

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 265

BY: LONG (Lewis)

AS INTRODUCED

AN ACT RELATING TO CRIMES AND PUNISHMENTS AND PROFESSIONS AND OCCUPATIONS; AMENDING 59 O.S. 1981, SECTIONS 1401, AS AMENDED BY SECTION 3, CHAPTER 139, O.S.L. 1990, 1402, AS AMENDED BY SECTION 4, CHAPTER 249, O.S.L. 1989, 1403, AS AMENDED BY SECTION 4, CHAPTER 139, O.S.L. 1990, 1404, AS AMENDED BY SECTION 16, CHAPTER 269, O.S.L. 1986, 1405, 1406, 1407 AND 1408 (59 O.S. 1990, SECTIONS 1401, 1402, 1403 AND 1404), WHICH RELATE TO JUNK DEALERS; DELETING, MODIFYING AND ADDING DEFINITIONS; EXPANDING SCOPE OF ACT TO INCLUDE RECYCLERS OF ADDITIONAL METALS; CONFORMING LANGUAGE; MODIFYING INFORMATION REQUIRED IN CERTAIN RECORD; SPECIFYING PENALTY FOR FAILING TO OBTAIN PARENTAL CONSENT TO MAKE PURCHASE FROM MINOR; AUTHORIZING INSPECTION OF CERTAIN PURCHASED MATERIALS AND RECORDS BY PEACE OFFICER; PROVIDING FOR ISSUANCE OF HOLD ORDER UNDER CERTAIN CONDITIONS, CONTENT OF NOTICE AND FOR RELEASE OF NOTICE; PROHIBITING AND ALLOWING CERTAIN ACTIONS; EXEMPTING CERTAIN PURCHASES FROM ACT; MAKING CERTAIN PURCHASES UNLAWFUL; REPEALING 21 O.S. 1981, SECTIONS 1041, 1042, 1043, 1044, 1045, 1046, 1047 AND 1048 AND SECTIONS 1 AND 2, CHAPTER 139, O.S.L.

1990 (59 O.S. SUPP. 1990, SECTIONS 1410 AND 1411),
WHICH RELATE TO JUNK DEALERS; PROVIDING FOR
CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 59 O.S. 1981, Section 1401, as amended by Section 3, Chapter 139, O.S.L. 1990 (59 O.S. Supp. 1990, Section 1401), is amended to read as follows:

Section 1401. As used in this act, ~~the following terms shall have the meanings indicated:~~

~~(a) "Copper material" means the metal copper or copper alloy or anything made of either copper or copper alloy.~~

~~(b) "Aluminum material" means the metal aluminum or aluminum alloy or anything made of either aluminum or aluminum alloy, except aluminum cans.~~

~~(c) "Junk dealer" means any person, firm or corporation being an owner, keeper or proprietor of a junk shop, junk store, salvage yard or scrap processor handling copper material; a collector or dealer in junk, salvage or other property made of copper material or aluminum metal; or anyone purchasing or handling copper material for remelting purposes.~~

~~(d) "Yard" means the place where any junk dealer stores copper material or keeps the same for purpose of sale.:~~

1. "Commission" means the Oklahoma Tax Commission;

2. "Ferrous metals" means any metals containing significant quantities of iron or steel;

3. "Fixed location" means any site occupied by a secondary metals recycler as owner of the site or as 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 one (1) year;

4. "Hard-drawn copper" means bare or insulated unalloyed copper wire or cable, not smaller than No. 16 wire gauge, or bus bars;

5. "Nonferrous metals" means metals not containing significant quantities of iron or steel, including, but not limited to, copper, brass, aluminum, bronze, lead, zinc and nickel, and alloys thereof;

6. "Peace officer" means any duly constituted law enforcement official of this state or of any city, town or village thereof;

7. "Secondary metals recycler" means any person in this state who:

a. from a fixed location or otherwise is predominantly engaged in the business of:

(1) gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose,

(2) 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

b. has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw products consisting of prepared grades and having an existing or potential economic value; provided, such metals are not converted by a process exclusively using hand tools, but by methods including, but not limited to, processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing or changing the physical form or chemical content of the metals thereof; and

8. "Regulated metals property" means any item composed primarily of nonferrous metals, but shall not include aluminum beverage containers, used beverage containers or similar beverage containers for which a secondary metals recycler gives consideration in excess of Fifty Dollars (\$50.00).

