

Senate Bill 321

By: Senators Unterman of the 45th, McKoon of the 29th, Stone of the 23rd and Ramsey, Sr. of the 43rd

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling
 2 and other trade practices, so as to provide for the comprehensive revision of provisions
 3 regarding secondary metals recyclers; to provide for definitions, procedures, conditions, and
 4 limitations relating to the buying and selling of regulated metal property; to amend Article
 5 1 of Chapter 8 of Title 16 of the Official Code of Georgia Annotated, relating to theft, so as
 6 to provide that only licensed funeral directors, registered cemetery owners, and certain other
 7 persons may sell certain burial objects as scrap metal; to provide for forfeiture of certain
 8 property and procedure therefor; to provide for powers, duties, and authority of sheriffs and
 9 other law enforcement officers; to provide for permits and fees; to provide for a state-wide
 10 data base; to provide for criminal offenses and penalties; to amend Code Section 40-3-36 of
 11 the Official Code of Georgia Annotated, relating to cancellation of certificate of title for
 12 scrap, dismantled, or demolished vehicles, salvage certificate of title, administrative
 13 enforcement, and removal of license plates, so as to revise certain provisions relating to the
 14 use of a form to transfer title to a motor vehicle to be sold or disposed of as scrap metal or
 15 parts; to provide for verification that a vehicle is not subject to any secured interest or lien;
 16 to provide for additional changes to said Code section, relating to the use of a form to transfer
 17 title to a motor vehicle to be sold or disposed of as scrap metal or parts and verification that
 18 a vehicle is not subject to any secured interest or lien, subject to a contingency; to amend
 19 Code Section 40-3-56 of the Official Code of Georgia Annotated, relating to satisfaction of
 20 security interests and liens, so as to change certain provisions relating to the release of
 21 security interests and liens; to provide for related matters; to provide an effective date and
 22 applicability; to repeal conflicting laws; and for other purposes.

23 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

24

PART I

25

SECTION 1-1.

26 Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling and other
 27 trade practices, is amended by revising Article 14, relating to secondary metals recyclers, to
 28 read as follows:

29

"ARTICLE 14

30 10-1-350.

31 As used in this article, the term:

32 (1) 'Aluminum property' means aluminum forms designed to shape concrete.33 (2) 'Copper property' means any copper wire, copper tubing, copper pipe, or any item
34 composed completely of copper.35 ~~(1)~~(3) 'Ferrous metals' means any metals containing significant quantities of iron or steel.36 (4) 'Fixed site' means any site in this state occupied by a secondary metals recycler as an
37 owner or a lessee of such site or in the case of a natural person, where such person
38 resides, is primarily located, or primarily engages in business as a secondary metals
39 recycler.40 ~~(2)~~(5) 'Law enforcement officer' means any duly constituted peace officer of the State
41 of Georgia or of any county, municipality, or political subdivision thereof.42 ~~(3)~~(6) 'Nonferrous metals' means stainless steel beer kegs and metals not containing
43 significant quantities of iron or steel, including, without limitation, copper, brass,
44 aluminum, bronze, lead, zinc, nickel, and alloys thereof.45 ~~(4)~~(7) 'Person' means an individual, partnership, corporation, joint venture, trust,
46 association, and any other legal business entity.47 ~~(5)~~(8) 'Personal identification card' means a current and unexpired driver's license or
48 identification card issued by the Department of Driver Services or a similar card issued
49 by another state, a military identification card, or an appropriate work authorization
50 issued by the U.S. Citizenship and Immigration Services of the Department of Homeland
51 Security, which shall contain the individual's name, address, and photograph.52 ~~(6)~~(9) 'Purchase transaction' means a transaction in which a secondary metals recycler
53 gives consideration in exchange for regulated metal property.54 ~~(7)~~(10) 'Regulated metal property' means any item composed primarily of any ferrous
55 metals, nonferrous metals, aluminum property, copper property, or catalytic converter but
56 shall not include aluminum beverage containers, used beverage containers, or similar
57 beverage containers.

58 ~~(8)~~(11) 'Secondary metals recycler' means any person who is engaged, from a fixed
 59 ~~location site~~ or otherwise, in the business in this state of paying compensation for ~~ferrous~~
 60 ~~or nonferrous metals~~ regulated metal property that ~~have~~ has served ~~their~~ its original
 61 economic purpose, whether or not engaged in the business of performing the
 62 manufacturing process by which ~~ferrous metals or nonferrous metals are~~ regulated metal
 63 property is converted into raw material products consisting of prepared grades and having
 64 an existing or potential economic value.

65 10-1-350.1.

66 (a) As used in this Code section, the term 'coil' means any copper, aluminum, or
 67 aluminum-copper condensing coil or evaporation coil including its tubing or rods. The
 68 term shall not include coil from a window air-conditioning system, if contained within the
 69 system itself, or coil from an automobile condenser.

