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## Commerce and Trade HB 872

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## COMMERCE AND TRADE

*Secondary Metals Recyclers: Amend Chapter 1 of Title 10 of the Official Code of Georgia Annotated, Relating to Selling and Other Trade Practices, so as to Provide for the Comprehensive Revision of Provisions Regarding Secondary Metals Recyclers; Provide for Definitions, Procedures, Conditions, Limitations, and Prohibitions Relating to the Buying and Selling of Regulated Metal Property; Provide that Secondary Metals Recyclers Shall Only Purchase Coil and Certain Copper Wire from Certain Persons; Provide that Secondary Metals Recyclers Shall Only Purchase Burial Objects from Certain Persons; Change Certain Provisions Relating to Records Secondary Metals Recyclers Are Required to Maintain and Provide to Law Enforcement; Change Certain Provisions Relating to Inspections by Law Enforcement Officers; Change Certain Provisions Relating to Payment by Secondary Metals Recyclers for Regulated Metal Property; Provide for Powers, Duties, and Authority of Sheriffs and Other Law Enforcement Officers; Provide for Registration and Fees; Provide for Certain Data Bases to be Created and Maintained and Certain Forms and Rules and Regulation to be Promulgated Therefor; Provide for Criminal Offenses and Penalties; Provide for Forfeiture of Certain Property and Procedure Therefor; Provide for Local Regulation of the Sale and Purchase of Regulated Metal Property; Amend Article 1 of Chapter 8 of Title 16 of the Official Code of Georgia Annotated, Relating to Theft, so as to Make Certain Changes for Purposes of Conformity; Amend Part 36 of Article 2 of Chapter 3 of Title 40 of the Official Code of Georgia Annotated, Relating to Cancellation of Certificate of Title for Scrap, Dismantled, or Demolished Vehicles, Salvage Certificate of Title, Administrative Enforcement, and Removal of License Plates, so as to Revise Certain Provisions Relating to the Use of a Form to Transfer Title to a Motor Vehicle to be Sold or Disposed of as Scrap Metal or Parts; Provide for Verification that a Vehicle is Not Subject to Any Secured Interest or Lien; Provide for Additional Changes to Said Code Section, Relating to the Use of a Form to Transfer Title to a Motor Vehicle*

***to be Sold or Disposed of as Scrap Metal or Parts and Verification that a Vehicle is Not Subject to Any Secured Interest or Lien, Subject to a Contingency; Provide for Definitions; Amend Part 56 of Article 3 of Chapter 3 of Title 40 of the Official Code of Georgia Annotated, Relating to Satisfaction of Security Interests and Liens, so as to Change Certain Provisions Relating to the Release of Security Interests and Liens; Provide for Related Matters; Provide Effective Dates and Contingencies; Provide for Applicability; Amend an Act Approved May 11, 2011 (Ga. L. 2011, p. 355), Relating to Drivers' Licenses, so as to Revise Effective Dates and a Funding Contingency; Repeal Conflicting Laws; and for Other Purposes***

CODE SECTIONS: 10-1-350 to -59 (amended); 10-1-360 to -63 (new); 10-1-360.1 (new); 16-8-12 (amended); 40-3-36, -56 (amended)

BILL NUMBER: HB 872

ACT NUMBER: 590

GEORGIA LAWS: 2012 Ga. Laws 112

SUMMARY: The Act revises and supplements existing code as it regulates secondary metals recyclers. Important registry information was added to existing law. Secondary metals recyclers now must maintain more thorough records, including photocopies of the regulated property, of the seller's and deliverer's identification, and of the check or voucher provided. All registration information is now compiled into a Georgia Bureau of Investigation database and will be available statewide. Additional safeguards include restricted buying hours for secondary metals recyclers and further specification of what metals may be sold without the seller carrying a license.

