

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 HOUSE BILL 1004

By: Bell

4
5
6 AS INTRODUCED

7 An Act relating to agriculture; amending 59 O.S.
8 2011, Sections 1422, as last amended by Section 2,
9 Chapter 230, O.S.L. 2013, and as renumbered by
10 Section 4, Chapter 18, O.S.L. 2014, 1423, as
11 renumbered by Section 5, Chapter 18, O.S.L. 2014, and
12 as last amended by Section 1, Chapter 23, O.S.L.
13 2018, and 1425, as amended by Section 4, Chapter 230,
14 O.S.L. 2013, and as renumbered by Section 7, Chapter
15 18, O.S.L. 2014 (2 O.S. Supp. 2018, Sections 11-91,
16 11-92 and 11-94), which relate to the Oklahoma Scrap
17 Metal Dealers Act; adding definitions; requiring
18 noncommercial copper vendor permit for certain copper
19 material transactions; prohibiting certain acts of
20 intending to sell burnt copper; modifying penalty;
21 increasing penalty for selling burnt copper;
22 providing penalties for purchasing and intending to
23 sell burnt copper; providing procedure to obtain
24 noncommercial copper vendor permit; requiring certain
filings; directing the Department of Agriculture,
Food, and Forestry to maintain certain filings and
records; requiring certain tax returns to allow for
certain donation; directing certain monies to the
credit of the Noncommercial Copper Vendor Permit
Revolving Fund; creating revolving fund; providing
for appropriation and expenditures of revolving fund;
providing for codification; and providing an
effective date.

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

1 SECTION 1. AMENDATORY 59 O.S. 2011, Section 1422, as
2 last amended by Section 2, Chapter 230, O.S.L. 2013, and as
3 renumbered by Section 4, Chapter 18, O.S.L. 2014 (2 O.S. Supp. 2018,
4 Section 11-91), is amended to read as follows:

5 Section 11-91. As used in the Oklahoma Scrap Metal Dealers Act:

6 1. "Aluminum material" means the metal aluminum or aluminum
7 alloy or anything made of either aluminum or aluminum alloy, except
8 aluminum beverage cans;

9 2. "Copper material" means the metal copper or copper alloy or
10 anything made of either copper or copper alloy;

11 3. "Noncommercial copper vendor" means any individual, other
12 than an exempted seller, that sells copper material to a scrap metal
13 dealer;

14 4. "Noncommercial copper vendor permit" means a copper sales
15 permit issued to a noncommercial copper vendor pursuant to the
16 Oklahoma Scrap Metal Dealers Act;

17 5. "Department" means the Oklahoma Department of Agriculture,
18 Food, and Forestry and its employees, officers and divisions;

19 ~~4.~~ 6. "Exempted seller" means any person, firm, corporation or
20 municipal corporation which constructs, operates or maintains
21 electric distribution and transmission or communications facilities;
22 or any person, firm or corporation that produces or otherwise
23 acquires any scrap metal regulated by the provisions of the Oklahoma
24 Scrap Metal Dealers Act in the normal course of business as:

- a. mechanical, electrical or plumbing contractor licensed to do business in this state,
- b. scrap metal dealer (Standard Industrial Classification Codes 5051 or 5093), licensed pursuant to the provisions of the Oklahoma Scrap Metal Dealers Act,
- c. holder of a farm-use tax permit,
- d. manufacturer,
- e. distributor, or
- f. retailer;

~~5.~~ 7. "License" means a scrap metal dealer license;

~~6.~~ 8. "Scrap metal" means any copper material or aluminum material or any item listed in Section ~~1424~~ 11-93 of this title, offered for sale or resale or purchased by any person, firm or corporation;

~~7.~~ 9. "Scrap metal dealer" means any person, firm or corporation being an owner, keeper or proprietor of a retail or wholesale business which buys, sells, salvages, processes or otherwise handles scrap metal materials regulated by the provisions of the Oklahoma Scrap Metal Dealers Act; and

~~8.~~ 10. "Yard" means the place where any scrap metal dealer stores scrap metal materials or keeps such materials for purpose of sale.

SECTION 2. AMENDATORY 59 O.S. 2011, Section 1423, as renumbered by Section 5, Chapter 18, O.S.L. 2014, and as last

1 amended by Section 1, Chapter 23, O.S.L. 2018 (2 O.S. Supp. 2018,
2 Section 11-92), is amended to read as follows:

3 Section 11-92. A. Every scrap metal dealer shall keep a
4 separate book, record or other electronic system as authorized by
5 the Oklahoma Scrap Metal Dealers Act, to record and maintain the
6 following data from any seller of any amount of scrap metal as
7 defined by the Oklahoma Scrap Metal Dealers Act:

