

House Bill 888

By: Representatives Rice of the 51st, Hill of the 21st, Spencer of the 180th, and Hembree of the 67th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 14 of Chapter 1 of Title 10, Title 16, Title 40, and Chapter 25 of Title 50
2 of the Official Code of Georgia Annotated, relating to secondary metals recyclers, crimes and
3 offenses, motor vehicles and traffic, and the Georgia Technology Authority, respectively, so
4 as to provide for comprehensive regulation of theft of regulated metal property; to provide
5 for a registry of persons convicted of certain theft crimes; to provide for criminal penalties;
6 to change punishment provisions for violations of Article 14 of Chapter 1 of Title 10; to
7 provide for the publication of second or subsequent convictions and procedure therefor; to
8 provide for forfeiture of certain property and procedure therefor; to provide for the
9 suspension of the drivers' licenses of persons convicted for certain offenses related to the
10 theft of regulated metal property; to provide for restoration of the drivers' licenses under
11 certain conditions; to change punishment provisions relating to criminal damage to property
12 in the first degree; to change punishment provisions relating to certain theft crimes involving
13 ferrous metals or regulated metal property; to create the crime of failing to register on the
14 metal theft registry; to provide for the Georgia Technology Authority to contract with the
15 private sector to create a metal theft registry; to provide for conditions of such registry; to
16 provide for definitions; to provide for related matters; to provide for an effective date and
17 applicability; to repeal conflicting laws; and for other purposes.

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

20 Article 14 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to
21 secondary metals recyclers, is amended by revising Code Section 10-1-357, relating to
22 penalties for violations, as follows:

23 "(a) Any person selling regulated metal property to a secondary metals recycler in violation
24 of any provision of this article shall be guilty of a misdemeanor unless the value of the
25 regulated ~~metals~~ metal property, in its original and undamaged condition, in addition to any

26 costs which are, or would be, incurred in repairing or in the attempt to recover any property
27 damaged in the theft or removal of such regulated metal property, is in an aggregate
28 amount which exceeds \$500.00, in which case such person shall be guilty of a felony and,
29 upon conviction, shall be punished by a fine of not more than \$5,000.00 or by
30 imprisonment for not less than one nor more than five years, or both, and shall be required
31 to register such conviction with the metal theft registry pursuant to Code Section 50-25-17.

32 (b) Any secondary metals recycler knowingly and intentionally engaging in any practice
33 which constitutes a violation of this article shall be guilty of a misdemeanor unless the
34 value of the regulated ~~metals~~ metal property, in its original and undamaged condition, in
35 addition to any costs which are, or would be, incurred in repairing or in the attempt to
36 recover any property damaged in the theft or removal of such regulated metal property, is
37 in an aggregate amount which exceeds \$500.00, in which case such secondary metals
38 recycler shall be guilty of a felony and, upon conviction, shall be punished by a fine of not
39 more than \$5,000.00 or by imprisonment for not less than one nor more than five years, or
40 both.

41 (c)(1) The clerk of the court in which a person is convicted a second or subsequent time
42 of any violation of this Code section within five years, as measured from the dates of
43 previous arrests for which convictions were obtained or pleas of nolo contendere were
44 accepted to the date of the current arrest for which a conviction is obtained or a plea of
45 nolo contendere is accepted, shall cause to be published a notice of conviction for each
46 such person convicted. Such notices of conviction shall be published in the manner of
47 legal notices in the legal organ of the county in which such person resides or, in the case
48 of nonresidents, in the legal organ of the county in which the person was convicted. Such
49 notice of conviction shall be one column wide by two inches long; shall contain the
50 photograph taken by the arresting law enforcement agency at the time of arrest, the name
51 and address of the convicted person, the date, time, and place of arrest, and the
52 disposition of the case; and shall be published once in the legal organ of the appropriate
53 county in the second week following such conviction or as soon thereafter as publication
54 may be made.

55 (2) The convicted person for which a notice of conviction is published pursuant to this
56 subsection shall be assessed \$25.00 for the cost of publication of such notice and such
57 assessment shall be imposed at the time of conviction in addition to any other fine
58 imposed pursuant to this Code section.

59 (3) The clerk of the court, the publisher of any legal organ which publishes a notice of
60 conviction, and any other person involved in the publication of an erroneous notice of
61 conviction shall be immune from civil or criminal liability for such erroneous publication,
62 provided such publication was made in good faith."