EFFECTIVE DATE: O.C.G.A. §§ 10-1-350 to -63, 16-8-12, 40-3-36, -56, July 1, 2012; § 10-1-360.1, effective upon the date in which there is an appropriation of funds required to carry out the goal of the new Code section

### *History*

Secondary metals recyclers are buyers of scrap metal.<sup>1</sup> They appraise ferrous metals (metals containing significant quantities of iron or steel) or nonferrous metals (metals not containing significant quantities of iron or steel, including stainless steel beer kegs, copper, brass, aluminum, bronze, lead, zinc, and nickel) and in exchange, provide the seller with compensation.<sup>2</sup> Metals recyclers used to pay cash to a seller, but that practice encouraged theft of these regulated metals.<sup>3</sup> In 2007 alone, copper thefts within Atlanta increased by 57%.<sup>4</sup> In 2009, in response to this problem, the Georgia General Assembly promulgated a new law placing restrictions on how payments could be made; specifically, cash payments could not be made any earlier than twenty-four hours after copper, aluminum, or catalytic converters were sold, and checks could only be made out to the person who was recorded as delivering the property.<sup>5</sup> The secondary metals recycler was required to maintain a record, including: the name and address of the recycler; the date of the transaction; the weight, quantity, or volume of the regulated metal property; the consideration given for the transaction; a signed statement from the seller stipulating that he was entitled to sell; and a photocopy of the seller's identification card.<sup>6</sup> Additionally, if a seller or secondary metals recycler violated the law, they would be guilty of

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1. O.C.G.A. § 10-1-350 (2011).

2. *Id.*

3. See Kristina Torres, *After the Legislature*, ATLANTA J.-CONST., Apr. 17, 2012, at B1, available at 2012 WLNR 8044740; see also Kristina Torres & Janel Davis, *Metal Theft Bill Passes Senate*, ATLANTA J.-CONST., Mar. 1, 2012, at B3, available at 2012 WLNR 4442490.

4. Marcus K. Garner, *Atlanta Copper Thefts*, ATLANTA J.-CONST., Aug. 3, 2008, at D1, available at 2008 WLNR 14451164.

5. O.C.G.A. § 10-1-352.1(b)(1)–(2) (2011).

6. *Id.* § 10-1-351.

a misdemeanor.<sup>7</sup> If a seller or secondary metals recycler damaged property while obtaining the metals in excess of \$500, that person would be guilty of a felony resulting in imprisonment for one to five years and would potentially be subject to a fine of less than \$5,000.<sup>8</sup>

Unfortunately, despite the 2009 efforts, metal thefts spiked.<sup>9</sup> Assistant District Attorney Brandon Honsalek found that thieves commonly tear the copper coil out of air conditioning units attached to homes.<sup>10</sup> With copper selling for over three dollars a pound and a depressed housing market full of vacant homes, this problem had the potential to soar.<sup>11</sup> It was Mr. Honsalek's belief that the increase in thefts may have been the result of secondary metals recyclers "look[ing] the other way" and the difficulty of identifying stolen metals.<sup>12</sup> To regulate the market, lawmakers needed to find a way to trace and identify the sellers of the stolen metals.

Metal theft has also been a public safety concern.<sup>13</sup> Utility companies have reported increases in copper thefts, and some have even offered rewards for information leading to convictions.<sup>14</sup> Thieves stealing from electric systems have caused outages, and thieves tampering with power lines have greatly increased the danger of electrocution to anyone nearby.<sup>15</sup> For example, one thirty-four year old man who attempted to steal copper wire from a high-voltage transformer at a Georgia Power Company substation suffered second- and third-degree burns on his face, chest, and arm.<sup>16</sup>

Several industries, including insurance companies, strongly supported House Bill (HB) 872 because they were forced to pay for

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7. *Id.* § 10-1-357.

8. *Id.*

9. Video Recording of House Judiciary Non-Civil Committee Hearings, Feb. 28, 2012 at 1 hr., 16 min., 7 sec. (remarks by Rep. Christian Coomer (R-14th)), <http://www.house.ga.gov/Committees/en-US/CommitteeArchives146.aspx> [hereinafter House Video].

10. See Electronic Mail Interview with Brandon Honsalek, Assistant District Attorney in Alcovy Circuit (May 7, 2012) [hereinafter Honsalek Interview].