8 1. A legible photocopy of the seller's driver license or
9 government provided photo identification, issued by the United
10 States government, State of Oklahoma, or any other state of the
11 United States, that contains his or her name, address, date of
12 birth, weight and height;

13 2. Vehicle description and license tag number of the seller if
14 the vehicle was used to transport the material being sold;

15 3. Date and place of the transaction and the transaction number
16 as provided by the scrap metal dealer;

17 4. Description of the items sold and weight of the items as
18 required by the provisions of the Oklahoma Scrap Metal Dealers Act;

19 5. Whether the scrap metal is in wire, cable, bar, rod, sheet
20 or tube form;

21 6. If any insulation is on the scrap metal, the names and
22 addresses of the persons, groups or corporations from whom seller
23 purchased or obtained the materials; ~~and~~

24

1 7. If apparent on the scrap metal, the name of the manufacturer
2 and serial number of each item of scrap metal; and

3 8. If copper material, a copy of the noncommercial copper
4 vendor's valid notarized noncommercial copper vendor permit that
5 matches the name on the seller's photo identification required in
6 paragraph 1 of this subsection.

7 B. Municipalities or other political subdivisions may designate
8 the reporting methods and the format of the information required by
9 subsection A of this section, either written, electronic or
10 Internet-based. The Oklahoma Department of Agriculture, Food, and
11 Forestry shall designate an Internet-based reporting method that
12 applies to all geographic areas of the state that are not subject to
13 a local designation for Internet reporting.

14 C. Records required by this section shall be made available at
15 any time to any person authorized by law for such inspection.

16 D. Purchases of thirty-five (35) pounds or more of scrap metal
17 containing a manufacturer's serial number or other unique label or
18 mark shall be held separate and apart so that the purchased scrap
19 metal may be readily identifiable from all other purchases for a
20 period of not less than ten (10) days from the date of purchase.
21 During the holding period the scrap metal dealer may not change the
22 form of the purchased scrap metal and shall permit any person
23 authorized by law to make inspection of such materials.

1 E. Purchases of thirty-five (35) pounds or more of scrap metal
2 which does not contain a manufacturer's serial number or other
3 unique label or mark shall either be held for the same time and in
4 the same manner as required by subsection D of this section; or in
5 the alternative, the scrap metal dealer shall be required to obtain
6 a digital image of the items purchased, the seller of the items, a
7 copy of the bill of sale and a copy of the seller's photo
8 identification. The digital image shall contain a depiction that
9 clearly identifies the seller and the items sold and is captured in
10 the common JPEG format. The digital image shall be retained by the
11 purchaser for a minimum of ninety (90) days from the date of
12 purchase. For the purpose of this section a "digital image" means a
13 raster-based two-dimensional, rectangular array of static data
14 elements called pixels, intended for display on a computer monitor
15 or for transformation into another format, such as a printed page.

16 F. No purchase of any amount of scrap metal from an exempted
17 seller, as defined by Section 11-91 of this title, shall be subject
18 to any holding period or digital imaging identification required by
19 subsection D or E of this section.

20 G. It shall be unlawful for any person to sell copper material
21 to a scrap metal dealer without first obtaining a noncommercial
22 copper vendor permit. It shall be unlawful for any person to sell,
23 intend to sell or purchase copper material or copper wire from which
24 the actual or apparent insulation or other coating has been burned,

1 melted or exposed to heat or fire resulting in melting some or all
2 of the insulation or coating. It shall be unlawful for any person
3 to sell or purchase copper wire that is four-gauge or larger in
4 size. This subsection shall not apply to sales by or purchases from
5 an exempted seller as defined by Section 11-91 of this title.
6 Documentation of exempt seller status shall be provided to the scrap
7 metal dealer and, if requested by a law enforcement agency where the
8 purchase was made, shall be transmitted to the law enforcement
9 agency and may be kept as permanent record and made available for
10 public inspection.

11 H. It shall be unlawful for any scrap metal dealer to purchase
12 any item from a minor without having first obtained the consent, in
13 writing, of a parent or guardian of such minor. Such written
14 consent shall be kept with the book, record or other electronic
15 recording system required by subsection A of this section and, if
16 requested by a law enforcement agency where the purchase was made,
17 shall be transmitted to the law enforcement agency and may be kept
18 as a permanent record and made available for public inspection.

19 I. A scrap metal dealer shall obtain from each seller of a
20 scrap metal item regulated by the Oklahoma Scrap Metal Dealers Act,
21 or a parent or guardian on behalf of a minor, a written declaration
22 of ownership containing a legible signature of the seller. The
23 declaration of ownership shall be in the following form and shall
24 appear on the bill of sale or transaction ticket to be completed by

1 the seller in the presence of the purchaser at the time of the
2 transaction:

3 "I hereby affirm under penalty of prosecution that I am the
4 rightful owner of the hereon described merchandise; or I am an
5 authorized representative of the rightful owner and affirm that I
6 have been given authority by the rightful owner to sell the hereon
7 described merchandise.

