

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas      *As Engrossed: H3/27/13 H4/1/13 S4/5/13*  
89th General Assembly      **A Bill**  
Regular Session, 2013

HOUSE BILL 1975

By: Representatives Williams, Hammer, Rice, McCrary, Hillman, Wright  
By: Senators A. Clark, L. Chesterfield

### For An Act To Be Entitled

AN ACT CONCERNING ACCOMPLICE LIABILITY FOR THEFT OF SCRAP METAL OR THEFT BY RECEIVING OF SCRAP METAL; TO INCREASE CIVIL PENALTIES; TO PROHIBIT A PERSON FROM SELLING SCRAP METAL UNDER CERTAIN CONDITIONS; REQUIRING TIMELY ELECTRONIC RECORDS; TO PROVIDE FOR PENALTIES FOR NONCOMPLIANCE; AND FOR OTHER PURPOSES.

### Subtitle

CONCERNING THE SALE, PURCHASE, OR TRANSFER OF SCRAP METAL; CONCERNING WHO MAY OR MAY NOT ENTER INTO SCRAP METAL TRANSACTIONS; AND CONCERNING PENALTIES.

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

*SECTION 1. Arkansas Code § 5-36-106, concerning the offense of theft by receiving, is amended to add a new subsection to read as follows:*

*(f) A person convicted of a felony offense under this section is subject to an enhanced sentence of an additional term of imprisonment of five (5) years at the discretion of the court if the finder of fact finds that the stolen property was nonferrous metal, as it is defined in § 17-44-101.*

*SECTION 2. Arkansas Code § 5-36-123(a), concerning the offense of theft of scrap metal, is amended to read as follows:*

*(a) A person commits theft of scrap metal if he or she commits, aids, or is an accomplice to a commission of theft of property under § 5-36-103(a)*



and the property is scrap metal.

SECTION 3. Arkansas Code § 5-36-124(b), concerning the offense of theft by receiving of scrap metal, is amended to read as follows:

(b) A person commits the offense of theft by receiving of scrap metal if he or she receives, retains, purchases, or disposes of scrap metal of another person ~~knowing~~ and he or she knows or should have known that the scrap metal was stolen.

SECTION 4. Arkansas Code § 5-36-124, concerning the offense of theft by receiving of scrap metal, is amended to add a new subsection to read as follows:

(d) A person convicted of a felony offense under this section is subject to an enhanced sentence of an additional term of imprisonment of five (5) years at the discretion of the court if the finder of fact finds that the scrap metal was nonferrous metal, as it is defined in § 17-44-101.

SECTION 5. Arkansas Code § 5-38-203, concerning the offense of criminal mischief in the first degree, is amended to add a new subsection to read as follows:

(d) A person convicted of a felony offense under this section is subject to an enhanced sentence of an additional term of imprisonment of five (5) years at the discretion of the court if the finder of fact finds that the damage to property involved the removal of nonferrous metal, as it is defined in § 17-44-101.

SECTION 6. Arkansas Code § 5-38-204, concerning the offense of criminal mischief in the second degree, is amended to add a new subsection to read as follows:

(c) A person convicted of a felony offense under this section is subject to an enhanced sentence of an additional term of imprisonment of five (5) years at the discretion of the court if the finder of fact finds that the damage to property involved the removal of nonferrous metal, as it is defined in § 17-44-101.

SECTION 7. Arkansas Code § 17-44-102(f), concerning records of scrap

metal transactions, is amended to read as follows:

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

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

(2)(A) The operator of the electronic database under this section shall send a report that shall include a list of all scrap metal recyclers in the county that have accessed or that have access to the database but have not filed a daily electronic record of scrap metal purchases as required by this section:

(i) To the county sheriff every seven (7) days; and

(ii) To any law enforcement agency that requests periodic copies of the report more frequently than every seven (7) days.

(B)(i) A scrap metal recycler who fails to file a daily electronic record of scrap metal purchases as required by this section shall be subject to the civil penalty provided for under § 17-44-106(a) for the first offense.

(ii) A second violation of the daily reporting requirement of this section is a Class A misdemeanor.

(iii) A third or subsequent violation is a Class D felony.

(C) The report by the operator of the electronic database shall include a list of all scrap metal recyclers in the county that have accessed or that have access to the database but have not filed a daily electronic record of scrap metal purchases as required by this section.

SECTION 8. Arkansas Code § 17-44-106 is amended to read as follows:  
17-44-106. Penalties.

(a) A person ~~that~~ who violates this chapter may be assessed a civil penalty of no more than ~~five hundred dollars (\$500)~~ one thousand dollars (\$1,000) per violation.

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

*SECTION 9. Arkansas Code Title 17, Chapter 44, is amended to add additional sections to read as follows:*

17-44-107. Lifetime ban.

(a) A person who is convicted of theft of scrap metal under § 5-36-123 is forever prohibited from selling scrap metal under this chapter.

(b) A person violating this section is subject to the civil penalties under § 17-44-106.

17-44-108. License to sell required.

(a)(1) A license is required for all scrap metal recyclers to be issued by the county sheriff.

(2)(A) A license under this section shall cost two hundred and fifty dollars (\$250) and may be renewed annually for twenty-five dollars (\$25.00).

(B) The fees described in subsection (a)(2)(A) do not apply to a not-for-profit scrap metal dealer or not-for-profit scrap metal recycler.

(3) The license fee shall be payable to the county sheriff and shall be used for the county sheriff's general operating expenses.

(b) Before a license may be issued under this section, a person operating as a scrap metal recycler shall:

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

(A) Water;

(B) Sewer;

(C) Electricity; and

(D) Gas;

(2) Show proof of a required national pollution discharge elimination system stormwater permit issued by Arkansas Department of Environmental Quality; and

(3) Have the ability to comply with online reporting as required by this chapter.

(c) A license under this section may be suspended or revoked by a court having jurisdiction if the prosecuting attorney shows in a civil action that a scrap metal recycler has failed to comply with the requirements of

this subchapter.

*/s/Williams*