11. See Telephone Interview with Rep. Jason Shaw (R-176th) (Apr. 26, 2012) [hereinafter Shaw Interview].

12. Honsalek Interview, *supra* note 10.

13. Torres & Davis, *supra* note 3.

14. *Id.*

15. *Id.*

16. *Burn Victim Was Stealing, Police Say*, ATLANTA J.-CONST., June 19, 1997, at B1, available at 1997 WLNR 3151906.

the losses the metal thieves caused.<sup>17</sup> Even when the price of stolen metal was minimal, the damage done in the process was astronomical. For example, a thief who stole \$50 worth of copper from a church caused damage in excess of \$30,000 in the process of stealing the copper.<sup>18</sup> Without even including the cost of repairs and damages, in 2011, the Georgia Farm Bureau reported a \$1.5 million loss in actual metal stolen.<sup>19</sup>

The bill sponsor, Representative Jason Shaw (R-176th), believed that if Georgia could partially model South Carolina's scrap metal bill, the problem might be abated.<sup>20</sup> In subcommittee, he noted that after South Carolina strengthened its law regulating secondary metals recyclers, metal theft declined in South Carolina, whereas in Georgia, metal theft was on the rise.<sup>21</sup> South Carolina Code section 16-17-680, amended in 2012, provides that secondary metals recyclers may *only* pay by check for the purchase of copper, catalytic converters, and beer kegs.<sup>22</sup> In regulating nonferrous metals, it provides that a secondary metals recycler may not purchase any amount of nonferrous metals unless the seller falls within a specified, licensed, or validated category.<sup>23</sup> Because other southern states' laws were lax in comparison to South Carolina, there was the potential for thieves to drive across state lines to pursue their illegal endeavors.<sup>24</sup>

### *Bill Tracking of HB 872*

#### *Consideration and Passage by the House*

Representatives Jason Shaw (R-176th), Richard Smith (R-131st), Buzz Brockway (R-101st), Matt Ramsey (R-72nd), Ben Watson

17. See Janel Davis, *Metal Regulations*, ATLANTA J.-CONST., Feb. 20, 2012, at B1, available at 2012 WLNR 3629617.

18. Garner, *supra* note 4 (“The [metal] thieves caused more than \$30,000 in damage getting at less than \$50 worth of copper.”).

19. Torres & Davis, *supra* note 3.

20. See House Video, *supra* note 9, at 1 hr., 15 min., 4 sec. (remarks by Rep. Jason Shaw (R-176th)) (stating that when “you look at for instance what South Carolina did in [passing their metal theft bill, their metal thefts have] gone down while [Georgia’s] has gone up.”).

21. House Video, *supra* note 9, at 1 hr., 15 min., 4 sec. (remarks by Rep. Jason Shaw (R-176th)).

22. S.C. CODE ANN. § 16-17-680(D)(4) (Supp. 2012).

23. S.C. CODE ANN. § 16-17-680(D)(1) (Supp. 2012).

24. Steve Crawford, *Car Thieves Steal, Scrap Old Models*, AUGUSTA CHRON., May 20, 2012, at A1, available at 2012 WLNR 10748444.

(R-163rd), and Bruce Williamson (R-111th) sponsored HB 872.<sup>25</sup> The House read the bill for the first time on February 2, 2012.<sup>26</sup> The House read the bill for the second time on February 3, 2012.<sup>27</sup> The bill was assigned to the House Judiciary Non-Civil Committee, which favorably reported the bill on March 5, 2012.<sup>28</sup> The bill was read for the third time on March 7, 2012 and was passed and adopted that same day by a vote of 168 to 2.<sup>29</sup>

After its introduction, the bill went through several revisions.<sup>30</sup> Perhaps the biggest change to the bill was the method by which sellers of the recycled metal would be paid.<sup>31</sup> As originally introduced, the bill stated that payment could only be made by check or electronic funds transfer fifteen days after the transaction.<sup>32</sup> However, this requirement changed quickly. The two subsequent substitutes offered by the House Judiciary Non-Civil Committee removed the language requiring the fifteen-day waiting period but maintained that the payment could only be made through check or electronic funds transfer.<sup>33</sup> The waiting period discussed in the original version and the subsequent substitutes was meant to deal with the issues of “instant gratification.”<sup>34</sup> Though there are sellers that want to legitimately recycle metal, there are many sellers that steal metal, including copper coils from air conditioning units, in order to receive instant payment when recycling.<sup>35</sup> This waiting period was meant to address the criminal issue surrounding metals recycling.<sup>36</sup>

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25. State of Georgia Final Composite Status Sheet, HB 872, May 10, 2012.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*; Georgia House of Representatives Voting Record, HB 872 (Mar. 7, 2012).