SECTION 2.

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Said article is further amended by adding a new Code section to read as follows:

"10-1-357.1.

(a) As used in this Code section, the term 'crime' means:

(1) Theft by taking in violation of Code Section 16-8-2, theft by conversion in violation of Code Section 16-8-4, or theft by receiving stolen property in violation of Code Section 16-8-7 if the subject of the theft was regulated metal property;

(2) Criminal damage to property in the first degree in violation of paragraph (2) of subsection (a) of Code Section 16-7-22; or

(3) A criminal violation of this article.

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

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

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

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

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

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

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

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

(d) Property taken or detained under this Code section shall not be subject to replevin but shall be deemed to be in the custody of the superior court of the county wherein the seizure was made or in the custody of the superior court of the county where it can be proven that

100 the crime was committed, subject only to the orders and decrees of the court having
101 jurisdiction over the forfeiture proceedings. When property is seized under this Code
102 section, law enforcement officers seizing such property shall:

103 (1) Place the property under seal;

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

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

109 (e) When property is seized under this Code section, the sheriff or law enforcement officer
110 seizing the same shall report the seizure, within 20 days thereof, to the district attorney of
111 the judicial circuit having jurisdiction in the county where the seizure was made. Within
112 60 days from the date he or she receives notice of the seizure, the district attorney of the
113 judicial circuit shall cause to be filed in the superior court of the county in which the
114 property was seized or detained an in rem complaint for forfeiture of such property as
115 provided for in this Code section. The proceedings shall be brought in the name of the
116 state by the district attorney of the circuit in which the property was seized, and the
117 complaint shall be verified by a duly authorized agent of this state in a manner required by
118 the law of this state. The complaint shall describe the property; state its location; state its
119 present custodian; state the name of the owner, if known to the duly authorized agent of
120 this state; allege the essential elements of the violation upon which the forfeiture is based;
121 and conclude with a prayer of due process to enforce the forfeiture. Upon the filing of such
122 a complaint, the court shall promptly cause process to issue to the present custodian in
123 possession of the property described in the complaint, commanding him or her to seize the
124 property described in the complaint and to hold that property for further order of the court.
125 A copy of the complaint shall be served upon the owner or lessee, if known, and upon any
126 person having a duly recorded security interest in or lien upon that property. If the owner
127 or lessee is unknown, resides outside this state, departs this state, cannot after due diligence
128 be found within this state, or conceals himself or herself so as to avoid service, notice of
129 the proceedings shall be published once a week for two weeks in the newspaper in which
130 the sheriff's advertisements are published. Such publication shall be deemed notice to any
131 and all persons having an interest in or right affected by such proceeding and from any sale
132 of the property resulting therefrom but shall not constitute notice to any person having a
133 duly recorded security interest in or lien upon such property and required to be served
134 under this Code section unless that person is unknown, resides outside this state, departs
135 this state, cannot after due diligence be found within this state, or conceals himself or
136 herself to avoid service. An owner of or interest holder in the property may file an answer

137 asserting a claim against the property in the action in rem. Any such answer shall be filed
 138 within 30 days after the service of the summons and complaint. Where service is made by
 139 publication and personal service has not been made, an owner or interest holder shall file
 140 an answer within 30 days of the date of final publication. An answer shall be verified by
 141 the owner or interest holder under penalty of perjury. In addition to complying with the
 142 general rules applicable to an answer in civil actions, the answer shall set forth:

- 143 (1) The caption of the proceedings as set forth in the complaint and the name of the
 144 claimant;
 145 (2) The address at which the claimant will accept mail;
 146 (3) The nature and extent of the claimant's interest in the property;
 147 (4) The date, identity of transferor, and circumstances of the claimant's acquisition of the
 148 interest in the property;
 149 (5) The specific provision of this Code section relied on in asserting that the property is
 150 not subject to forfeiture;
 151 (6) All essential facts supporting each assertion; and
 152 (7) The precise relief sought.

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

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

- 165 (A) Retain it for official use by any agency of this state or any political subdivision
 166 thereof;
 167 (B) Sell that which is not required to be destroyed by law and which is not harmful to
 168 the public. The proceeds shall be used for payment of all proper expenses of the
 169 proceedings for forfeiture and sale, including but not limited to the expenses of seizure,
 170 maintenance of custody, advertising, and court costs; or
 171 (C) Require the sheriff or police chief of the county in which the seizure occurred to
 172 take custody of the property and remove it for disposition in accordance with law.

