

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2012-46
HOUSE BILL 199

AN ACT TO RECODIFY THE PROVISIONS OF THE GENERAL STATUTES THAT REGULATE PRECIOUS METALS BUSINESSES, PAWNBROKERS AND CASH CONVERTERS, AND SECONDARY METALS RECYCLERS, AND TO STRENGTHEN METALS THEFT PREVENTION BY REQUIRING PERMITTING OF NONFERROUS METALS PURCHASERS, MAKING IT A CRIME TO CUT, MUTILATE, DEFACE, OR OTHERWISE INJURE THE PROPERTY OF ANOTHER TO OBTAIN NONFERROUS METALS, CREATING RELATED CRIMINAL OFFENSES, AND MAKING OTHER RELATED CHANGES TO THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"Article 45.

"Pawnbrokers, Metal Dealers, and Scrap Dealers."

SECTION 2. Chapter 91A of the General Statutes is recodified as Part 1 of Article 45 of Chapter 66 of the General Statutes, G.S. 66-385 through G.S. 66-399.

SECTION 3. The title of Part 1 of Article 45 of Chapter 66 of the General Statutes, as enacted by Section 2 of this act, reads as rewritten:

"Part 1. Pawnbrokers and Cash Converters Modernization Act. Converters."

SECTION 4. G.S. 91A-1, as recodified by Section 2 of this act, reads as rewritten:
"§ 66-385. Short title.

This ~~Chapter~~Part shall be known and may be cited as the Pawnbrokers and Cash Converters Modernization Act."

SECTION 5. G.S. 91A-2, as recodified by Section 2 of this act, reads as rewritten:
"§ 66-386. Purpose.

The making of pawn loans and the acquisition and disposition of tangible personal property by and through pawnshops and cash converters vitally affects the general economy of this State and the public interest and welfare of its citizens. In recognition of these facts, it is the policy of this State and the purpose of the Pawnbrokers and Cash Converters Modernization Act to do all of the following:

- (1) Ensure a sound system of making loans and acquiring and disposing of tangible personal property by and through pawnshops, and to prevent unlawful property transactions, particularly in stolen property, through licensing and regulating pawnbrokers.
- ~~(1a)~~(2) Ensure a sound system of acquiring and disposing of tangible personal property by and through cash converters and to prevent unlawful property transactions, particularly in stolen property, by requiring record keeping by cash converters.
- ~~(2)~~(3) Provide for pawnbroker licensing fees and investigation fees of licensees.
- ~~(3)~~(4) Ensure financial responsibility to the State and the general public.
- ~~(4)~~(5) Ensure compliance with federal and State laws.
- ~~(5)~~(6) Assist local governments in the exercise of their police authority."

SECTION 6. G.S. 91A-3, as recodified by Section 2 of this act, reads as rewritten:
"§ 66-387. Definitions.

The following definitions apply in this ~~Chapter~~Part:

...



- (2) Cash converter. – A person engaged in the business of purchasing goods from the public for cash at a permanently located retail store who holds himself or herself out to the public by signs, advertising, or other methods as engaging in that business. The term does not include any of the following:
- a. Pawnbrokers.
 - b. Persons whose goods purchases are made directly from manufacturers or wholesalers for their inventories.
 - c. Precious metals dealers, to the extent that their transactions are regulated under ~~Article 25 of Chapter 66 of the General Statutes~~ Part 2 of this Article.
 - d. Purchases by persons primarily in the business of obtaining from the public, either by purchase or exchange, used clothing, children's furniture, and children's products, provided the amount paid for the individual item purchased is less than fifty dollars (\$50.00).
 - e. Purchases by persons primarily in the business of obtaining from the public, either by purchase or exchange, sporting goods and sporting equipment, provided the amount paid for the individual item purchased is less than fifty dollars (\$50.00).

....."
SECTION 7. G.S. 91A-5, as recodified by Section 2 of this act, reads as rewritten:
"§ 66-389. License required.

It is unlawful for any person, firm, or corporation to establish or conduct a business of pawnbroker unless such person, firm, or corporation has procured a license to conduct business in compliance with the requirements of this ~~Chapter~~ Part."

SECTION 8. G.S. 91A-6(c) and (d), as recodified by Section 2 of this act, read as rewritten:

"(c) Licenses shall be granted under this ~~Chapter~~ Part by the city if the pawnshop is to be operated within the corporate limits of a city as defined by G.S. 160A-1, and by a county if it is to be operated outside the corporate limits of any city as defined by G.S. 160A-1.

(d) Any license granted under this ~~Chapter~~ Part may be revoked by the county or city issuing it, after a hearing, for substantial abuses of this ~~Chapter~~ Part by the licensee."