30. State of Georgia Final Composite Status Sheet, HB 872, May 10, 2012.

31. Jeremy Redmon & Janel Davis, *In Brief*, ATLANTA J.-CONST., Mar. 20, 2012, at B3, available at 2012 WLNR 5888332.

32. HB 872, as introduced, § 1-3, p. 4, ln. 116–19, 2012 Ga. Gen. Assem.

33. Compare HB 872, as introduced, § 1-3, p. 4, ln. 116–19, 2012 Ga. Gen. Assem., with HB 872 (LC 29 5225S), § 1-5, p. 5–6, ln. 145–71, 2012 Ga. Gen. Assem., and HB 872 (HCSFA), § 1-5, p. 5–6, ln. 146–71, 2012 Ga. Gen. Assem.

34. Shaw Interview, *supra* note 11.

35. *Id.*

36. Representative Shaw explained that there is a high percentage of sellers looking for quick cash, thus by restricting the cash payment and establishing a waiting period, the legislators are attempting to reduce the high rate of crimes involving the stolen recycled metals. *Id.*

Another significant change to the bill affected the records required for all purchase transactions of the recycled metal property. The bill, as introduced, included certain items that the secondary metals recycler should maintain after the transaction: (1) a digital photograph of the recycled metal and (2) a photographed copy of the permit issued to the recycler by the sheriff permitting the recycler to engage in the transaction.<sup>37</sup> However, the House Committee substitute offered by the House Judiciary Non-Civil Committee did not include the requirement to maintain a photographed copy of the recycler's permit.<sup>38</sup> Instead, the House Committee substitute called for the seller to sign a document indicating that he or she understood that he or she was a secondary metals recycler and should not be engaging in the transaction, unless he or she was registered.<sup>39</sup>

#### *Consideration and Passage by the Senate*

Senator Renee Unterman (R-45th) sponsored HB 872 in the Senate.<sup>40</sup> The Senate read the bill for the first time on March 7, 2012.<sup>41</sup> The bill was assigned to the Senate Regulated Industries and Utilities Committee, which favorably reported the bill on March 21, 2012.<sup>42</sup> The bill was read for a second time on March 21, 2012 and for a third time on March 26, 2012.<sup>43</sup> On March 26, 2012, the Senate passed their substitute version of HB 872 by a vote of 43 to 4.<sup>44</sup>

The Senate made several changes to the bill. The Senate Regulated Industries and Utilities Committee offered a Senate Committee substitute.<sup>45</sup> In this substitute, a check or electronic funds transfer from the secondary metals recycler to the seller would be made fourteen days after the transaction.<sup>46</sup> The Senate Committee

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37. HB 872, as introduced, § 1-2, p. 2-3, ln. 50-77, 2012 Ga. Gen. Assem.

38. *Compare* HB 872, as introduced, § 1-2, p. 3, ln. 76-77, 2012 Ga. Gen. Assem., *with* HB 872 (LC 29 5225S), § 1-3, p. 3-4, ln. 79-117, 2012 Ga. Gen. Assem.

39. HB 872 (LC 29 5225S), § 1-3, p. 3-4, ln. 97-107, 2012 Ga. Gen. Assem.

40. State of Georgia Final Composite Status Sheet, HB 872, May 10, 2012.

41. *Id.*

42. *Id.*

43. *Id.*

44. Georgia Senate Voting Record, HB 872 (Mar. 26, 2012); State of Georgia Final Composite Status Sheet, HB 872, May 10, 2012.

45. State of Georgia Final Composite Status Sheet, HB 872, May 10, 2012.

46. HB 872 (LC 36 2182S), § 1-1, p. 7-8, ln. 233-238, 2012 Ga. Gen. Assem.



substitute also added further requirements regarding the records the secondary metals recycler must maintain.<sup>47</sup> The secondary metals recycler must keep a copy of the check or voucher paid to the seller in order to prove the seller of the regulated metal property received compensation for the recycled metal.<sup>48</sup> Also, instead of only maintaining a photocopy of the personal identification card of the person delivering the recycled metal, the secondary metals recycler must make a copy of the identification card of the person selling the regulated metal, as well, if the seller and deliverer are different people.<sup>49</sup> In addition, there must be a photo, videotape, or other digital recording that depicts the facial image of the person selling the recycled metal and the deliverer, if the seller and deliverer are different people.<sup>50</sup> Further, the Senate Committee substitute required any document, report, license, and permit to be photocopied and kept by the secondary metals recycler.<sup>51</sup> Finally, the Senate Committee substitute sought to amend the Code by prohibiting the sale or purchase of recycled metals between the hours of seven p.m. and seven a.m.<sup>52</sup> All these changes made in the Senate Committee substitute were incorporated into the final version of the bill adopted by both the House and Senate.<sup>53</sup>