SECTION 2. AMENDATORY 59 O.S. 1981, Section 1402, as amended by Section 4, Chapter 249, O.S.L. 1989 (59 O.S. Supp. 1990, Section 1402), is amended to read as follows:

Section 1402. ~~(a)~~ A. Any ~~junk dealer~~ secondary metals recycler being engaged in business when this act becomes effective shall, within thirty (30) days thereafter, and any other person, firm or corporation desiring to become a ~~junk dealer~~ secondary metals recycler shall, prior to the commencement of business, file a verified application and obtain a license from the Oklahoma Tax Commission. Each ~~junk dealer~~ secondary metals recycler shall pay an annual license fee to the State of Oklahoma in the sum of Thirty-five Dollars (\$35.00). Each ~~junk dealer~~ secondary metals recycler shall maintain at least one secondary metals recycler maintains or desires to maintain more than one yard, said ~~junk dealer~~ secondary metals recycler shall obtain, in addition to his original license, a duplicate license for each additional ~~yard~~ fixed location. An annual fee of Fifteen Dollars (\$15.00) shall be paid by the ~~junk dealer~~ secondary metals recycler for each duplicate license. Licensed ~~junk dealers~~ secondary metals recyclers may, at any time after they have obtained an original license and before its expiration, obtain duplicate licenses for additional ~~yards~~ fixed locations by payment to the ~~Oklahoma Tax~~ Commission of a fee of Fifteen Dollars (\$15.00) for each duplicate license. The application for license shall be on a form provided by and approved by the ~~Oklahoma Tax~~ Commission. Such form shall state the name of the ~~junk dealer~~ secondary metals recycler; the location of his principal ~~yard~~ fixed location; the location of all other ~~yards~~ fixed

locations maintained by him within the state; the name or style of the firm under which such business is being conducted; the names and addresses of persons interested in the business as principals, copartners, officers and directors, specifying as to each his capacity and title. Provided that any ~~junk-dealer~~ secondary metals recycler who shall feel aggrieved by the action of the ~~Oklahoma Tax~~ Commission, that it has acted unreasonably or arbitrarily in refusing to grant a license or in suspending or revoking his license may appeal from the action of said Commission to the Supreme Court of the state for a review of any such alleged unreasonable and arbitrary action; and the decision of said Court shall be final and binding upon said Commission; provided that any such order of said Commission shall be binding upon any such ~~junk-dealer~~ secondary metals recycler until reversed by said Court.

~~(b)~~ B. A certificate of license shall be furnished by the ~~Oklahoma Tax~~ Commission to every person whose application to become a ~~junk-dealer~~ secondary metals recycler has been filed and approved. Such certificate shall be nonassignable and shall designate the name and address of licensee, the location of the ~~yard~~ fixed location and the fact that he is authorized to engage in the business of a ~~junk-dealer~~ secondary metals recycler to handle nonferrous metals or hard drawn copper material and shall be signed by the ~~Oklahoma Tax~~ Commission. Each ~~junk-dealer~~ secondary metals recycler shall keep such certificate of license in a prominent and conspicuous place in his ~~yard~~ fixed location. In the case of a ~~junk-dealer~~ secondary metals recycler having more than one ~~yard~~ fixed location, a duplicate license shall be on display in a conspicuous and prominent place in each such ~~yard~~ location.

~~(c)~~ C. The license or duplicate license herein provided for shall be renewable on the first day of January of each year upon application to the ~~Oklahoma Tax~~ Commission and upon payment of the fees herein provided for.