SECTION 9. G.S. 91A-7(e), as recodified by Section 2 of this act, reads as rewritten:

"(e) Except as otherwise provided in this ~~Chapter~~ Part, any person presenting a pawn ticket to a pawnbroker is presumed to be entitled to redeem the pledged goods described on the ticket."

SECTION 10. G.S. 91A-10(a), as recodified by Section 2 of this act, reads as rewritten:

"§ 66-395. Prohibitions.

(a) A pawnbroker shall not:

- (1) Accept a pledge from a person under the age of 18 years.
- (2) Make any agreement requiring the personal liability of a pledgor in connection with a pawn transaction.
- (3) Accept any waiver, in writing or otherwise, of any right or protection accorded a pledgor under this ~~Chapter~~ Part.
- (4) Fail to exercise reasonable care to protect pledged goods from loss or damage.
- (5) Fail to return pledged goods to a pledgor upon payment of the full amount due the pawnbroker on the pawn transaction. In the event such pledged goods are lost or damaged while in the possession of the pawnbroker, it shall be the responsibility of the pawnbroker to replace the lost or damaged goods with merchandise of like kind and equivalent value. In the event the pledgor and pawnbroker cannot agree as to replacement, the pawnbroker shall reimburse the pledgor in the amount of the value agreed upon pursuant to ~~G.S. 91A-7(b)~~ G.S. 66-391(b).
- (6) Take any article in pawn, pledge, or as security from any person, which is known to such pawnbroker to be stolen, unless there is a written agreement with local or State law enforcement.

- (7) Sell, exchange, barter, or remove from the pawnshop any goods pledged, pawned, or purchased before the earlier of seven days after the date the pawn ticket record is electronically reported in accordance with ~~G.S. 91A-7(d)~~G.S. 66-391(d) or 30 days after the transaction, except in case of redemption by pledgor or items purchased for resale from wholesalers.
- (8) Operate more than one pawnshop under one license, and such shop must be at a permanent place of business.
- (9) Take as pledged goods any manufactured mobile home, recreational vehicle, or motor vehicle other than a motorcycle."

SECTION 11. G.S. 91A-11, as recodified by Section 2 of this act, reads as rewritten:

"§ 66-396. Penalties.

(a) Every person, firm, or corporation, their guests or employees, who shall knowingly violate any of the provisions of this ~~Chapter, Part~~, shall, on conviction thereof, be deemed guilty of a Class 2 misdemeanor. If the violation is by an owner or major stockholder or managing partner of the pawnshop and the violation is knowingly committed by the owner, major stockholder, or managing partner of the pawnshop, then the license of the pawnshop may be suspended at the discretion of the court.

(b) The provision of subsection (a) of this section shall not apply to violations of ~~G.S. 91A-10(a)(6)~~G.S. 66-395(a)(6) or G.S. 66-395(b) which shall be prosecuted under the North Carolina criminal statutes.

(c) Any contract of pawn the making or collecting of which violates any provision of this ~~Chapter, Part~~, except as a result of accidental or bona fide error of computation, shall be void, and the licensee shall have no right to collect, receive or retain any interest or fee whatsoever with respect to such pawn."

SECTION 12. G.S. 91A-12, as recodified by Section 2 of this act, reads as rewritten:

"§ 66-397. Municipal or county authority.

All of the counties and cities as defined by G.S. 160A-1 may by ordinance adopt the provisions of this ~~Chapter-Part~~ and may adopt such further rules and regulations as the governing bodies of the counties and cities deem appropriate; provided, however, no county or city may regulate:

- (1) Interest, fees, or recovery charges;
- (2) Hours of operation, unless such regulation applies to businesses generally;
- (3) The nature of the business or type of pawn transaction; or
- (4) License fees in excess of rates set by the State."

SECTION 13. G.S. 91A-13, as recodified by Section 2 of this act, reads as rewritten:

"§ 66-398. License renewal.

Notwithstanding any provision of this ~~Chapter-Part~~ to the contrary, any person, firm, or corporation licensed as a pawnbroker on or before October 1, 1989, shall continue in force until the natural expiration thereof and all other provisions of this ~~Chapter-Part~~ shall apply to such license. Such pawnbroker shall be eligible for renewal of his license upon its expiration or subsequent renewals, provided such license complies with the requirements for renewal that were in effect immediately prior to October 1, 1989."

SECTION 14. G.S. 91A-14, as recodified by Section 2 of this act, reads as rewritten:

"§ 66-399. Bond.

Every person, firm, or corporation licensed under this ~~Chapter-Part~~ shall, at the time of receiving the license, file with the city or county issuing the license a bond payable to such city or county in the sum of five thousand dollars (\$5,000), to be executed by the licensee, and by two responsible sureties or a surety company licensed to do such business in this State, to be approved by the city or county, which shall be for the faithful performance of the requirements and obligations pertaining to the business so licensed. The city or county may sue for forfeiture of the bond upon a breach thereof. Any person who obtains a judgment against a pawnbroker and upon which judgment execution is returned unsatisfied may maintain an action in his own name upon the bond, to satisfy the judgment."