173 (2)(A) Money, currency, or proceeds which are realized from the sale or disposition
 174 of forfeited property shall after satisfaction of the interest of secured parties and after
 175 payment of all costs vest in the local political subdivision whose law enforcement
 176 officers seized it. If the property was seized by a municipal law enforcement agency,
 177 then the money, currency, or proceeds realized from the sale or disposition of the
 178 property shall vest in that municipality. If the property was seized by a county law
 179 enforcement agency, then the money, currency, or proceeds realized from the sale or
 180 disposition of the property shall vest in that county. If the property was seized by joint
 181 action of a county law enforcement agency and a municipal law enforcement agency,
 182 then the money, currency, or proceeds realized from the sale or disposition of the
 183 property shall vest in that county and that municipality and shall be divided equally
 184 between the county and municipality. If the property was seized by a state law
 185 enforcement agency, then the money, currency, or proceeds realized from the sale or
 186 disposition of the property shall vest in the county where the condemnation proceedings
 187 are filed. Except as otherwise provided in subparagraph (B) of paragraph (1) of this
 188 subsection for payment of all costs, the local government in which the money, currency,
 189 or proceeds realized from the forfeited property vests shall expend or use such funds
 190 or proceeds received for any official law enforcement purpose except for the payment
 191 of salaries or rewards to law enforcement personnel, at the discretion of the chief officer
 192 of the local law enforcement agency, or to fund victim-witness assistance programs.
 193 Such property shall not be used to supplant any other local, state, or federal funds
 194 appropriated for staff or operations.
 195 (B) Any local law enforcement agency receiving property under this subsection shall
 196 submit an annual report to the local governing authority. The report shall be submitted
 197 with the agency's budget request and shall itemize the property received during the
 198 fiscal year and the utilization made thereof."

199 **SECTION 3.**

200 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
 201 amended by revising Code Section 16-7-22, relating to criminal damage to property in the
 202 first degree, as follows:

203 "16-7-22.

204 (a) A person commits the offense of criminal damage to property in the first degree when
 205 he or she:

206 (1) Knowingly and without authority interferes with any property in a manner so as to
 207 endanger human life; or

208 (2) Knowingly and without authority and by force or violence interferes with the
 209 operation of any system of public communication, public transportation, sewerage,
 210 drainage, water supply, gas, power, or other public utility service or with any constituent
 211 property thereof.

212 (b) A person convicted of the offense of criminal damage to property in the first degree
 213 shall be punished by imprisonment for not less than ~~one~~ three nor more than ten years, and
 214 if such conviction is for violating paragraph (2) of subsection (a) of this Code section, such
 215 person shall be required to register such conviction with the metal theft registry pursuant
 216 to Code Section 50-25-17."

217 SECTION 4.

218 Said title is further amended by revising paragraph (9) of subsection (a) of Code Section
 219 16-8-12, relating to penalties for various theft crimes in violation of Code Sections 16-8-2
 220 through 16-8-9, as follows:

221 "(9) Notwithstanding the provisions of paragraph (1) of this subsection, if the property
 222 of the theft was ~~ferrous metals or~~ regulated metal property, as such ~~terms are~~ term is
 223 defined in Code Section 10-1-350, and the sum of the aggregate amount of such property,
 224 in its original and undamaged condition, plus any reasonable costs which are or would
 225 be incurred in the repair or the attempt to recover any property damaged in the theft or
 226 removal of such regulated metal property, exceeds \$500.00, by imprisonment for not less
 227 than one nor more than five years, a fine of not more than \$5,000.00, or both, and such
 228 person shall be required to register such conviction with the metal theft registry pursuant
 229 to Code Section 50-25-17."