### *Conference Committee*

The House and Senate each insisted on their version of the bill; therefore, on March 29, 2012, a Conference Committee was appointed.<sup>54</sup> The Conference Committee offered a Conference Committee substitute in which the seller could elect to receive the check or voucher at the time of the transaction rather than waiting for fourteen days to receive a mailed check, voucher, or electronic funds transfer.<sup>55</sup> However, if the seller chose to immediately receive the

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47. HB 872 (LC 36 2182S), 2012 Ga. Gen. Assem.

48. *Id.* § 1-1, p. 5, ln. 135–37.

49. *Id.* § 1-1, p. 5, ln. 154–56.

50. *Id.* § 1-1, p. 5, ln. 157–60.

51. *Id.* § 1-1, p. 6, ln. 168–72.

52. *Id.* § 1-1, p. 10, ln. 323–24.

53. HB 872 (HB 872/AP), 2012 Ga. Gen. Assem.

54. State of Georgia Final Composite Status Sheet, HB 872, May 10, 2012.

55. HB 872 (LC 36 2203S), § 1-1, p. 7, ln. 217–31, 2012 Ga. Gen. Assem.; Laura Diamond et al., *Legislature In Brief*, ATLANTA J.-CONST., Feb. 24, 2012, at B3, available at 2012 WLNR 3978178;

check or voucher, he or she would have to wait three days to redeem the voucher or cash the check.<sup>56</sup> The language in the Conference Committee substitute was transferred to the final version of the bill, which ultimately passed in both the House and the Senate.<sup>57</sup> On March 29, 2012, the final version of the bill passed the House by a vote of 159 to 8 and passed the Senate by a vote of 50 to 0.<sup>58</sup>

On April 9, 2012, the bill was sent to Governor Nathan Deal, and on April 16, 2012, Governor Deal signed the bill into law.<sup>59</sup>

### *The Act*

The Act amends Chapter 1 of Title 10 of the Official Code of Georgia Annotated with the purpose of adding more regulations for secondary metals recyclers.<sup>60</sup>

Section 1-1 of Part 1 of the Act amends Article 14 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated by defining five new terms and revising existing definitions.<sup>61</sup> Also, this section explains when a secondary metals recycler is allowed to purchase coil.<sup>62</sup> Secondary metals recyclers are not allowed to purchase coil unless it is purchased from: (1) a licensed contractor who provides his or her valid license at the time of the sale to be photocopied and kept on file with the secondary metals recycler; (2) a seller who has “verifiable documentation” that the coil being sold is the “result of a replacement of condenser coils or a heating or air-conditioning system performed” by a licensed contractor; or (3) a secondary metals recycler who is able to provide required documentation.<sup>63</sup>

Secondary metals recyclers are also not allowed to purchase “any copper wire which appears to have been exposed to heat, charred, or

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State of Georgia Final Composite Status Sheet, HB 872, May 10, 2012.

56. HB 872 (LC 36 2203S), § 1-1, p. 7, ln. 217–31, 2012 Ga. Gen. Assem.

57. HB 872 (HB 872/AP), 2012 Ga. Gen. Assem.; State of Georgia Final Composite Status Sheet, HB 872, May 10, 2012.

58. Georgia House of Representatives Voting Record, HB 872 (Mar. 29, 2012); Georgia Senate Voting Record, HB 872 (Mar. 29, 2012); State of Georgia Final Composite Status Sheet, HB 872, May 10, 2012.

59. State of Georgia Final Composite Status Sheet, HB 872, May 10, 2012.

60. O.C.G.A. §§ 10-1-350 to -63, -360.1 (Supp. 2012); O.C.G.A. § 16-8-12 (Supp. 2012); O.C.G.A. § 40-3-36, -56 (Supp. 2012).