SECTION 15. Article 25 of Chapter 66 of the General Statutes is recodified as Part 2 of Article 45 of Chapter 66 of the General Statutes, G.S. 66-405 through G.S. 66-414.

SECTION 16. The title of Part 2 of Article 45 of Chapter 66 of the General Statutes, as enacted by Section 15 of this act, reads as rewritten:

"Part 2. Regulation of Precious Metal Businesses."

SECTION 17. G.S. 66-164, as recodified by Section 15 of this act, reads as rewritten:

"§ 66-406. Definitions.

The following definitions apply in this ~~Article~~Part:

- (1) Dealer. – A person who purchases precious metals from the public, other than by an exempted transaction, in the form of jewelry, flatware, silver services, or other forms and holds himself or herself out to the public by signs, advertising, or other methods as engaging in such purchases, including any independent contractor purchasing precious metals under any arrangement in any department store. An exempted transaction is one that is (i) not considered in determining whether a person is a dealer under this ~~Article~~Part and (ii) not subject to the requirements of this ~~Article~~Part, even if it is entered into by a person otherwise defined and regulated as a dealer. Exempted transactions are:
 - a. Purchases directly from manufacturers or wholesalers of precious metals by permanently located retail merchants for their inventories.
 - b. Pawns, pledges, or purchases of items made of precious metals, if the transaction is entered into by a licensed pawnbroker and the transaction is regulated under the provisions of ~~Chapter 91A of the General Statutes~~Part 1 of this Article.
 - c. The acquisition of precious metals by a permanently located retail merchant through barter or exchange for other items sold in the ordinary course of the merchant's business, provided that the seller does not receive, as part of the transaction, any sum of money or any gift card or stored-value card, unless the card is redeemable only at that merchant's business.

.....
SECTION 18. G.S. 66-165, as recodified by Section 15 of this act, reads as

rewritten:

"§ 66-407. Permits.

...
(b) Employee Requirements. – Every employee engaged in the precious metals purchasing business shall, within two business days of being so engaged, register his or her name and address with the local law enforcement agency and have his or her photograph taken by the agency. The employee also shall consent to a criminal history record check, which shall be performed by the local law enforcement agency. A person who refuses to consent to a criminal history record check shall not be employed by a dealer required to be licensed under this section. A person who has been convicted of a felony involving a crime of moral turpitude, larceny, receiving stolen goods, or of similar charges shall not be employed by a dealer required to be licensed under this section, unless the person has had his or her rights of citizenship restored pursuant to Chapter 13 of the General Statutes for five years or longer immediately preceding the date of registration. The agency shall issue to the employee a certificate of compliance with this section upon the applicant's payment of the sum of ten dollars (\$10.00) to the agency. The certificate shall be renewed annually for a three-dollar (\$3.00) fee and shall be posted in the work area of the registered employee. An employee is not subject to the requirements of this subsection if the employee is engaged in the precious metals purchasing business only incidentally to his or her main job responsibilities, and each precious metals transaction with which the employee is involved is overseen by a licensed dealer or registered employee. All records of transactions must be signed by the licensed dealer or registered employee at the time of the transaction, as required under ~~G.S. 66-169(a)~~G.S. 66-410(a).

The Department of Justice may provide a criminal history record check to the local law enforcement agency for an employee engaged in the precious metals business. The agency shall provide to the Department of Justice, along with the request, the fingerprints of the employee, any additional information required by the Department of Justice, and a form signed by the employee consenting to the check of the criminal record and to the use of the fingerprints and

other identifying information required by the State or national repositories. The employee's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The agency shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each employee a fee for conducting the checks of criminal history records authorized by this subsection.

(c) **Special Occasion Permit.** – A special occasion permit authorizes the permittee to purchase precious metals as a dealer participating in any trade shows, antique shows, and crafts shows conducted within the State. A special occasion permit shall be issued by any local law enforcement agency; provided, however, that a permittee under subsection (a) of this section shall apply for a special occasion permit with the local law enforcement agency that issued the dealer's permit. The Department of Public Safety shall approve the forms for both the application and the permit. The application shall be given under oath and notarized. A 30-day waiting period from the date of filing of the application is required prior to initial issuance of a permit.

Any dealer applying to a local law enforcement agency for a special occasion permit shall furnish the local law enforcement agency with the information required in an application for a dealer's permit as set forth in subsection (a) of this section. In addition, the applicant shall provide a physical address where any item included in a dealer purchase will be held for the period required under ~~G.S. 66-170~~, G.S. 66-411. The physical address shall be the location where the purchase was made, unless another physical address within the law enforcement jurisdiction where the purchase was made is approved by the law enforcement agency that issues the permit. The items shall be available at all reasonable times for inspection on the premises by law enforcement agencies.