SECTION 3. AMENDATORY 59 O.S. 1981, Section 1403, as amended by Section 4, Chapter 139, O.S.L. 1990 (59 O.S. Supp. 1990, Section 1403), is amended to read as follows:

Section 1403. Any license, issued pursuant to Section 1402 of this title to any ~~junk dealer~~ secondary metals recycler who violates any of the provisions of ~~Sections 1401 through 1408~~ Section 1401 et seq. of this title relating to the purchase of ~~copper materials,~~ nonferrous metals, hard drawn copper or regulated metals property may be canceled or suspended for a period not to exceed thirty (30) days by the ~~Oklahoma Tax~~ Commission. The ~~Oklahoma Tax~~ Commission may refuse the issuance of or extension or reinstatement of any license where the applicant or licensee shall have violated any provisions of this act or existing laws. Provided that such cancellation or refusal shall be mandatory as to any ~~junk dealer~~ secondary metals recycler having been convicted of three separate violations of this act. Provided, further, that before the ~~Oklahoma Tax~~ Commission may cancel or suspend any license or refuse the issuance, reinstatement or extension thereof, said ~~Oklahoma Tax~~ Commission shall give each licensee or applicant ten (10) days' notice of a hearing before said ~~Oklahoma Tax~~ Commission, granting such person an opportunity to show cause why such action should not be taken. Provided, further, that upon notice given to any ~~junk dealer~~ secondary metals recycler by the ~~Oklahoma Tax~~ Commission of its intention to cancel or suspend any license or to refuse the issuance, reinstatement or extension thereof, the ~~Oklahoma Tax~~ Commission shall have the authority to enter its order suspending such license or prohibiting the applicant from doing business without a license pending the final hearing before it as herein provided for and, after notice of such order of suspension or prohibition from doing business, it shall be unlawful for such ~~junk dealer~~ secondary metals recycler to further engage in the business of a ~~junk dealer~~ secondary metals recycler, as defined herein, and

in the event any such person shall conduct or at any time continue such unlawful operation, after notice of suspension or prohibition from doing business, the ~~Oklahoma Tax~~ Commission may institute or cause to be brought against such person or persons proceedings for injunction in any court of competent jurisdiction to enjoin and restrain such person or persons from doing business pending the order of the ~~Oklahoma Tax~~ Commission. Upon cancellation of a license by the ~~Oklahoma Tax~~ Commission, no new license shall be issued to such ~~dealer~~ secondary metals recycler for a period of one (1) year from the date of cancellation. In all cases where proceedings are brought for injunction under this act, no bond for injunction shall be required and in all such cases, after notice of suspension has been given, no further notice shall be required before the issuance of a temporary restraining order on any proceeding for injunction. If an appeal is taken from the order of the ~~Oklahoma Tax~~ Commission issued pursuant to this section, the ~~junk dealer~~ secondary metals recycler, in order to conduct business as a ~~junk dealer~~ secondary metals recycler pending outcome of the appeal, shall be required to post a bond in the amount of Five Thousand Dollars (\$5,000.00).

SECTION 4. AMENDATORY 59 O.S. 1981, Section 1404, as amended by Section 16, Chapter 269, O.S.L. 1986 (59 O.S. Supp. 1990, Section 1404), is amended to read as follows:

Section 1404. All of the monies collected under this ~~act~~ Section 1401 et seq. of this title shall be placed to the credit of the Oklahoma Tax Commission Fund to be used for the purpose of carrying into effect the provisions of this act and the ~~Oklahoma Tax~~ Commission shall appoint necessary employees and incur all necessary expenses for such purpose.

SECTION 5. AMENDATORY 59 O.S. 1981, Section 1405, is amended to read as follows:

Section 1405. Any person injured by the failure of any ~~junk dealer~~ secondary metals recycler to comply with any requirements of law governing the business of such person or persons may sue upon the bond of such junk dealer and recover such damages as he may prove himself entitled to, not to exceed the penalty of such bond.

