

Senate Bill 203

By: Senators Harp of the 29th, Staton of the 18th, Mullis of the 53rd, Shafer of the 48th, Hamrick of the 30th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 14 of Chapter 1 of Title 10, Code Section 16-8-12, and Chapter 1 of Title
2 46 of the Official Code of Georgia Annotated, relating to secondary metals recyclers,
3 penalties for certain theft crimes, and general provisions for public utilities and public
4 transportation, respectively, so as to provide for increased penalties for certain crimes
5 involving public utility property; to change certain provisions relating to inspection by law
6 enforcement officers; to change provisions relating to actions to recover property; to change
7 provisions relating to penalties for violating Article 14 of Chapter 1 of Title 10; to provide
8 for forfeiture of certain property and procedure therefor; to provide for legislative findings
9 and preemption; to provide for the Governor to appoint certain special officers for purposes
10 of investigating certain thefts of public utility property; to provide the special officers power
11 of arrest, compensation, qualifications, bond, and duration of appointment and commission;
12 to provide for related matters; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 style="text-align:center">**SECTION 1.**

15 Article 14 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to
16 secondary metals recyclers, is amended by revising Code Section 10-1-352, relating to
17 inspections by law enforcement officers, as follows:

18 "10-1-352.

19 During the usual and customary business hours of a secondary metals recycler, a law
20 enforcement officer or special officer, as such official is described in Code Section 46-1-6,
21 shall, after properly identifying himself or herself as a law enforcement officer or special
22 officer, have the right to inspect:

- 23 (1) Any and all purchased regulated metal property in the possession of the secondary
24 metals recycler; and
25 (2) Any and all records required to be maintained under Code Section 10-1-351."

1 punished by a fine of not more than \$5,000.00 or by imprisonment for not less than one nor
2 more than five years, or both.

3 (b) Any secondary metals recycler knowingly and intentionally engaging in any practice
4 which constitutes a violation of this article shall be guilty of a misdemeanor, provided that
5 ~~if a secondary metals recycler knowingly and intentionally engages in a pattern of practices~~
6 ~~which constitute violations of this article and the transactions included in this pattern are~~
7 ~~in an aggregate amount which exceeds \$500.00, such secondary metals recycler shall be~~
8 ~~guilty of a felony and, upon conviction, shall be punished by a fine of not more than~~
9 \$5,000.00 or by imprisonment for not less than one nor more than five years, or both."

10 SECTION 4.

11 Said article is further amended by adding two new Code sections to read as follows:

12 "10-1-358.

13 (a) As used in this Code section, the term 'crime' means the offenses of theft by taking as
14 defined in Code Section 16-8-2; theft by conversion as defined in Code Section 16-8-4;
15 theft by receiving stolen property as defined in Code Section 16-8-7 if the subject of the
16 theft was ferrous metals or regulated metal property, as such terms are defined in Code
17 Section 10-1-350; criminal damage to property in the first degree as defined in paragraph
18 (2) of subsection (a) of Code Section 16-7-22; or a criminal violation of Article 14 of
19 Chapter 1 of Title 10.

20 (b) All motor vehicles, tools, and weapons which are used or intended for use in any
21 manner in the commission of or to facilitate the commission of a crime are subject to
22 forfeiture under this Code section, but:

23 (1) No motor vehicle used by any person as a common carrier in the transaction of
24 business as a common carrier is subject to forfeiture under this Code section unless it
25 appears that the owner or other person in charge of the motor vehicle is a consenting
26 party or privy to the commission of a crime;

27 (2) No motor vehicle is subject to forfeiture under this Code section by reason of any act
28 or omission established by the owner thereof to have been committed or omitted without
29 his or her knowledge or consent, and any co-owner of a motor vehicle without knowledge
30 of or consent to the act or omission is protected to the extent of the interest of such
31 co-owner; and

32 (3) A forfeiture of a motor vehicle encumbered by a bona fide security interest is subject
33 to the interest of the secured party if he or she neither had knowledge of nor consented
34 to the act or omission.

35 (c) Property subject to forfeiture under this Code section may be seized by any law
36 enforcement officer of this state or any political subdivision thereof who has the power to

1 make arrests upon process issued by any court having jurisdiction over the property.

2 Seizure without process or warrant may be made if:

3 (1) The seizure is incident to an arrest or a search under a search warrant;

4 (2) The property subject to seizure has been the subject of a prior judgment in favor of
5 this state in a criminal injunction or forfeiture proceeding based upon this Code section;

6 or

7 (3) If probable cause exists that the vehicle, tool, or weapon is subject to seizure.