If the applicant for a special occasion permit is a partnership or association, all persons owning a ten percent (10%) or more interest in the partnership or association shall comply with the provisions of this subsection. Any such permits shall be issued in the name of the partnership or association.

If the applicant for a special occasion permit is a corporation, each officer, director and stockholder owning ten percent (10%) or more of the corporation's stock, of any class, shall comply with the provisions of this subsection. Any such permits shall be issued in the name of the corporation.

No permit shall be issued to an applicant who has been convicted of a felony involving a crime of moral turpitude, or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or any other state, unless the applicant has had his or her rights of citizenship restored pursuant to Chapter 13 of the General Statutes for five years or longer immediately preceding the date of application. In the case of a partnership, association, or corporation, no permit shall be issued to any applicant with an officer, partner, or director who has been convicted of a felony involving a crime of moral turpitude, or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or any other state, unless that person has had his or her rights of citizenship restored pursuant to Chapter 13 of the General Statutes for five years or longer immediately preceding the date of application.

The Department of Justice may provide a criminal history record check to the local law enforcement agency for a person who has applied for a permit through the agency. The agency shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The agency shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection.

The filing fee for a special occasion permit application is one hundred eighty dollars (\$180.00) to provide for the administrative cost of the local law enforcement agency including purchase of required forms and the cost of conducting the criminal history record check of the applicant. The fee is not refundable even if the permit is denied or is later suspended or revoked. A special occasion permit is in addition to and not in lieu of other business licenses and is not transferable. No person other than the dealer named on the permit and that dealer's employees may engage in the business of purchasing precious metals under the authority of the permit.

A special occasion permit is valid for 12 months from the date issued, unless earlier surrendered, suspended, or revoked. Application for renewal of a permit for an additional 12 months shall be on a form approved by the Department of Public Safety and shall be accompanied by a nonrefundable renewal fee of one hundred eighty dollars (\$180.00).

Each special occasion permit shall be posted in a prominent place on the premises of any show at which the permittee purchases precious metals."

SECTION 19. G.S. 66-167, as recodified by Section 15 of this act, reads as rewritten:

"§ 66-408. Perjury; punishment.

Any person who shall willfully commit perjury in any application for a permit or exemption filed pursuant to this ~~Article Part~~ shall be guilty of a Class 2 misdemeanor."

SECTION 20. G.S. 66-168, as recodified by Section 15 of this act, reads as rewritten:

"§ 66-409. Bond or trust account required.

Before any permit shall be issued to a dealer pursuant to ~~G.S. 66-165~~, G.S. 66-407, the dealer shall execute a satisfactory cash or surety bond or establish a trust account with a licensed and insured bank or savings institution located in the State of North Carolina in the sum of ten thousand dollars (\$10,000). The bond or trust account shall be in favor of the State of North Carolina. A surety bond is to be executed by the dealer and by two responsible sureties or a surety company licensed to do business in the State of North Carolina and shall be on a form approved by the Department of Public Safety. Any bond shall be kept in full force and effect and shall be delivered to the law-enforcement agency which first issued a current permit to the dealer. A bond or trust account shall be for the faithful performance of the requirements and obligations of the dealer's business in conformity with this ~~Article Part~~. Any law-enforcement agency shall have full power and authority to revoke the permit and sue for forfeiture of the bond or trust account upon a breach thereof. Any person who shall have suffered any loss or damage by any act of the permittee that constitutes a violation of this ~~Article Part~~ shall have the right to institute an action to recover against such permittee and the surety or trust account. Upon termination of the bond or trust account the permit shall become void."

SECTION 21. G.S. 66-169(a), as recodified by Section 15 of this act, reads as rewritten:

"§ 66-410. Records to be kept.

(a) Every dealer to whom a permit has been issued pursuant to ~~G.S. 66-165~~ G.S. 66-407 shall maintain consecutively numbered records of each precious metals transaction. Each consecutively numbered record shall be made at the time of the transaction and shall contain a clear and accurate description of the transaction. A valid description shall include each of the following applicable and available items of information: the manufacturer's name, the model, the model number, the serial number, and any engraved numbers or initials found on the items; the date of the transaction; the name, sex, race, residence, telephone number and driver's license number of the person selling the items purchased; and the signature of both the dealer or registered employee and the seller. In the event the seller cannot furnish valid, unexpired photographic identification in the form of a drivers license, State-issued identification card, passport, or military identification card, the dealer shall require two forms of positive identification."

SECTION 22. G.S. 66-170, as recodified by Section 15 of this act, reads as rewritten:

"§ 66-411. Items not to be modified.

No item included in a dealer purchase shall be sold, traded or otherwise disposed of, melted, cut or otherwise changed in form nor shall any item be removed from the licensed premises, or other location specified on the application for a special occasion permit, for a

period of seven days from the date the transaction was reported in accordance with ~~G.S. 66-169~~ G.S. 66-410."