SECTION 6. AMENDATORY 59 O.S. 1981, Section 1406, is amended to read as follows:

Section 1406. ~~(a) Every junk dealer~~ secondary metals recycler shall keep a separate book or register in which he shall enter the following information: ~~Name, address, age, driver's license number, or, if driver's license not available, similar definite identification of the person or~~ about persons from whom regulated metals property or thirty-five (35) pounds or more of hard drawn copper or copper alloy utilized by persons, firms, corporations or municipal corporations engaged in the transmission and distribution of electric energy, or engaged in telephone, telegraph or other communications is purchased; ~~license:~~

1. The name, address and age of the person;

2. The person's driver's license number, or if a driver's license is not available, the number from a state-issued identification card or a federal government issued identification card;

3. License tag number of vehicle or conveyance in which the regulated metals property or hard drawn copper are delivered;

~~the~~ 4. The date and place of each purchase of such regulated metals property or hard drawn copper or copper alloy;

~~the description should include the~~ 5. The weight of said regulated metals property or hard drawn copper or copper alloy purchased, including whether the same is in wire, cable, bars, rods, or tubing and if any installation is thereon the names and addresses of the persons, groups of persons or corporations from whom seller purchased said copper or copper alloy. Such book or register shall

be made available to any ~~law enforcement official~~ peace officer or the representatives of persons, firms, corporations or municipal corporations described above for inspection at any time.

~~(b) A junk dealer who purchases copper material shall also report, in writing, all purchases of thirty-five (35) pounds or more of copper material not exempt from the ten-day holding period to the sheriff of the county in which said purchases are made, if requested in writing by said sheriff. The report shall be made in writing to said sheriff within forty-eight (48) hours after any such purchase is made and shall contain all of the information required to be maintained in the book or register provided for herein.~~

SECTION 7. AMENDATORY 59 O.S. 1981, Section 1407, is amended to read as follows:

Section 1407. Each purchase of thirty-five (35) pounds or more of hard drawn copper ~~or copper alloy~~ utilized by persons, firms, corporations or municipal corporations engaged in the transmission and distribution of electric energy, or engaged in telephone, telegraph or other communications shall be held separate and apart so that such hard drawn copper ~~and copper alloy~~ shall be readily identifiable from all other purchases for a period of not less than ten (10) days from the date of purchase of such hard drawn copper ~~or copper alloy~~, during which period the purchaser shall not change the form of said hard drawn copper ~~or copper alloy~~ and shall permit any ~~law enforcement~~ peace officer or the representatives of persons, firms, corporations or municipal corporations to make inspection of such hard drawn copper ~~material~~ during said ten-day holding period; provided, however, that all such purchases made from persons, firms, corporations or municipal corporations who construct, operate, maintain or sell electric distribution and transmission communications facilities, or produce scrap nonferrous metals or hard drawn copper ~~material~~ in the normal course of business or the sale of nonferrous metals or hard drawn copper ~~material~~ by one

licensed ~~junk-dealer~~ secondary metals recycler to another are not subject to said ten-day holding period; but there shall be required from such persons, firms, corporations or municipal corporations a bill of sale or other written evidence of title of such purchases.

SECTION 8. AMENDATORY 59 O.S. 1981, Section 1408, is amended to read as follows:

Section 1408. ~~(a)~~ A. Anyone acting as a ~~junk-dealer~~ secondary metals recycler without a license, as required by Section ~~2~~ 1402 of this ~~act~~ title, is guilty of a misdemeanor and, upon conviction thereof, is subject to a fine of Fifty Dollars (\$50.00); provided that each day's operation without a license constitutes a separate offense.

