

1 INTERIM STUDY PROPOSAL 2013-071

2 State of Arkansas

As Engrossed: H3/4/13

3 89th General Assembly

A Bill

4 Regular Session, 2013

HOUSE BILL 1414

5
6 By: Representatives Hammer, McCrary, Cozart, *Eubanks, Hillman*

7 Filed with: Interim House Committee on Judiciary

8 pursuant to A.C.A. §10-3-217.

9 For An Act To Be Entitled

10 AN ACT TO PROHIBIT A PERSON FROM ENTERING INTO A
11 TRANSACTION WITH A SCRAP METAL DEALER IF THE PERSON
12 HAS BEEN CONVICTED OF A THEFT OFFENSE EXCEPT UNDER
13 LIMITED CIRCUMSTANCES; TO PROVIDE FOR LICENSURE; TO
14 PROVIDE FOR A PRESUMPTION; TO AMEND THE OFFENSE OF
15 THEFT OF SCRAP METAL; TO DECLARE AN EMERGENCY; AND
16 FOR OTHER PURPOSES.

17 18 19 Subtitle

20 CONCERNING THE CRIMINAL OFFENSE OF THEFT
21 OF SCRAP METAL; CONCERNING REGULATIONS
22 GOVERNING SCRAP METAL TRANSACTIONS; AND
23 TO DECLARE AN EMERGENCY.

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26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

27
28 SECTION 1. Arkansas Code § 5-36-102, concerning theft offenses, is
29 amended to add a new subsection to read as follows:

30 (f) The following give rise to a presumption that nonferrous scrap
31 metal not in the form of an aluminum can is stolen:

32 (1) The unexplained possession or control by a person not
33 licensed under § 17-44-107 of nonferrous scrap metal; or

34 (2) The acquisition by a person not licensed under § 17-44-107
35 of nonferrous scrap metal without consideration or for a consideration known
36 to be far below the nonferrous scrap metal's reasonable value.

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SECTION 2. Arkansas Code § 5-36-124(c)(1), concerning the theft of scrap metal, is amended to read as follows:

(c)(1) Theft by receiving of scrap metal is a:

(A) Class D felony if the combined value of the scrap metal and the amount of damage caused by the person who committed the theft of the scrap metal in obtaining the scrap metal is more than one thousand dollars (\$1,000); or

(B) Class A misdemeanor.

SECTION 3. Arkansas Code § 17-44-101(3)(B), concerning the definition of nonferrous metal, is amended to read as follows:

(B) "Nonferrous metal" includes without limitation the following metals, ~~and~~ their alloys, and items:

- (i) Copper;
- (ii) Brass;
- (iii) Aluminum;
- (iv) Bronze;
- (v) Lead;
- (vi) Zinc; ~~and~~
- (vii) Nickel;
- (viii) Stainless steel; and
- (ix) A beer keg;

SECTION 4. Arkansas Code § 17-44-101 is amended to add a new subdivision to read as follows:

(10)(A) "Theft offense" means one (1) or more of the following criminal offenses:

- (i) Theft of property, § 5-36-103;
- (ii) Theft by receiving, § 5-36-106;
- (iii) Theft of services, § 5-36-104;
- (iv) Theft of leased, rented, or entrusted personal property, § 5-36-115;
- (v) Theft of motor fuel, § 5-36-120;
- (vi) Theft of recyclable materials, § 5-36-121;
- (vii) Theft of scrap metal, § 5-36-123;

- 1 (viii) Theft by receiving of scrap metal, § 5-36-124;
- 2 (ix) Criminal mischief, §§ 5-38-203 and 5-38-204;
- 3 (x) Damaging wires and other fixtures of telephone, cable
- 4 and electric power companies, § 5-38-206;
- 5 (xi) Residential or commercial burglary, § 5-39-201;
- 6 (xii) Breaking or entering, § 5-39-202; or
- 7 (xiii) Destruction or removal of a cemetery or grave
- 8 marker, § 5-39-401.

9 (B) Shoplifting, § 5-36-116, is not a theft offense under this
10 subchapter.

11
12 SECTION 4. Arkansas Code § 17-44-102(d)(1), concerning the records
13 required to be kept by a scrap metal recycler, is amended to read as follows:

14 (1) The name, address, gender, birth date, and identifying
15 number from the seller's driver's license, military identification card,
16 passport, or other form of government-issued photo identification as well as
17 the same information from each person accompanying the seller at the time of
18 the transaction;

19
20 SECTION 5. Arkansas Code § 17-44-102(f), concerning the filing of a
21 daily electronic report of scrap metal transactions, is amended to read as
22 follows:

23 (f)(1) For records required under subsections (a) and (d) of this
24 section, a scrap metal recycler shall file a daily electronic record of scrap
25 metal purchases made for that day.