SECTION 23. G.S. 66-172, as recodified by Section 15 of this act, reads as rewritten:

"§ 66-413. Penalties.

Any dealer who violates the provisions of this ~~Article-Part~~ shall be deemed guilty of a Class 2 misdemeanor. In addition any dealer so convicted shall be ineligible for a dealer's permit for a period of three years from the date of conviction. Each and every violation shall constitute a separate and distinct offense."

SECTION 24. G.S. 25-9-201(b) reads as rewritten:

"(b) Applicable consumer laws and other law. – A transaction subject to this Article is subject to any applicable rule of law which establishes a different rule for consumers, to any other statute, rule, or regulation of this State that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit, and to any consumer-protection statute, rule, or regulation of this State, including Chapter 24 of the General Statutes, the Retail Installment Sales Act (Chapter 25A of the General Statutes), the North Carolina Consumer Finance Act (Article 15 of Chapter 53 of the General Statutes), and the Pawnbrokers and Cash Converters Modernization Act (~~Chapter 91A~~Part 1 of Article 45 of Chapter 66 of the General Statutes)."

SECTION 25. G.S. 105-88(a)(3) reads as rewritten:

"§ 105-88. Loan agencies.

(a) Every person, firm, or corporation engaged in any of the following businesses must pay for the privilege of engaging in that business an annual tax of two hundred fifty dollars (\$250.00) for each location at which the business is conducted:

- (1) The business of making loans or lending money, accepting liens on, or contracts of assignments of, salaries or wages, or any part thereof, or other security or evidence of debt for repayment of such loans in installment payment or otherwise.
- (2) The business of check cashing regulated under Article 22 of Chapter 53 of the General Statutes.
- (3) The business of pawnbroker regulated under ~~Chapter 91A~~Part 1 of Article 45 of Chapter 66 of the General Statutes."

SECTION 26. G.S. 66-11 and G.S. 66-11.1 are repealed.

SECTION 27. G.S. 66-11.2 is recodified as G.S. 66-426 under Part 3 of Article 45 of Chapter 66 of the General Statutes, as enacted by Section 28 of this act.

SECTION 28. Chapter 66 of the General Statutes is amended by adding a new Part to read:

"Part 3. Regulation of Sales and Purchases of Metals.

"§ 66-415. Definitions.

The following definitions apply in this Part:

- (1) Cash card system. – A system of payment that captures a photograph of a payment recipient and that provides payment in cash or in a form other than cash.
- (2) Fixed site. – A site occupied by a secondary metals recycler as the owner of the site or as a lessee of the site under a lease or other rental agreement providing for occupation of the site by a nonferrous metals purchaser for a total duration of not less than 364 days.
- (3) Law enforcement officer. – Any duly constituted law enforcement officer of the State or of any municipality or county.
- (4) Nonferrous metals. – Metals not containing significant quantities of iron or steel, including, but not limited to, copper wire, copper clad steel wire, copper pipe, copper bars, copper sheeting, aluminum other than aluminum cans, a product that is a mixture of aluminum and copper, catalytic converters, lead-acid batteries, and stainless steel beer kegs or containers. The term shall not include precious metals as defined and regulated in Part 2 of this Article.
- (5) Nonferrous metals purchaser. – A secondary metals recycler who purchases, gathers, or obtains nonferrous metals.
- (6) Permit. – A permit issued pursuant to G.S. 66-421(a).

- (7) Regulated metals property. – All ferrous and nonferrous metals.
- (8) Secondary metals recycler. – Any person, firm, or corporation in the State:
 - a. That is engaged in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of 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. That has facilities for 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, by methods including, but not limited to, the processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content of the metals, but not including the exclusive use of hand tools.

"§ 66-416. Required records and receipts for regulated metals transactions.

(a) Receipt Required. – A secondary metals recycler shall issue a receipt for all purchase transactions in which the secondary metals recycler purchases regulated metals property. This receipt shall be issued to and signed by the person delivering the property, and the secondary metals recycler shall be able to provide documentation regarding the employee who completed the transaction.