~~(b)~~ B. Any ~~junk-dealer~~ secondary metals recycler failing to maintain records, as required by Section ~~6~~ 1406 of this ~~act~~ title, and any ~~junk-dealer~~ secondary metals recycler failing to hold hard drawn copper material, as required by Section ~~7~~ 1407 of this ~~act~~ title, and any secondary metals recycler failing to obtain the prior written consent of a parent or legal guardian to make purchases from a minor, as required by Section 11 of this act, is guilty of a misdemeanor and, upon conviction thereof, is subject to a fine of Five Hundred Dollars (\$500.00).

~~(c)~~ C. Any person who knowingly gives false information with respect to the information required in Section ~~6~~ 1406 of this ~~act~~ title is guilty of a misdemeanor and, upon conviction thereof, is subject to a fine not to exceed Five Hundred Dollars (\$500.00).

~~(d)~~ D. Each conviction of a ~~junk-dealer~~ secondary metals recycler for violation of any provision of this act shall be reported to the ~~Oklahoma Tax~~ Commission by the clerk of the court rendering such verdict.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1409 of Title 59, unless there is created a duplication in numbering, reads as follows:

During the usual and customary business hours of a secondary metals recycler, a peace officer, after properly identifying himself as a peace officer, shall have the right to inspect:

1. Any purchased regulated metals property or hard drawn copper in the possession of the secondary metals recycler; and
2. Any record required to be maintained pursuant to the provisions of Section 1406 of Title 59 of the Oklahoma Statutes.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1410A of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Whenever a peace officer has reasonable cause to believe that certain items of hard drawn copper or regulated metals property in the possession of a secondary metals recycler have been stolen, the peace officer may issue a hold notice to the secondary metals recycler. The hold notice shall:

1. Be in writing;
2. Be delivered to the secondary metals recycler;
3. Specifically identify those items of hard drawn copper or regulated metals property that are believed to have been stolen and that are subject to the notice; and
4. Inform the secondary metals recycler of the information contained in subsection B of this section and in Section 10 of this act.

B. Upon receipt of the notice issued in accordance with this section, the secondary metals recycler receiving the notice shall not process or remove the items of hard drawn copper or regulated metals property identified in the notice, nor any portion thereof, from the place of business of the secondary metals recycler for fifteen (15) calendar days from and after receipt of the notice by the secondary metals recycler, unless sooner released by a peace officer.

C. At the expiration of the hold period, the hold is automatically released, and the secondary metals recycler may dispose of the hard drawn copper or regulated metals property unless other disposition has been ordered by a court of competent jurisdiction.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1411A of Title 59, unless there is created a duplication in numbering, reads as follows:

This act shall not apply to the purchase of hard drawn copper or regulated metals property from:

1. Organizations, corporations or associations registered with the state as charitable, philanthropic, religious, fraternal, civic, patriotic, social or school-sponsored organizations or associations or from any nonprofit corporations or associations;

2. A peace officer acting in an official capacity and having presented proof of such capacity to the secondary metals recycler;

3. A trustee in bankruptcy, executor, administrator or receiver having presented proof of such status to the secondary metals recycler;

4. Any public official acting under judicial process or authority and having presented proof of such process or authority to the secondary metals recycler;

5. A sale on the execution, or by virtue of any process issued by a court after having received proof of such execution or process; or

6. A manufacturing, industrial or other commercial vendor that generates or sells hard drawn copper or regulated metals property in the ordinary course of their business.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1412 of Title 59, unless there is created a duplication in numbering, reads as follows:

It shall be unlawful for any secondary metals recycler to purchase ferrous metals, nonferrous metals or hard drawn copper from a minor without first having obtained in writing the consent of the parents or legal guardian of such minor.

SECTION 13. REPEALER 21 O.S. 1981, Sections 1041, 1042, 1043, 1044, 1045, 1046, 1047 and 1048 and Sections 1 and 2, Chapter 139, O.S.L. 1990 (59 O.S. Supp. 1990, Sections 1410 and 1411), are hereby repealed.

SECTION 14. This act shall become effective September 1, 1991.

43-1-330

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