70 (b) No secondary metals recycler shall purchase any coil unless it is purchased from:

71 (1) A contractor licensed pursuant to Chapter 14 of Title 43 who provides a copy of his
 72 or her valid license at the time of sale that is scanned or photocopied by the secondary
 73 metals recycler or whose scanned or photocopied license is on file with the secondary
 74 metals recycler; or

75 (2) A person with verifiable documentation, such as a receipt or work order, indicating
 76 that the coils are the result of a replacement of condenser coils or a heating or
 77 air-conditioning system performed by a contractor licensed pursuant to Chapter 14 of
 78 Title 43.

79 (c) No secondary metals recycler shall purchase any copper wire which appears to have
 80 been exposed to heat, charred, or burned in an attempt to remove insulation surrounding
 81 it unless it is purchased from:

82 (1) A contractor licensed pursuant to Chapter 14 of Title 43 who provides a copy of his
 83 or her valid license at the time of sale that is scanned or photocopied by the secondary
 84 metals recycler or whose scanned or photocopied license is on file with the secondary
 85 metals recycler; or

86 (2) A person with a certified copy of a police report showing that such person's real
 87 property was involved in a fire.

88 10-1-351.

89 (a) A secondary metals recycler shall maintain a legible record of all purchase transactions
 90 to which such secondary metals recycler is a party. Such record shall include the following
 91 information:

92 (1) The name and address of the secondary metals recycler;

- 93 (2) The date of the transaction;
- 94 (3) The weight, quantity, or volume and a description of the type of regulated metal
 95 property purchased in a purchase transaction. For purposes of this paragraph, the term
 96 'type of regulated metal property' shall include a general physical description, such as
 97 wire, tubing, extrusions, or castings;
- 98 (4) A digital photograph or photographs or a digital video image or images of the
 99 regulated metal property which shows the regulated metal property in a clear, undistorted
 100 manner;
- 101 ~~(4)~~(5) The amount of consideration given in a purchase transaction for the regulated
 102 metal property and a copy of the check or voucher or documentation evidencing the
 103 electronic funds transfer given as consideration for such purchase transaction;
- 104 ~~(5)~~(6) A signed and sworn affidavit from the person receiving consideration in the
 105 purchase transaction stating that he or she is the rightful owner of the regulated metal
 106 property or is entitled to sell the regulated metal property being sold;
- 107 (7) A signed and sworn affidavit from the person selling the regulated metal property
 108 stating that he or she understands that: 'A secondary metals recycler is any person who
 109 is engaged, from a fixed site or otherwise, in the business in this state of paying
 110 compensation for ferrous or nonferrous metals that have served their original economic
 111 purpose, whether or not engaged in the business of performing the manufacturing process
 112 by which ferrous metals or nonferrous metals are converted into raw material products
 113 consisting of prepared grades and having an existing or potential economic value. No
 114 ferrous metals, nonferrous metals, aluminum property, copper property, or catalytic
 115 converters (aluminum beverage containers, used beverage containers, or similar beverage
 116 containers are exempt), may be sold to a secondary metals recycler unless such secondary
 117 metals recycler is a holder of a valid permit issued pursuant to Article 14 of Chapter 1 of
 118 Title 10 of the Official Code of Georgia Annotated';
- 119 ~~(6)~~(8) A photocopy scanned or photocopied copy of a valid personal identification card
 120 of the person delivering the regulated metal property to the secondary metals recycler;
- 121 (9) Reserved;
- 122 (9) A photograph, videotape, or digital recording depicting a recognizable facial image
 123 of any person with whom the secondary metals recycler conducts a purchase transaction,
 124 employing technology allowing the image to be retained in electronic storage and in a
 125 transferable format such that the image may be provided to law enforcement upon
 126 request;
- 127 ~~(7)~~(10) The distinctive number from, and type of, the personal identification card of the
 128 person delivering the regulated metal property to the secondary metals recycler; ~~and~~

129 ~~(8)~~(11) The vehicle license tag number or vehicle identification number, state of issue,
 130 and the type of vehicle, if available, used to deliver the regulated metal property to the
 131 secondary metals recycler. For purposes of this paragraph, the term 'type of vehicle' shall
 132 mean an automobile, pickup truck, van, or truck;

133 (12) A scanned or photocopied copy of the verifiable documentation, reports, and
 134 licenses required pursuant to Code Section 10-1-350.1; and

135 (13) A scanned or photocopied copy of the permit issued by the sheriff pursuant to Code
 136 Section 10-1-358, if the regulated metal property is purchased from a secondary metals
 137 recycler.

138 (b) A secondary metals recycler shall maintain or cause to be maintained the information
 139 required by subsection (a) of this Code section for not less than two years from the date of
 140 the purchase transaction. In addition, all of the information required by subsection (a) of
 141 this Code section, except for the scanned or photocopied copy of the permit specified in
 142 paragraph (13) of subsection (a) of this Code section, shall be provided to the sheriff of the
 143 county from which the secondary metals recycler has received the permit under Code
 144 Section 10-1-358. The sheriff shall place or cause to be placed such information in the data
 145 base established under Code Section 10-1-358.