(b) Records Required. – A secondary metals recycler shall maintain a record of all purchase transactions in which the secondary metals recycler purchases regulated metals property. The record of each transaction shall contain the following information:

- (1) The name and address of the secondary metals recycler.
- (2) The name, initials, or other identification of the individual entering the information.
- (3) The date of the transaction.
- (4) The weight of the regulated metals property purchased.
- (5) The description made in accordance with the custom of the trade of the type of regulated metals property purchased and the physical address where the regulated metals were obtained by the seller and the date when purchased, and a statement signed by the seller or the seller's agent certifying that the seller or the seller's agent has the lawful right to sell and dispose of the property.
- (6) The amount of consideration given for the regulated metals property.
- (7) The name and address of the vendor of the regulated metals property and the license plate number, make, model, and color of the vehicle used to deliver the regulated metals.
- (8) A photocopy or electronic scan of the unexpired drivers license or state or federally issued photo identification card of the person delivering the regulated metals property to the secondary metals recycler. If the secondary metals recycler has a copy of the valid photo identification of the person delivering the regulated metals property on file, the secondary metals recycler must examine the photo identification and verify that it has not expired, but may reference the photo identification that is on file without making a separate photocopy or electronic scan for each subsequent transaction. If the person delivering the regulated metals property does not have an unexpired drivers license or an unexpired state or federally issued photo identification card, the secondary metals recycler shall not complete the transaction.
- (9) A copy of the receipt required under subsection (a) of this section when all the information required under subsection (a) of this section is clear and legible or, in the event the copy of the receipt is not clear or not legible, the original receipt.
- (10) A video or digital photograph of the seller together with the regulated metals property being delivered by the seller. The video or photograph required by

this section shall be of a quality that is sufficient to allow a person of ordinary faculties to identify the person recorded or photographed.

- (11) In transactions involving catalytic converters that are not attached to a vehicle, and central air conditioner evaporator coils or condensers, the person delivering the materials shall place next to that person's signature on the receipt required under subsection (a) of this section, a clear impression of that person's index finger that is in ink and free of any smearing. A secondary metals recycler may elect to obtain the fingerprint electronically. If the secondary metals recycler has a copy of the fingerprint of the person delivering the nonferrous metal on file, the secondary metals recycler must examine the photo identification, but may reference the fingerprint that is on file without making a separate fingerprint for each subsequent transaction.

"§ 66-417. Inspection of regulated metals property and records.

(a) Retention of Records. – A secondary metals recycler shall keep and maintain the information required under G.S. 66-416(b) for not less than two years from the date of the purchase of the regulated metals property. Records shall be securely maintained at all times and shall be destroyed in a manner that protects the identity of the owner of the property, the seller of the property, and the purchaser of the property.

(b) Inspection of Regulated Metals Property and Records. – During the usual and customary business hours of a secondary metals recycler, a law enforcement officer shall have the right to inspect all of the following:

(1) Any and all purchased regulated metals property in the possession of the secondary metals recycler.

(2) Any and all records required to be maintained under G.S. 66-416(b).

(c) Making Receipts Available for Inspection by Law Enforcement. – A secondary metals recycler shall make receipts for the purchase of regulated metals property available for pickup each regular workday if requested by the sheriff or chief of police of the county or the chief of police of the municipality in which the secondary metals recycler is located. The sheriff or the chief of police may request these receipts to be electronically transferred directly to the law enforcement agency. Records retained by a law enforcement agency shall be securely retained as required by law and destroyed in a manner that protects the identity of the owner of the property, the seller of the property, and the purchaser of the property.

(d) Records Are Not Public. – Records submitted to any public law enforcement agency pursuant to this section are records of criminal investigations or records of criminal intelligence information as defined in G.S. 132-1.4 and are not public records as defined by G.S. 132-1.

"§ 66-418. Hold notices for nonferrous metals; retention of nonferrous metals.

(a) Hold Notices. – When a law enforcement officer has reasonable suspicion to believe that any item of nonferrous metal in the possession of a nonferrous metals purchaser has been stolen, the law enforcement officer may issue a hold notice to the nonferrous metals purchaser. The hold notice must be in writing, be delivered to the nonferrous metals purchaser, specifically identify those items of nonferrous metal that are believed to have been stolen and that are subject to the notice, and inform the nonferrous metals purchaser of the information contained in this section. Upon receipt of the notice, the nonferrous metals purchaser must not process or remove the items of nonferrous metal identified in the notice, or any portion thereof, from the secondary metal recycler's fixed site for 15 calendar days after receipt of the notice unless released prior to the 15-day period by the law enforcement officer. A hold notice may be renewed for an additional 30 days by the law enforcement officer. A renewal must satisfy the same requirements as an initial hold notice in order to be valid.

(b) Retention of Nonferrous Metals. – Any secondary metals recycler owner convicted of a felonious violation of this Article, G.S. 14-71, 14-71.1, or 14-72 shall hold and retain nonferrous metals for seven days from the date of purchase before selling, dismantling, crushing, defacing, or in any manner altering or disposing of the regulated metals property.

"§ 66-419. Prohibited activities and transactions.

(a) A secondary metals recycler shall not do any of the following:

(1) Operate any business that cashes checks at a fixed site at which the secondary metals recycler purchases regulated metals property.

(2) Purchase nonferrous metals for the purpose of recycling the nonferrous metals, unless the nonferrous metals purchaser possesses a valid permit.