8 (d) Property taken or detained under this Code section shall not be subject to replevin but
9 is deemed to be in the custody of the superior court wherein the seizure was made or in
10 custody of the superior court where it can be proven that the crime was committed, subject
11 only to the orders and decrees of the court having jurisdiction over the forfeiture
12 proceedings. When property is seized under this Code section, law enforcement officers
13 seizing such property shall:

14 (1) Place the property under seal;

15 (2) Remove the property to a place designated by the judge of the superior court having
16 jurisdiction over the forfeiture as set out in this subsection; or

17 (3) Deliver such property to the sheriff or police chief of the county in which the seizure
18 occurred, and the sheriff or police chief shall take custody of the property and remove it
19 to an appropriate location for disposition in accordance with law.

20 (e) When property is seized under this Code section, the sheriff or law enforcement officer
21 seizing the same shall report the fact of seizure, within 20 days thereof, to the district
22 attorney of the judicial circuit having jurisdiction in the county where the seizure was
23 made. Within 60 days from the date he or she receives notice of the seizure, the district
24 attorney of the judicial circuit shall cause to be filed in the superior court of the county in
25 which the property is seized or detained an in rem complaint for forfeiture of such property
26 as provided for in this Code section. The proceedings shall be brought in the name of the
27 state by the district attorney of the circuit in which the property was seized, and the
28 complaint shall be verified by a duly authorized agent of this state in a manner required by
29 the law of this state. The complaint shall describe the property; state its location; state its
30 present custodian; state the name of the owner, if known to the duly authorized agent of
31 this state; allege the essential elements of the violation upon which the forfeiture is based;
32 and conclude with a prayer of due process to enforce the forfeiture. Upon the filing of such
33 a complaint, the court shall promptly cause process to issue to the present custodian in
34 possession of the property described in the complaint, commanding him or her to seize the
35 property described in the complaint and to hold that property for further order of the court.
36 A copy of the complaint shall be served upon the owner or lessee, if known, and upon any
37 person having a duly recorded security interest in or lien upon that property. If the owner

1 or lessee is unknown, resides out of this state, departs this state, cannot after due diligence
2 be found within this state, or conceals himself or herself so as to avoid service, notice of
3 the proceedings shall be published once a week for two weeks in the newspaper in which
4 the sheriff's advertisements are published. Such publication shall be deemed notice to any
5 and all persons having an interest in or right affected by such proceeding and from any sale
6 of the property resulting therefrom but shall not constitute notice to any person having a
7 duly recorded security interest in or lien upon such property and required to be served
8 under this Code section unless that person is unknown, resides out of this state, departs this
9 state, cannot after due diligence be found within this state, or conceals himself or herself
10 to avoid service. An owner of or interest holder in the property may file an answer
11 asserting a claim against the property in the action in rem. Any such answer shall be filed
12 within 30 days after the service of the summons and complaint. Where service is made by
13 publication and personal service has not been made, an owner or interest holder shall file
14 an answer within 30 days of the date of final publication. An answer shall be verified by
15 the owner or interest holder under penalty of perjury. In addition to complying with the
16 general rules applicable to an answer in civil actions, the answer shall set forth:

- 17 (1) The caption of the proceedings as set forth in the complaint and the name of the
18 claimant;
- 19 (2) The address at which the claimant will accept mail;
- 20 (3) The nature and extent of the claimant's interest in the property;
- 21 (4) The date, identity of transferor, and circumstances of the claimant's acquisition of the
22 interest in the property;
- 23 (5) The specific provision of this Code section relied on in asserting that the property is
24 not subject to forfeiture;
- 25 (6) All essential facts supporting each assertion; and
- 26 (7) The precise relief sought.

27 If at the expiration of the period set forth in this subsection no answer has been filed, the
28 court shall order the disposition of the seized property as provided for in this Code section.
29 If an answer is filed, a hearing must be held within 60 days after service of the complaint
30 unless continued for good cause and must be held by the court without a jury. If the court
31 determines that a claimant defending the complaint knew or by the exercise of ordinary
32 care should have known that the property was to be used for an unlawful purpose
33 subjecting it to forfeiture under this Code section, the court shall order the disposition of
34 the seized property as provided in this Code section and that claimant shall have no claim
35 upon the property or proceeds from the sale thereof.

1 (f)(1) When property is forfeited under this Code section, the judge of the superior court
2 in the county where the seizure was made or in the county in which it can be proven that
3 the crime was committed may dispose of the property by issuing an order to:

4 (A) Retain it for official use by any agency of this state or any political subdivision
5 thereof;

6 (B) Sell that which is not required to be destroyed by law and which is not harmful to
7 the public. The proceeds shall be used for payment of all proper expenses of the
8 proceedings for forfeiture and sale, including but not limited to the expenses of seizure,
9 maintenance of custody, advertising, and court costs; or

10 (C) Require the sheriff or police chief of the county in which the seizure occurred to
11 take custody of the property and remove it for disposition in accordance with law.

