37 (4) No conveyance shall be forfeited under the provisions of this section
38 unless the owner knew or had reason to believe the vehicle was being
39 used in the commission of any violation that may subject the
40 conveyance to forfeiture under this section.

41 (b) Any vehicle subject to forfeiture under this section may be seized by any law
42 enforcement officer upon process issued by any district or superior court having
43 jurisdiction over the vehicle except that seizure without such process may be made
44 when:

- 1 (1) The seizure is incident to an arrest or a search under a search warrant;
2 (2) The vehicle subject to seizure has been the subject of a prior judgment
3 in favor of the State in a criminal injunction or forfeiture proceeding
4 under this section.

5 (c) Vehicles taken or detained under this section shall not be repleviable, but
6 shall be deemed to be in custody of the law enforcement agency seizing it, which may:

- 7 (1) Place the vehicle under seal; or
8 (2) Remove the vehicle to a place designated by it; or
9 (3) Request that the North Carolina Department of Justice take custody of
10 the vehicle and remove it to an appropriate location for disposition in
11 accordance with law.

12 Any vehicle seized by a State, local, or county law enforcement officer shall be held in
13 safekeeping as provided in this subsection until an order of disposition is properly
14 entered by the judge.

15 (d) Whenever a vehicle is forfeited under this section, the law enforcement
16 agency having custody of it may:

- 17 (1) Retain the vehicle for official use; or
18 (2) Sell any forfeited vehicle, provided that the proceeds be disposed of
19 for payment of all proper expenses of the proceedings for forfeiture
20 and sale, including expense of seizure, maintenance of custody,
21 advertising, and court costs; or
22 (3) Transfer any vehicles which are forfeited under the provisions of this
23 section to the North Carolina Department of Justice when, in the
24 discretion of the presiding judge and upon application of the North
25 Carolina Department of Justice, said vehicle may be of official use to
26 the North Carolina Department of Justice;
27 (4) Upon determination by the director of any law enforcement agency
28 that a vehicle transferred pursuant to the provisions of this section is of
29 no further use to said agency for use in official investigations, such
30 vehicle may be sold as surplus property in the same manner as other
31 vehicles owned by the law enforcement agency, and the proceeds from
32 such sale after deducting the cost of sale shall be paid to the treasurer
33 or proper officer authorized to receive fines and forfeitures to be used
34 for the school fund of the county in the county in which said vehicle
35 was seized; provided, that any vehicle transferred to any law
36 enforcement agency under the provisions of this section which has
37 been modified to increase speed shall be used in the performance of
38 official duties only and not for resale, transfer, or disposition other
39 than as junk."

40 **SECTION 4.** This act becomes effective December 1, 2007, and applies to
41 offenses committed on or after that date.