61. *Compare* O.C.G.A. § 10-1-350 (2011), with O.C.G.A. § 10-1-350 (Supp. 2012).

62. O.C.G.A. § 10-1-351 (Supp. 2012).

63. *Id.* § 10-1-351(a).

burned in an attempt to remove insulation surrounding [the copper wire]”<sup>64</sup> unless the wire is purchased from: (1) a licensed contractor<sup>65</sup> who provides a copy of his or her valid license at the time of the sale; (2) a seller who provides a copy of the police report showing that the seller’s real property was involved in a fire; or (3) a secondary metals recycler who provides the documentation required by (1) and (2) that he or she received from the contractor or seller.<sup>66</sup>

Further, secondary metals recyclers may only purchase a burial object from: (1) a licensed funeral director, cemetery owner, manufacturer, or distributor of burial objects who provides his or her valid license at the time of the sale to be photocopied and kept on file with the secondary metals recycler; (2) a seller who has verifiable documents that he or she is the “rightful owner of the burial object”; or (3) a secondary metals recycler who is able to provide required documentation.<sup>67</sup>

Also, after any purchase transaction, a secondary metals recycler is required to maintain a record of the following information: (1) “the name and address of the secondary metals recycler”; (2) “the date of the transaction”; (3) “the weight, quantity, or volume and description of the type of regulated metal property [being] purchased”; (4) a photograph of the regulated metal property being purchased; (5) a copy of the check being given as consideration for the purchase; (6) “a signed and sworn affidavit<sup>68</sup> from the seller” stating that he or she is “the rightful owner of the regulated metal property” and is allowed to sell it and that he or she understands the definition of a secondary metals recycler; (7) a scan or photocopy of a valid identification card of the seller and deliverer of the regulated metal property and a photograph of the seller and deliverer, if the seller is different than the deliverer; (8) “the vehicle license tag number or vehicle identification number, state of issue, and the type of vehicle” being

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64. *Id.* § 10-1-351(b). When insulation that surrounds copper wiring has been burned off, it is one indication that the wiring has been stolen because thieves want to burn off the identification marks placed on the insulation by the utility companies. Margaret Newkirk, *Task Force Targets Stolen Copper*, ATLANTA J.-CONST., Jan. 1, 2011, at B1, available at 2011 WLNR 30160.

65. A licensed contractor is one who is licensed pursuant to Chapter 14 of Title 43 of the Official Code of Georgia Annotated. O.C.G.A. § 10-1-351(b)(1) (Supp. 2012).

66. *Id.* § 10-1-351(b).

67. *Id.* § 10-1-352.

68. *Id.* § 10-1-353(d). (The Act makes it unlawful to make a false statement in the required affidavit, which will be “punishable as an act of false swearing.”)

used to deliver the regulated metal property; and (9) a photocopy of the documentation required.<sup>69</sup>

This section also revises the way a secondary metals recycler may pay the seller of the regulated metal property.<sup>70</sup> In an effort to curb “instant gratification,” whereby some sellers seek to gain by selling the regulated metal property, cash payments are now prohibited.<sup>71</sup> A secondary metals recycler is only permitted to pay by “check, electronic funds transfer, or voucher.”<sup>72</sup> This section also requires that the seller wait at least three days from the date of the transaction to redeem the voucher, and only “the person whose name appears on the voucher as the seller or [] such person’s heirs or legal representative” may redeem the voucher.<sup>73</sup> This three-day requirement is also an attempt to curb “instant gratification.”

The Act also makes a minor change regarding the restitution available to the lawful owner of the regulated metal property when he or she recovers stolen regulated metal property from a secondary metals recycler.<sup>74</sup> Now, the rightful owner of the regulated metal property will receive restitution from either the seller or deliverer who is convicted of the wrong acts rather than receiving restitution from the person who sold the regulated metal property to the secondary metals recycler.<sup>75</sup>

Further, the Act makes it unlawful to (1) “engage in the purchase or sale of regulated metal property between the hours” of seven p.m. and seven a.m. and (2) “to give a false or altered personal identification card, vehicle license tag number, or vehicle identification number to a secondary metals recycler as part of a purchase transaction.”<sup>76</sup>

The Act also creates a requirement that all secondary metals recyclers must be registered with the sheriff of each county in which they maintain a place of business before purchasing any regulated

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69. *Id.* § 10-1-353(a).