8 _____
9 Signature"

10 J. If requested by a law enforcement agency, a scrap metal
11 dealer shall report in writing all purchases of scrap metal as
12 defined by the Oklahoma Scrap Metal Dealers Act within forty-eight
13 (48) hours following such purchase. The report shall contain all
14 the information required by this section.

15 K. A scrap metal dealer purchasing a vehicle from any person
16 shall be required to record the information required in subsection A
17 of this section and the make, model, license tag number and vehicle
18 identification number of the purchased vehicle. A person selling a
19 vehicle to a scrap metal dealer shall be required to present to the
20 dealer the title of the vehicle or a certificate of ownership form,
21 as approved by the Oklahoma Tax Commission and available at the
22 Oklahoma Tax Commission or through a motor license agent, in
23 addition to signing a declaration of ownership as required by
24 subsection I of this section. The scrap metal dealer shall not

1 provide payment for the vehicle until the certificate of ownership
2 has been submitted to the Oklahoma Tax Commission or a motor license
3 agent, and the vehicle is determined not to be stolen. The
4 provisions of this subsection shall not apply to sales, purchases or
5 other transfer of vehicles between scrap metal dealers and licensed
6 automotive dismantlers and parts recyclers.

7 L. The provisions of the Oklahoma Scrap Metal Dealers Act shall
8 not apply to the sale or purchase of aluminum beverage cans for
9 recycling purposes.

10 M. A scrap metal dealer shall not enter into any cash
11 transactions in excess of One Thousand Dollars (\$1,000.00) in
12 payment for the purchase of scrap metal that is listed in subsection
13 B of Section 11-93 of this title unless the transaction is made with
14 an exempted seller. Payment by check shall be issued and made
15 payable only to the seller of the scrap metal whose identification
16 information has been obtained pursuant to the provisions of this
17 section.

18 SECTION 3. AMENDATORY 59 O.S. 2011, Section 1425, as
19 amended by Section 4, Chapter 230, O.S.L. 2013, and as renumbered by
20 Section 7, Chapter 18, O.S.L. 2014 (2 O.S. Supp. 2018, Section 11-
21 94), is amended to read as follows:

22 Section 11-94. A. Any person found in violation of any
23 provision of the Oklahoma Scrap Metal Dealers Act, with the
24 exceptions as provided by subsections B, C and D of this section,

1 shall, upon conviction, be guilty of a misdemeanor and punished by a
2 fine of not more than Two Thousand Five Hundred Dollars (\$2,500.00)
3 per offense. Any person convicted of a second violation of the
4 Oklahoma Scrap Metal Dealers Act shall be guilty of a misdemeanor
5 and punished by a fine of not more than Five Thousand Dollars
6 (\$5,000.00) per offense or by imprisonment in the county jail for a
7 period of not more than six (6) months. Any person convicted of a
8 third or subsequent violation of the Oklahoma Scrap Metal Dealers
9 Act shall be guilty of a felony punishable by a fine of not more
10 than Ten Thousand Dollars (\$10,000.00) per offense or by
11 imprisonment in the custody of the Department of Corrections for a
12 period of not more than two (2) years, or by both such fine and
13 imprisonment.

14 B. Any person acting as a scrap metal dealer without a scrap
15 metal dealer license or a sales tax permit as required by the
16 Oklahoma Scrap Metal Dealers Act shall, upon conviction, be guilty
17 of a misdemeanor and punished by a fine of not more than Five
18 Hundred Dollars (\$500.00); provided, that each day of operation in
19 violation of the Oklahoma Scrap Metal Dealers Act shall constitute a
20 separate offense.

21 C. Any person who knowingly provides false information with
22 respect to the provisions of subsection I of Section ~~1423~~ 11-92 of
23 this title or Section 4 of this act shall, upon conviction, be
24 guilty of a felony and punished by a fine of Five Thousand Dollars

1 (\$5,000.00), or by imprisonment in the custody of the Department of
2 Corrections for a period of not more than two (2) years, or by both
3 such fine and imprisonment.

4 D. Any person convicted of purchasing ~~or selling~~ burnt copper
5 material or copper wire as prohibited by subsection G of Section
6 ~~1423~~ 11-92 of this title shall, upon first conviction, be guilty of
7 a misdemeanor and punished by a fine of Two Thousand Five Hundred
8 Dollars (\$2,500.00). Any person convicted of a second or subsequent
9 violation shall be guilty of a felony punishable by a fine of Five
10 Thousand Dollars (\$5,000.00), or by imprisonment in the custody of
11 the Department of Corrections for a period of not more than two (2)
12 years, or by both such fine and imprisonment.