- (3) Purchase any central air conditioner evaporator coils or condensers, or catalytic converters that are not attached to a vehicle, except that a secondary metals recycler may purchase these items from a company, contractor, or individual that is in the business of installing, replacing, maintaining, or removing these items.
- (4) Purchase any regulated metals property that the secondary metals recycler knows or reasonably should know to be stolen.

(b) It shall be unlawful to transport or possess on highways of this State an amount of copper weighing in the aggregate more than 25 pounds, unless at least one of the following is true:

- (1) The vehicle is used in the ordinary course of business for the purpose of transporting nonferrous metals. This term includes vehicles used by gas, electric, communications, water, plumbing, electrical, and climate conditioning service providers, and their employees, agents, and contractors, in the course of providing these services.
- (2) The person transporting or possessing the copper possesses, and presents when requested, a valid bill of sale for the copper.
- (3) A law enforcement officer determines that the copper is not stolen and is in the rightful possession of the person.

(c) A secondary metals recycler shall not purchase any of the following:

- (1) Any regulated metal marked with the initials or other identification of a telephone, cable, electric, water, or other public utility, or any brewer.
- (2) Any utility access cover.
- (3) Any street light pole or fixture.
- (4) Any road or bridge guard rail.
- (5) Any highway or street sign.
- (6) Any water meter cover.
- (7) Any metal beer keg, including any made of stainless steel that is clearly marked as being the property of the beer manufacturer.
- (8) Any traffic directional or control sign.
- (9) Any traffic light signal.
- (10) Any regulated metal marked with the name of a government entity.
- (11) Any spikes, plates, or other railroad track components or signs, and any property owned by a railroad and marked and otherwise identified as such.
- (12) Any historical marker or any grave marker or burial vase.

"§ 66-420. Permissible payment methods for nonferrous metals purchasers.

(a) Limitation on Cash Purchases. – No nonferrous metals purchaser shall enter into a cash transaction for the purchase of copper, and no nonferrous metals purchaser shall purchase any nonferrous metal property for any cash consideration greater than one hundred dollars (\$100.00) per transaction. Any payment in excess of one hundred dollars (\$100.00) per transaction shall be made by check, money order or cash card system. A nonferrous metals purchaser shall not make more than one cash purchase per day from any individual, business, corporation or partnership.

"§ 66-421. Issuance of nonferrous metals purchase permits by Sheriff; form; fees; recordkeeping.

(a) Issuance of Permits. – The sheriff of each county shall issue a nonferrous metals purchase permit to an applicant if the applicant (i) has a fixed site in the sheriff's county; (ii) declares on a form provided by the sheriff that the applicant is informed of and will comply with the provisions of this Part; (iii) does not have a permit that has been revoked pursuant to G.S. 66-324(b) at the time of the application; and (iv) has not been convicted of more than three violations of this Part. A permit shall be valid for 12 months and shall be valid only for fixed sites in the county of issuance. A permit shall be obtained for each fixed site at which nonferrous metals are purchased.

(b) Form. – The Attorney General shall prescribe a standard application form and a standard permit form to be used by sheriffs. The permit form shall contain, at a minimum, the date of issuance and the name and address of the permit holder.

(c) Fees; Record-Keeping Requirements. – The sheriff shall not charge a fee for a permit, and shall retain a copy of any permit issued.

"§ 66-422. Exemptions.

This Part does not apply to:

- (1) Purchases of regulated metals property from a manufacturing, industrial, government, or other commercial vendor that generates or sells regulated metals property in the ordinary course of its business.
- (2) Purchases of regulated metals property that involve only beverage containers, except that G.S. 66-418 shall apply in that case.

"§ 66-423. Preemption.

A county or municipality shall not enact any local law, ordinance, or regulation regulating secondary metals recyclers or regulated metals property that conflicts with this Part, and this Part preempts all existing laws, ordinances, or regulations that conflict with it.

"§ 66-424. Violations.

(a) Punishment Generally. – Unless the conduct is covered by some other provision of law providing greater punishment, any person knowingly and willfully violating any of the provisions of this Part shall be guilty of a Class 1 misdemeanor for a first offense. A second or subsequent violation of this Part is a Class I felony.

(b) Revocation of Permits. – If the owner or the employees of a fixed site are convicted of an aggregate of three or more violations of this Part within a 10 year period, the permit associated with that fixed site shall be immediately revoked by the sheriff for a period of six months. Any attempt to circumvent this subsection by procuring a permit through a family member shall result in extension of the revocation period for an additional 18 months.

"§ 66-425. Restitution.

The court may order a defendant to make restitution to the secondary metals recycler or property owner, as appropriate, for any damage or loss caused by the defendant and arising out of a violation of G.S. 14-71, G.S. 14-71.1, G.S. 14-72, G.S.14-159.4, G.S. 66-419(a) (3), or G.S. 66-419(a)(4) committed by the defendant."