70. *Id.* § 10-1-355.

71. O.C.G.A. § 10-1-355 (Supp. 2012).

72. *Id.* § 10-1-355(a).

73. *Id.* § 10-1-355(c).

74. *Id.* § 10-1-357(b).

75. *Compare* O.C.G.A. § 10-1-354(b) (2011), *with* O.C.G.A. § 10-1-357(b) (Supp. 2012).

76. O.C.G.A. § 10-1-359 (Supp. 2012).

metal property.<sup>77</sup> The Act creates a statewide electronic database to maintain a record of each registration so that all Georgia law enforcement agents may search the database.<sup>78</sup> The Act also changes the punishment for any person who buys or sells regulated metal property in violation of the Code.<sup>79</sup>

The Act also defines additional terms and declares certain items contraband, which are subject to forfeiture if discovered.<sup>80</sup> Finally, section 1-1 of the Act permits the “[p]olitical subdivisions” of Georgia to “enact rules, regulations, codes, ordinances, and other laws” related to the occupational tax of secondary metals recyclers and land use and zoning related to secondary metals recyclers.<sup>81</sup>

Next, section 1-2 of the Act amends Article 1 of Chapter 8 of Title 16 of the Official Code of Georgia Annotated relating to theft.<sup>82</sup> Paragraph 9 of subsection (a) of Code section 16-8-12 replaces the term “ferrous metals” with “regulated metal property.”<sup>83</sup>

Section 1-3 of the Act amends Article 2 of Chapter 3 of Title 40 of the Official Code of Georgia Annotated “relating to cancellation of certificate of title for scrap, dismantled, or demolished vehicles, salvage certificate of title, administrative enforcement, and removal of license plates.”<sup>84</sup> Any person interested in recycling a “junk” vehicle is now required to provide a certification that the vehicle is not subject to any secured interest or lien.<sup>85</sup>

Section 1-4 of the Act adds a new subsection to Code section 40-3-36, which explains that a “scrap metal processor,” “secondary metals recycler,” and “used motor vehicle parts dealer” will have the same meaning as set forth in their respective Code sections.<sup>86</sup>

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77. *Id.* § 10-1-360(a).

78. *Id.* § 10-1-360(b).

79. Compare O.C.G.A. § 10-1-357 (2011), with O.C.G.A. § 10-1-361 (Supp. 2012).

80. O.C.G.A. § 10-1-362 (Supp. 2012). The following are contraband: (1) any property which is “used or intended for use” in facilitating a crime and “any proceeds derived . . . therefrom”; and (2) any weapon which is used or available for use in facilitating a crime. *Id.*

81. O.C.G.A. § 10-1-363 (Supp. 2012).

82. *Id.* § 16-8-12.

83. *Id.* § 16-8-12(a)(9).

84. *Id.* § 40-3-36.

85. *Id.* § 40-3-36(a)(2)(J).

86. *Id.* § 40-3-36(j). Scrap metal processor is defined in Code section 43-43-1; secondary metals recycler is defined in Code section 10-1-350, and used motor vehicle parts dealer is defined in Code section 43-47-2. *Id.*

Section 1-5 of this Act amends Article 3 of Chapter 3 of Title 40 of the Official Code of Georgia Annotated relating to satisfaction of security interests and liens.<sup>87</sup> For any vehicle that is at least twelve model years old, any security interest or lien will be considered to be satisfied so that the seller may recycle the vehicle.<sup>88</sup> This provides an exception to the requirement that all recycled vehicles must be free of any security interest or lien before being recycled.<sup>89</sup>

Finally, Part 2 of the Act adds a new Code section to Chapter 1 of Title 10 of the Official Code of Georgia Annotated relating to selling and other trade practices.<sup>90</sup> All secondary metals recyclers must provide all of the information that is required to be obtained for each transaction to the Georgia Bureau of Investigation (GBI) so that the GBI can establish and maintain the statewide database.<sup>91</sup>

### *Analysis*

#### *Constitutionality*

This bill will not likely raise any federal or state constitutional issues. As Assistant District Attorney Brandon Honsalek noted, there are no provisions in this statute that have not been applied on some level to different types of businesses in the state.<sup>92</sup> For example, pawn shops have not been challenged on their strict hours for buying and selling, so constitutional objections in that arena are unlikely to arise.<sup>93</sup>

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87. O.C.G.A. § 40-3-56(a)(1), (c) (Supp. 2012).