230 SECTION 5.

231 Said title is further amended by revising Code Section 16-8-12, relating to penalties for
 232 violation of Code Sections 16-8-2 through 16-8-9, by adding a new subsection to read as
 233 follows:

234 "(d)(1) If the property of the theft was regulated metal property, as such term is defined
 235 in Code Section 10-1-350, the clerk of the court in which a person is convicted a second
 236 or subsequent time within five years, as measured from the dates of previous arrests for
 237 which convictions were obtained or pleas of nolo contendere were accepted to the date
 238 of the current arrest for which a conviction is obtained or a plea of nolo contendere is
 239 accepted, shall cause to be published a notice of conviction for each such person
 240 convicted. Such notices of conviction shall be published in the manner of legal notices
 241 in the legal organ of the county in which such person resides or, in the case of
 242 nonresidents, in the legal organ of the county in which the person was convicted. Such

243 notice of conviction shall be one column wide by two inches long; shall contain the
 244 photograph taken by the arresting law enforcement agency at the time of arrest, the name
 245 and address of the convicted person, the date, time, and place of arrest, and the
 246 disposition of the case; and shall be published once in the legal organ of the appropriate
 247 county in the second week following such conviction or as soon thereafter as publication
 248 may be made.

249 (2) The convicted person for which a notice of conviction is published pursuant to this
 250 subsection shall be assessed \$25.00 for the cost of publication of such notice and such
 251 assessment shall be imposed at the time of conviction in addition to any other fine
 252 imposed pursuant to this Code section.

253 (3) The clerk of the court, the publisher of any legal organ which publishes a notice of
 254 conviction, and any other person involved in the publication of an erroneous notice of
 255 conviction shall be immune from civil or criminal liability for such erroneous publication,
 256 provided such publication was made in good faith."

257 **SECTION 6.**

258 Said title is further amended by revising Article 2 of Chapter 10, relating to obstruction of
 259 public administration and related offenses, by adding a new Code section to read as follows:

260 "16-10-34.

261 Any individual who is required to register on the metal theft registry as specified in Code
 262 Section 50-25-17 and who fails to comply with such requirement or who provides false
 263 information shall be guilty of a misdemeanor."

264 **SECTION 7.**

265 Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is
 266 amended by adding a new Code section to read as follows:

267 "40-5-57.4.

268 (a) The driver's license of any person convicted for a second or subsequent offense of:

269 (1) Theft by taking in violation of Code Section 16-8-2, theft by conversion in violation
 270 of Code Section 16-8-4, or theft by receiving stolen property in violation of Code Section
 271 16-8-7 if the subject of the theft was regulated metal property, as such term is defined in
 272 Code Section 10-1-350;

273 (2) Criminal damage to property in the first degree in violation of paragraph (2) of
 274 subsection (a) of Code Section 16-7-22; or

275 (3) A criminal violation of Article 14 of Chapter 1 of Title 10

276 shall be suspended as provided in this Code section. The person shall submit the driver's
 277 license to the court upon conviction and the court shall forward the driver's license to the
 278 department.

279 (b)(1) A first suspension of a driver's license under this Code section shall be for a period
 280 of six months.

281 (2) A second or subsequent suspension of a driver's license under this Code section shall
 282 be for a period of one year.

283 (c) After the suspension period and when the person pays a restoration fee of \$200.00 or,
 284 when processed by mail, \$210.00, the suspension shall terminate and the department shall
 285 return the person's driver's license to such person."

286 **SECTION 8.**

287 Chapter 25 of Title 50 of the Official Code of Georgia Annotated, relating to the Georgia
 288 Technology Authority, is amended by adding a new Code section to read as follows:

289 "50-25-17.

290 (a) As used in this Code section, the term:

291 (1) 'Address' means the street or route address of the registrant's residence. For purposes
 292 of this Code section, the term does not include a post office box.

293 (2) 'Photograph' means a passport quality and passport sized photograph.

294 (b) The authority shall contract with the private sector to create a metal theft registry. The
 295 authority shall monitor the success of such registry.

296 (c) The metal theft registry shall collect the name, address, and photograph of any
 297 individual who is required to register pursuant to subsection (a) of Code Section 10-1-357,
 298 subsection (b) of Code Section 16-7-22, or paragraph (9) of subsection (a) of Code Section
 299 16-8-12. Registration shall not be required for any individual who is sentenced pursuant
 300 to Article 3 of Chapter 8 of Title 42.

301 (d) Each registrant shall be required to pay a one-time registration fee, not to exceed
 302 \$50.00, to the private sector entity selected by the authority and shall supply a current
 303 photograph for the registry. A registrant shall be responsible for updating any change in
 304 name or address within 30 days after such change."

305 **SECTION 9.**

306 This Act shall become effective on January 1, 2013, and shall apply to all offenses
 307 committed on and after such date.

308 **SECTION 10.**

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