SECTION 29. G.S. 66-11.2(a), as recodified by Section 27 of this act, reads as rewritten:

"§ 66-426. Forfeiture of vehicles used to transport unlawfully obtained regulated metals property.

(a) Vehicles which are used or intended for use to convey or transport, or in any manner to facilitate the conveyance or transportation of unlawfully obtained regulated metals property, as defined by this ~~Article, Part,~~ are subject to forfeiture, except that:

- (1) No conveyance shall be forfeited under the provisions of this section by reason of any act or omission, committed or omitted while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any state;
- (2) No conveyance shall be forfeited unless the violation involved is a felony;
- (3) A forfeiture of a vehicle encumbered by a bona fide security interest is subject to the interest of the secured party who had no knowledge of or consented to the act or omission;
- (4) No conveyance shall be forfeited under the provisions of this section unless the owner knew or had reason to believe the vehicle was being used in the commission of any violation that may subject the conveyance to forfeiture under this section."

SECTION 30. G.S. 20-62.1(a) reads as rewritten:

"§ 20-62.1. Purchase of vehicles for purposes of scrap or parts only.

(a) Records for Scrap or Parts. – A secondary metals recycler, as defined in G.S. 66-11(a)(3), G.S. 66-415(8), and a salvage yard, as defined in G.S. 20-137.7(6), purchasing motor vehicles solely for the purposes of dismantling or wrecking such motor vehicles for the recovery of scrap metal or for the sale of parts only, must comply with the provision of G.S. 20-61, provided, however, that a secondary metals recycler or salvage yard may purchase a motor vehicle without a certificate of title, if the motor vehicle is 10 model years old or older and the secondary metals recycler or salvage yard comply with the following requirements:

....

SECTION 31. Article 22 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-159.4. Cutting, mutilating, defacing, or otherwise injuring property to obtain nonferrous metals.

(a) Definition of Nonferrous Metals. – For purposes of this section, the term "nonferrous metals" means metals not containing significant quantities of iron or steel, including, but not limited to, copper wire, copper clad steel wire, copper pipe, copper bars, copper sheeting, aluminum other than aluminum cans, a product that is a mixture of aluminum and copper, catalytic converters, lead-acid batteries, and stainless steel beer kegs or containers.

(b) Prohibited Act. – It is unlawful for a person to willfully and wantonly cut, mutilate, deface, or otherwise injure any personal or real property of another, including any fixtures or improvements, for the purpose of obtaining nonferrous metals in any amount.

(c) Punishment. – Violations of this section are punishable as follows:

(1) Default. – If the direct injury is to property, and the amount of loss in value to the property, the amount of repairs necessary to return the property to its condition before the act, or the property loss (including fixtures or improvements) is less than one thousand dollars (\$1,000), a violation shall be punishable as a Class 1 misdemeanor. If the applicable amount is one thousand dollars (\$1,000) or more, but less than ten thousand dollars (\$10,000), a violation shall be punishable as a Class H felony. If the applicable amount is ten thousand dollars (\$10,000) or more, a violation shall be deemed an aggravated offense and shall be punishable as a Class F felony.

(2) When person suffers serious injury. – Unless the conduct is covered under some other provision of law providing greater punishment, a violation of this section that results in a serious injury to another person is punishable as a Class A1 misdemeanor.

(3) When person suffers a serious bodily injury. – Unless the conduct is covered under some other provision of law providing greater punishment, a violation of this section that results in serious bodily injury to another person is punishable as a Class F felony. For purposes of this subdivision, "serious bodily injury" is as defined in G.S. 14-32.4.

(4) When person is killed. – Unless the conduct is covered under some other provision of law providing greater punishment, a violation of this section that results in the death of another person is punishable as a Class D felony.

(5) When critical infrastructure affected. – Unless the conduct is covered under some other provision of law providing greater punishment, a violation of this section that results in the disruption of communication or electrical service to critical infrastructure or to more than 10 customers of the communication or electrical service is guilty of a Class 1 misdemeanor.

(d) Liability. – This section does not create or impose a duty of care upon the owner of personal or real property that would not otherwise exist under common law. A public or private owner of personal or real property shall not be civilly liable:

(1) To a person who is injured while committing or attempting to commit a violation of this section.

(2) To a person who is injured while a third party is committing or attempting to commit a violation of this section.

(3) For a person's injuries caused by a dangerous condition created as a result of a violation of this section, when the owner does not know and could not have reasonably known of the dangerous condition."

SECTION 32. Pawnbroker licenses and permits to engage as a dealer in the business of purchasing precious metals that are valid on the effective date of this act shall continue in force until the natural expiration thereof, unless otherwise revoked or suspended in accordance with applicable law.

SECTION 33. This act becomes effective October 1, 2012, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

In the General Assembly read three times and ratified this the 19th day of June, 2012.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 12:10 p.m. this 20th day of June, 2012