

## 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

**AS PASSED SENATE**

## 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 change certain provisions relating to inspection by law  
 5 enforcement officers; to change provisions relating to actions to recover property; to change  
 6 provisions relating to penalties for violating Article 14 of Chapter 1 of Title 10; to provide  
 7 for forfeiture of certain property and procedure therefor; to provide for legislative findings  
 8 and preemption; to provide for the Governor to appoint certain special officers for purposes  
 9 of investigating certain thefts of public utility property; to provide the special officers power  
 10 of arrest, compensation, qualifications, bond, and duration of appointment and commission;  
 11 to provide for related matters; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

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

17 "10-1-352.

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

22 (1) Any and all purchased regulated metal property in the possession of the secondary  
 23 metals recycler; and

24 (2) Any and all records required to be maintained under Code Section 10-1-351."



1 removal of such regulated metal property, is in an aggregate amount which exceeds  
 2 \$500.00, in which case such person shall be guilty of a felony and, upon conviction, shall  
 3 be punished by a fine of not more than \$5,000.00 or by imprisonment for not less than one  
 4 nor more than five years, or both.

5 (b) Any secondary metals recycler knowingly and intentionally engaging in any practice  
 6 which constitutes a violation of this article shall be guilty of a misdemeanor, ~~provided that~~  
 7 ~~if a secondary metals recycler knowingly and intentionally engages in a pattern of practices~~  
 8 ~~which constitute violations of this article and the transactions included in this pattern are~~  
 9 unless the value of the regulated metals property, in its original and undamaged condition,  
 10 in addition to any costs which are, or would be, incurred in repairing or in the attempt to  
 11 recover any property damaged in the theft or removal of such regulated metal property, is  
 12 in an aggregate amount which exceeds \$500.00, such secondary metals recycler shall be  
 13 guilty of a felony and, upon conviction, shall be punished by a fine of not more than  
 14 \$5,000.00 or by imprisonment for not less than one nor more than five years, or both."

#### 15 SECTION 4.

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

17 "10-1-358.

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

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

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

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

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

4 (c) Property subject to forfeiture under this Code section may be seized by any law  
5 enforcement officer of this state or any political subdivision thereof who has the power to  
6 make arrests upon process issued by any court having jurisdiction over the property.  
7 Seizure without process or warrant may be made if:

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

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

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

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

19 (1) Place the property under seal;

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

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

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

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

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

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

1     subjecting it to forfeiture under this Code section, the court shall order the disposition of  
2     the seized property as provided in this Code section and that claimant shall have no claim  
3     upon the property or proceeds from the sale thereof.

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

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

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

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

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

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

5 10-1-359.

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

## 10 SECTION 5.

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

14 "46-1-6.

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

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

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

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

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

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

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

10

**SECTION 6.**

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