88. *Id.* § 40-3-56(c).

89. The holder of any security interest or lien must execute a release within ten days. *Id.* § 40-3-56(a)(1). However, for vehicles older than eleven years, any security interest or lien “shall be considered satisfied and a release shall not be required after four years from the date of issuance of a title on which such lien or security interest is listed.” *Id.* § 40-3-56(c).

90. *Id.* § 10-1-360.1.

91. *Id.* § 10-1-360.1.

92. Honsalek Interview, *supra* note 10.

93. *Id.*

*Burden*

Despite the fact that the metal recycling industry as a whole supports the stricter law,<sup>94</sup> there is no question that the heightened registration requirements will burden secondary metals recyclers. Though the 2009 amendments required secondary metals recyclers to maintain a record, they now must maintain photographs of a clear facial image of the person selling the metal *and* the person delivering the metal.<sup>95</sup> The secondary metals recycler must now further maintain an extensive record of each individual sale they make.<sup>96</sup> Though the bill was constructed with secondary metals recyclers in mind, the real incentive came from a frustrated insurance industry making payouts for stolen goods and from people involved in the criminal justice system seeing an increase in thefts.<sup>97</sup>

*Waiting Period*

Representative Jason Shaw (R-176th), the bill's sponsor, noted that the biggest compromise made during negotiations was removing the fourteen-day waiting period.<sup>98</sup> The original rationale was that because instant gratification was a primary reason for metal thefts, if secondary metals recyclers held on to payment for fourteen days prior to mailing out the checks, the thieves would eventually tire of waiting.<sup>99</sup> Additionally, a waiting period implicitly creates an incentive for the unlawful seller to give a real address.<sup>100</sup> As such, the problem of finding the seller post sale could be abated. To gain the industry's support, which was of vital importance in the creation of this bill, the General Assembly, perhaps to their detriment, withdrew this provision.<sup>101</sup>

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94. Shaw Interview, *supra* note 11.

95. Compare O.C.G.A. § 10-1-351 (2011), with O.C.G.A. § 10-1-353(a)(9) (Supp. 2012).

96. O.C.G.A. § 10-1-353 (Supp. 2012).

97. Shaw Interview, *supra* note 11.

98. *Id.*

99. *See id.*

100. *Id.*

101. *See* Kristina Torres & Christopher Quinn, *At the Legislature*, ATLANTA J.-CONST., Mar. 29, 2012, at A1, available at 2012 WLNR 6656511 (noting that the recycling industry fought the Senate's inclusion of a fourteen-day waiting period).

*Compared: South Carolina*

Importantly, though subcommittee representatives spoke of strengthening Georgia's law to look more like South Carolina's, Georgia did not implement identical registration requirements.<sup>102</sup> South Carolina, unlike Georgia, requires that a seller must fall within a licensed or validated category.<sup>103</sup> Both states require secondary metals recyclers to obtain the proper registration, but only South Carolina requires sellers to obtain permits from their local sheriff.<sup>104</sup> Interestingly, in a South Carolina county that requires sellers to obtain permits, copper thefts have decreased by 15%.<sup>105</sup> Even though Georgia strengthened its scrap metals recycling laws, perhaps the General Assembly did not go far enough.

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102. See House Video, *supra* note 9, at 1 hr., 15 min., 4 sec. (remarks by Rep. Jason Shaw (R-176th)); compare S.C. CODE ANN. § 16-17-680(D)(1) (Supp. 2012), with O.C.G.A. § 10-1-360 (Supp. 2012).

103. S.C. CODE ANN. § 16-17-680(D)(1) (Supp. 2012).

104. *Stricter SC Laws on Scrap Metal Sees Fewer Thefts*, SCNOW.COM (Mar. 26, 2012), <http://www2.scnw.com/news/2012/mar/26/stricter-sc-laws-scrap-metal-sees-fewer-thefts-ar-3479673/>.

105. *Id.*