26 (2) The report shall be made daily by entering the information
27 into an automated database which may be interfaced by law enforcement
28 statewide.

29 (3) The report shall be made by the end of each business day,
30 and knowingly failing to comply with the reporting requirements of this
31 subsection will result in a violation with a fine of:

32 (A) One hundred dollars (\$100) for the first offense;

33 (B) Two hundred fifty dollars (\$250) for the second
34 offense; or

35 (C) Five hundred dollars (\$500) for the third or
36 subsequent offense.

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2 SECTION 6. Arkansas Code § 17-44-105 is amended to read as follows:

3 17-44-105. ~~Sales by minors~~ Prohibited sales.

4 (a)~~(1)~~ ~~No~~ A scrap metal recycler shall not purchase or otherwise
5 receive in the course of business scrap metal that is claimed by:

6 (1)(A) any A minor, or that may be in the possession of or under
7 control of a minor, unless the minor is accompanied by his or her parent or
8 guardian.

9 ~~(2)(B)~~ The parent or guardian shall state in writing that
10 the transaction is taking place with the parent's or guardian's full
11 knowledge and consent.

12 (C) A parent or guardian who has been convicted of theft
13 and is otherwise prohibited from selling scrap metal under this section is
14 ineligible to accompany a minor to make a sale under this section;

15 (2) A person who has been convicted of a theft offense unless:

16 (A) The person has allowed a local law enforcement agency
17 to inspect the scrap metal intended to be sold; and

18 (B) The local law enforcement agency has issued a permit
19 to the person after inspection to sell the scrap metal; or

20 (3) A person who attempts to sell scrap metal for which he does
21 not have the proper license under this subchapter.

22 (b) A scrap metal recycler shall preserve and keep on file and make
23 available for inspection the written statement and a copy of the permit
24 required by ~~subsection (a)~~ of this section for not less than three (3) years.

25
26 SECTION 7. Arkansas Code § 17-44-106 is amended to read as follows:

27 17-44-106. Penalties.

28 (a) A person that knowingly violates this chapter ~~may be assessed a~~
29 civil penalty is guilty of a violation and subject to a fine of no more than
30 five hundred dollars (\$500) one thousand dollars (\$1,000) per violation
31 occurrence.

32 (b) Any person that knowingly gives false information with respect to
33 the matters required to be maintained in the records provided for in this
34 chapter is guilty of a Class ~~A misdemeanor~~ D felony.

1 (c) A person who knowingly operates as a scrap metal recycler without
2 a license as required by § 17-44-108 is upon conviction guilty of a Class D
3 felony.

4
5 SECTION 8. Arkansas Code Title 17, Chapter 44, is amended to add two
6 additional sections to read as follows:

7 17-44-107. License to sell required.

8 (a)(1) A license shall be required for all scrap metal transactions,
9 except as provided by law.

10 (2)(A) A county sheriff's office is authorized to issue a
11 license under this section for a fee of twenty dollars (\$20.00).

12 (B) Fees collected under this subsection shall be remitted
13 on a monthly basis to the communications facility and equipment fund as
14 described in § 21-6-307(b)(2).

15 (b) A person is required to have one (1) of the following licenses to
16 sell scrap metal under this section:

17 (1) A Class One license, which has the following
18 characteristics:

19 (A) Is issued to any person who is selling scrap metal
20 that does not include nonferrous metal;

21 (B)(i)(a) Cannot be issued to a person who is otherwise
22 prohibited from selling scrap metal under § 17-44-105(a)(2) unless the county
23 sheriff issues a license at his discretion.

24 (b) A person who has been convicted of or
25 pleaded guilty to a violation under § 5-36-123 or § 5-36-124 cannot be issued
26 a license under any circumstance.

27 (ii) A licensee under this section who subsequently
28 is convicted of a theft offense shall have the license revoked; and

29 (C) Is valid for one (1) year;

30 (2) A Class Two license, which has the following
31 characteristics:

32 (A) Is issued to any person who is selling scrap metal in
33 a form that includes:

34 (i) Nonferrous metal;

35 (ii) Farm equipment;

1 (iii) Heating, venting, and air conditioning
2 components;

3 (iv) Commercial construction equipment;

4 (v) Automobiles, in whole or in part; and

5 (vi) Batteries;

6 (B)(i)(a) Cannot be issued to a person who is otherwise
7 prohibited from selling scrap metal under § 17-44-105(a)(2) unless the county
8 sheriff issues a license at his discretion.