13 E. Any person convicted of selling burnt copper material or
14 copper wire as prohibited by subsection G of Section 11-92 of this
15 title shall, upon first conviction, be guilty of a misdemeanor and
16 punished by a fine of Five Thousand Dollars (\$5,000.00). Any person
17 convicted of a second or subsequent violation shall be guilty of a
18 felony punishable by a fine of Ten Thousand Dollars (\$10,000.00), or
19 by imprisonment in the custody of the Department of Corrections for
20 a period of not more than two (2) years, or by both such fine and
21 imprisonment.

22 F. Any person convicted of purchasing with the intent to resell
23 burnt copper material or copper wire as prohibited by subsection G
24 of Section 11-92 of this title shall, upon first conviction, be

1 guilty of a felony and punished by a fine of Fifteen Thousand
2 Dollars (\$15,000.00). Any person convicted of a second or
3 subsequent violation shall be guilty of a felony punishable by a
4 fine of Twenty-five Thousand Dollars (\$25,000.00), or by
5 imprisonment in the custody of the Department of Corrections for a
6 period of not more than four (4) years, or by both fine and
7 imprisonment. An offender may request consideration for a drug
8 court program, if applicable.

9 G. Each scrap metal dealer convicted of a violation of the
10 Oklahoma Scrap Metal Dealers Act shall be reported to the Oklahoma
11 Tax Commission by the clerk of the court rendering such verdict.

12 ~~F.~~ H. The Tax Commission shall revoke the sales tax permit of
13 any person convicted of three separate violations of the Oklahoma
14 Scrap Metal Dealers Act. The person shall not be eligible to
15 receive a sales tax permit for such purpose for a period of one (1)
16 year following the revocation. The revocation procedure shall be
17 subject to notice and hearing as required by Section ~~1426~~ 11-95 of
18 this title.

19 SECTION 4. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 11-98a of Title 2, unless there
21 is created a duplication in numbering, reads as follows:

22 A. A noncommercial copper vendor permit shall be available to
23 any person who engages in business as a noncommercial copper vendor.
24 The permit shall be posted without a fee on the Oklahoma Department

1 of Agriculture, Food, and Forestry's website and shall automatically
2 be approved and be available for download once the applicant submits
3 the following information:

- 4 1. The full name and place of residence of the applicant;
- 5 2. Telephone number and email address of the applicant; and
- 6 3. The Social Security number of the applicant.

7 B. The original completed form shall be notarized and filed
8 with the Department. Copies of the permit may be presented to the
9 scrap metal dealer for a copper material transaction.

10 C. The noncommercial copper vendor permit shall be valid for
11 one (1) year from date of issuance. The noncommercial copper vendor
12 may thereafter renew the permit in the same manner as provided in
13 subsection A of this section.

14 D. The Department shall keep the original notarized forms on
15 file and maintain a record of all persons who have obtained a
16 noncommercial copper vendor permit, which shall be made available at
17 any time to any person authorized by law for such inspection.

18 SECTION 5. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 2368.32 of Title 68, unless
20 there is created a duplication in numbering, reads as follows:

21 A. Each state individual income tax return form for tax years
22 which begin after December 31, 2018, and each state corporate tax
23 return form for tax years beginning after December 31, 2018, shall
24 contain a provision to allow a donation from a tax refund for the

1 benefit of permitting noncommercial copper vendors in this state.
2 For purposes of this section, "noncommercial copper vendors" shall
3 have the same meaning as paragraph 3 of Section 11-91 of Title 2 of
4 the Oklahoma Statutes. The provision to allow donation shall read
5 as follows:

6 "Support of regulating and permitting noncommercial copper
7 vendors in this state. Check if you wish to donate from your tax
8 refund: () \$2, () \$5, or () \$____."

9 B. Except as otherwise provided for in this section, all monies
10 generated pursuant to subsection A of this section shall be paid to
11 the State Treasurer by the Oklahoma Tax Commission and placed to the
12 credit of the Noncommercial Copper Vendor Permit Revolving Fund
13 created in subsection C of this section.

14 C. There is hereby created in the State Treasury a revolving
15 fund for the Oklahoma Department of Agriculture, Food, and Forestry
16 to be designated the "Noncommercial Copper Vendor Permit Revolving
17 Fund". The fund shall be a continuing fund, not subject to fiscal
18 year limitations, and shall consist of all monies apportioned to the
19 fund pursuant to the provisions of this section. All monies
20 accruing to the credit of the fund are hereby appropriated and may
21 be budgeted and expended by the Oklahoma Department of Agriculture,
22 Food, and Forestry for the purpose of providing funding for
23 permitting noncommercial copper vendors. Expenditures from the fund
24 shall be made upon warrants issued by the State Treasurer against

1 claims filed as prescribed by law with the Director of the Office of
2 Management and Enterprise Services for approval and payment.

3 SECTION 6. This act shall become effective November 1, 2019.
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