

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

A Bill

HOUSE BILL 1414

5 By: Representatives Hammer, McCrary, Cozart
6

For An Act To Be Entitled

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

Subtitle

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17
18 CONCERNING THE CRIMINAL OFFENSE OF THEFT
19 OF SCRAP METAL; CONCERNING REGULATIONS
20 GOVERNING SCRAP METAL TRANSACTIONS; AND
21 TO DECLARE AN EMERGENCY.
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23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

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

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

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

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

36 SECTION 2. Arkansas Code § 5-36-124(c)(1), concerning the theft of



1 scrap metal, is amended to read as follows:

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

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

7 (B) Class A misdemeanor.

8
 9 SECTION 3. Arkansas Code § 17-44-101(3)(B), concerning the definition
 10 of nonferrous metal, is amended to read as follows:

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

- 13 (i) Copper;
- 14 (ii) Brass;
- 15 (iii) Aluminum;
- 16 (iv) Bronze;
- 17 (v) Lead;
- 18 (vi) Zinc; ~~and~~
- 19 (vii) Nickel;
- 20 (viii) Stainless steel; and
- 21 (ix) A beer keg;

22
 23 SECTION 4. Arkansas Code § 17-44-101 is amended to add a new
 24 subdivision to read as follows:

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

- 27 (i) Theft of property, § 5-36-103;
- 28 (ii) Theft by receiving, § 5-36-106;
- 29 (iii) Theft of services, § 5-36-104;
- 30 (iv) Theft of leased, rented, or entrusted personal
 31 property, § 5-36-115;
- 32 (v) Theft of motor fuel, § 5-36-120;
- 33 (vi) Theft of recyclable materials, § 5-36-121;
- 34 (vii) Theft of scrap metal, § 5-36-123;
- 35 (viii) Theft by receiving of scrap metal, § 5-36-124;
- 36 (ix) Criminal mischief, §§ 5-38-203 and 5-38-204;

1 (x) Damaging wires and other fixtures of telephone, cable
 2 and electric power companies, § 5-38-206;

3 (xi) Residential or commercial burglary, § 5-39-201;

4 (xii) Breaking or entering, § 5-39-202; or

5 (xiii) Destruction or removal of a cemetery or grave
 6 marker, § 5-39-401.

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

9
 10 SECTION 4. Arkansas Code § 17-44-102(d)(1), concerning the records
 11 required to be kept by a scrap metal recycler, is amended to read as follows:

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

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

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

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

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

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

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

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

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

1 17-44-105. ~~Sales by minors~~ Prohibited sales.

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

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

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

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

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

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

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

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

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

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

25 17-44-106. Penalties.

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

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

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

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

3 17-44-107. License to sell required.

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

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

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

10 (1) A Class One license, which has the following
11 characteristics:

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

14 (B)(i) Cannot be issued to a person who is otherwise
15 prohibited from selling scrap metal under § 17-44-105(a)(2).

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

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

19 (2) A Class Two license, which has the following
20 characteristics:

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

23 (i) Nonferrous metal;

24 (ii) Farm equipment;

25 (iii) Heating, venting, and air conditioning
26 components;

27 (iv) Commercial construction equipment;

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

29 (vi) Batteries;

30 (B)(i) Cannot be issued to a person who is otherwise
31 prohibited from selling scrap metal under § 17-44-105(a)(2).

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

34 (C) Requires the person to have a heating, venting, and
35 air conditioning, plumbing, electrician, or general contractor's license, or
36 a ninety-day conditional license from the county sheriff;

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

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

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

6 (3) A Class Three license, which has the following
 7 characteristics:

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

9 (i) Scrap metal listed in subdivision (b)(2)(A) of
 10 this section;

11 (ii) Metal associated with the railroad;

12 (iii) Metal associated with a communication entity;

13 or

14 (iv) Metal associated with a public utility;

15 (B)(i) Cannot be issued to a person who is otherwise
 16 prohibited from selling scrap metal under § 17-44-105(a)(2).

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

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

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

23 (4)(A) A general public permit, which allows a private citizen
 24 to sell any item except a nonferrous metal if the item presented is
 25 accompanied by current property tax documents that match the driver's license
 26 of the seller.

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

31
 32 17-44-108. Requirements to operate as a scrap metal dealer – License.

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

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

- 1 (A) Water;
- 2 (B) Sewer;
- 3 (C) Electricity;
- 4 (D) Gas, if applicable; and
- 5 (E) Communication equipment sufficient to accommodate
- 6 monitoring equipment covered under the state contract;

7 (2) Hold valid permits from the Arkansas Department of
 8 Environmental Quality;

9 (3) Not have been previously been convicted of a theft offense;
 10 and

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

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

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

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

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

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