12 (2)(A) Money, currency, or proceeds which are realized from the sale or disposition
13 of forfeited property shall after satisfaction of the interest of secured parties and after
14 payment of all costs vest in the local political subdivision whose law enforcement
15 officers seized it. If the property was seized by a municipal law enforcement agency,
16 then the money, currency, or proceeds realized from the sale or disposition of the
17 property shall vest in that municipality. If the property was seized by a county law
18 enforcement agency, then the money, currency, or proceeds realized from the sale or
19 disposition of the property shall vest in that county. If the property was seized by joint
20 action of a county law enforcement agency and a municipal law enforcement agency,
21 then the money, currency, or proceeds realized from the sale or disposition of the
22 property shall vest in that county and that municipality and shall be divided equally
23 between the county and municipality. If the property was seized by a state law
24 enforcement agency, then the money, currency, or proceeds realized from the sale or
25 disposition of the property shall vest in the county where the condemnation proceedings
26 are filed. Except as otherwise provided in subparagraph (B) of paragraph (1) of this
27 subsection for payment of all costs, the local government in which the money, currency,
28 or proceeds realized from the forfeited property vests shall expend or use such funds
29 or proceeds received for any official law enforcement purpose except for the payment
30 of salaries or rewards to law enforcement personnel, at the discretion of the chief officer
31 of the local law enforcement agency, or to fund victim-witness assistance programs.
32 Such property shall not be used to supplant any other local, state, or federal funds
33 appropriated for staff or operations.

34 (B) Any local law enforcement agency receiving property under this subsection shall
35 submit an annual report to the local governing authority. The report shall be submitted
36 with the agency's budget request and shall itemize the property received during the
37 fiscal year and the utilization made thereof.

1 10-1-359.

2 The General Assembly finds that this article is a matter of state-wide concern. This article
3 supersedes and preempts all rules, regulations, codes, ordinances, and other laws adopted
4 by any county, municipality, consolidated government, or other local governmental agency
5 regarding secondary metal recyclers and the sale or purchase of regulated metal property."

6 **SECTION 5.**

7 Code Section 16-8-12 of the Official Code of Georgia Annotated, relating to penalties for
8 violation of Code Sections 16-8-2 through 16-8-9, is revised in subsection (a) by striking "or"
9 at the end of paragraph (7), by replacing the period with "; or" at the end of paragraph (8),
10 and by adding a new paragraph to read as follows:

11 "(9) Notwithstanding the provisions of paragraph (1) of this subsection, if the property
12 of the theft was ferrous metals or regulated metal property, as such terms are defined in
13 Code Section 10-1-350, by imprisonment for not less than one nor more than five years,
14 a fine of not more than \$5,000.00, or both."

15 **SECTION 6.**

16 Chapter 1 of Title 46 of the Official Code of Georgia Annotated, relating to general
17 provisions for public utilities and public transportation, is amended by adding a new Code
18 section to read as follows:

19 "46-1-6.

20 (a) Upon the application of the president or resident executive officer of any publicly,
21 privately, or cooperatively owned utility operating and doing business in this state as a
22 utility, the Governor may appoint one or more persons as special officers for the protection
23 of the property and interest of such corporation, with power to make arrests, provided that
24 such special officers shall be paid by the corporation applying for such appointment; and
25 provided, further, that such special officers shall not receive any compensation from this
26 state or any county thereof.

27 (b) All special officers appointed and commissioned as provided for in this Code section
28 shall have throughout this state all the powers, duties, and responsibilities of sheriffs or
29 other law enforcement officers of this state while engaged in the performance of their
30 duties as such special officers, except the serving of civil processes.

31 (c) Every special officer appointed and commissioned under this Code section shall be a
32 resident of the United States and of good character. Every such officer shall be required
33 to post a good and sufficient bond payable to the State of Georgia in the sum of \$1,000.00,
34 conditioned on the faithful performance of his or her duties.

1 (d) All appointments and commissions issued under this Code section shall continue so
2 long as the special officer is employed in such capacity by the publicly, privately, or
3 cooperatively owned utility. The authority of any person appointed under this Code section
4 shall immediately cease whenever such person ceases to be an agent, servant, or employee
5 of the utility applying for the appointment or no longer serves as a special officer of such
6 utility.

7 (e) Whenever any publicly, privately, or cooperatively owned utility no longer requires the
8 services of any special officer so appointed, it shall file written notice to that effect in the
9 offices of the Governor and the Secretary of State.

10 (f) The appointment and commission of a special officer may be revoked at any time by
11 the Governor, with or without written notice by the president or resident executive officer
12 of the publicly, privately, or cooperatively owned utility applying for the appointment and
13 commission.

14 (g) All criminal processes served by a special officer shall be returned by the officer to the
15 county from which the same originated."

16 **SECTION 7.**

17 All laws and parts of laws in conflict with this Act are repealed.