9 (b) A person who has been convicted of or
10 pleaded guilty to a violation under § 5-36-123 or § 5-36-124 cannot be issued
11 a license under any circumstance.

12 (ii) A licensee under this section who subsequently
13 is convicted of a theft offense shall have the license revoked; and

14 (C) Requires the person to have a heating, venting, and
15 air conditioning, plumbing, electrician, or general contractor’s license, or
16 a ninety-day conditional license from the county sheriff;

17 (D) Is required for any person who sells scrap metal any
18 number of times per year; and

19 (E)(i) Is valid for one (1) year.

20 (ii) A Class Two license may be renewed for a fee of
21 five dollars (\$5.00) any time during the one-year period;

22 (3) A Class Three license, which has the following
23 characteristics:

24 (A) Is issued to a person who is selling:

25 (i) Scrap metal listed in subdivision (b)(2)(A) of
26 this section;

27 (ii) Metal associated with the railroad;

28 (iii) Metal associated with a communication entity;

29 or

30 (iv) Metal associated with a public utility;

31 (B)(i)(a) Cannot be issued to a person who is otherwise
32 prohibited from selling scrap metal under § 17-44-105(a)(2) unless the county
33 sheriff issues a license at his discretion.

34 (b) A person who has been convicted of or
35 pleaded guilty to a violation under § 5-36-123 or § 5-36-124 cannot be issued
36 a license under any circumstance.

1 (ii) A licensee under this section who subsequently
2 is convicted of a theft offense shall have the license revoked; and

3 (C) Is valid for one (1) year;

4 (D) Must be accompanied by a letter from an entity
5 authorizing the person to sell the scrap metal on its behalf if the metal is
6 as described in subdivision (b)(3)(A)(ii) – (iv) of this section.

7 (4)(A) A general public permit, which allows a private citizen
8 to sell any item except a nonferrous metal if the item presented is
9 accompanied by current property tax documents that match the driver’s license
10 of the seller.

11 (B) However, if a person under subdivision (4)(A) has an
12 item that is or contains a nonferrous metal, a Class One, Class Two, or Class
13 Three license, where applicable, or a one-time waiver every six (6) months
14 from a local law enforcement agency is required.

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16 17-44-108. Requirements to operate as a scrap metal dealer – License.

17 (a) In order to operate as a scrap metal dealer under this chapter, a
18 person operating as a scrap metal dealer shall:

19 (1) Have a fixed physical location with a full complement of
20 permanent utilities, including without limitation:

21 (A) Water;

22 (B) Sewer;

23 (C) Electricity;

24 (D) Gas, if applicable; and

25 (E) Communication equipment sufficient to accommodate
26 monitoring equipment covered under the state contract;

27 (2) Hold valid permits from the Arkansas Department of
28 Environmental Quality;

29 (3) Not have been previously been convicted of a theft offense;
30 and

31 (4) Have the ability to comply with online monitoring as
32 required by this chapter.

33 (b)(1) A person complying with the requirements of this section may
34 apply to the county sheriff for a license to operate a scrap metal yard.

35 (2) A license issued under subdivision (b)(1) of this section
36 costs twenty dollars (\$20.00) and shall be renewed annually.

1 (c) This section does not apply to a not-for-profit scrap metal dealer
2 or scrap metal recycler.

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4 SECTION 9. EMERGENCY CLAUSE. It is found and determined by the
5 General Assembly of the State of Arkansas that theft of metal subsequently
6 sold to a scrap metal dealer is a serious problem in Arkansas; that every day
7 this problem is not addressed is one more day that a person's home or
8 business could be stripped of copper wiring or a farmer's equipment could be
9 stolen and sold for scrap; and that this act is immediately necessary because
10 curtailing theft of metal to be sold for scrap is a pressing issue that needs
11 to be immediately addressed. Therefore, an emergency is declared to exist,
12 and this act being necessary for the preservation of the public peace,
13 health, and safety shall become effective on June 1, 2013.

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15 /s/Hammer

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18 Referred by the Arkansas House of Representatives
19 Prepared by: BPG/VJF

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