146 (c) When the metal being purchased is a motor vehicle, the person offering to sell the
 147 motor vehicle to a secondary metals recycler shall either provide the title to such motor
 148 vehicle or fully execute a ~~cancellation of certificate of title for scrap vehicles~~ statement on
 149 a form as promulgated by the Department of Revenue, Motor Vehicle Division, designated
 150 as MV-1SP, in accordance with Code Section 40-3-36. The secondary metals recycler
 151 shall forward the title or MV-1SP form to the Department of Revenue within 72 hours of
 152 receipt of the title or form.

153 (d) It shall be unlawful to make a false statement in executing the affidavit required by
 154 paragraphs (6) and (6.1) of subsection (a) of this Code section, and the making of a false
 155 statement shall be punishable as an act of false swearing under Code Section 16-10-71.

156 10-1-352.

157 During the usual and customary business hours of a secondary metals recycler, a law
 158 enforcement officer shall, after properly identifying himself or herself as a law enforcement
 159 officer, have the right to inspect:

160 (1) Any and all ~~purchased~~ regulated metal property in the possession of the secondary
 161 metals recycler; and

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

163 ~~10-1-352.1. 10-1-353.~~

164 ~~(a) As used in this Code section, the terms:~~

165 ~~(1) 'Aluminum property' means aluminum forms designed to shape concrete.~~

166 ~~(2) 'Copper property' means any copper wire, copper tubing, copper pipe, or any item~~
 167 ~~composed completely of copper.~~

168 ~~(b) A secondary metals recycler may pay by check or by cash for any copper property,~~
 169 ~~catalytic converter, or aluminum property as follows:~~

170 ~~(1) Cash payments shall occur no earlier than 24 hours after the copper property,~~
 171 ~~catalytic converter, or aluminum property is provided to the secondary metals recycler;~~
 172 ~~and~~

173 ~~(2) Checks shall be payable only to the person named who was recorded as delivering~~
 174 ~~the copper property, catalytic converter, or aluminum property to the secondary metals~~
 175 ~~recycler; provided, however, that if such person is delivering the copper property,~~
 176 ~~catalytic converter, or aluminum property on behalf of a governmental entity or a~~
 177 ~~nonprofit or for profit business, the check may be payable to such business or entity and~~
 178 ~~may also be transmitted to such business or entity.~~

179 ~~(c) The provisions of this Code section shall not apply to any transaction between business~~
 180 ~~entities.~~

181 ~~(a) A secondary metals recycler shall pay only by check, voucher, or electronic funds~~
 182 ~~transfer for regulated metal property.~~

183 ~~(b) If the seller of the regulated metal property is an employee or authorized agent of a~~
 184 ~~business as evidenced by a copy of a valid business license and a letter from the owner or~~
 185 ~~operator of the business expressly recognizing the seller as an employee or authorized~~
 186 ~~agent, then payment for the regulated metal property shall be made only by check or~~
 187 ~~electronic funds transfer made payable to the business and mailed to or electronically~~
 188 ~~transferred using the address of such business entity 14 days immediately following the~~
 189 ~~sale.~~

190 ~~(c)(1) If the seller of the regulated metal property is not an employee or authorized agent~~
 191 ~~of a business or elects to be paid in his or her name, the payment for the regulated metal~~
 192 ~~property shall be by check, electronic funds transfer, or voucher, at the option of the~~
 193 ~~seller.~~

194 ~~(2) If the seller elects payment by check or electronic funds transfer pursuant to~~
 195 ~~paragraph (1) of this subsection, the check or electronic funds transfer shall be made~~
 196 ~~payable only to the natural person who was recorded as the seller of the regulated metal~~
 197 ~~property to the secondary metals recycler and mailed to or electronically transferred using~~
 198 ~~the address indicated on the personal identification card of the seller presented at the time~~
 199 ~~of such sale 14 days immediately following the sale.~~

200 (3) If the seller elects payment by voucher pursuant to paragraph (1) of this subsection,
 201 the secondary metals recycler shall mail the seller a voucher for the amount of regulated
 202 metal property purchased 14 days immediately following the sale. Such voucher shall
 203 made payable only to the natural person who was recorded as the seller of the regulated
 204 metal property to the secondary metals recycler and mailed to the address indicated on
 205 the personal identification card of the seller presented at the time of such sale. The
 206 voucher shall include the date of purchase, name of the seller, the amount paid for the
 207 regulated metal property, a detailed description of the regulated metal property
 208 purchased, and the date on which the voucher expires. The voucher may only be
 209 redeemed for cash by the person whose name appears on the voucher as the seller or by
 210 such person's heirs or legal representative. If a voucher is not redeemed by the person
 211 whose name appears on the voucher as the seller or by such person's heirs or legal
 212 representative within six months of the date of the transaction, the voucher shall expire
 213 and the secondary metals recycler shall not be required to honor the voucher after the
 214 expiration date.

215 ~~10-1-353.~~ 10-1-354.

216 (a) Whenever a law enforcement officer has reasonable cause to believe that any item of
 217 regulated metal property in the possession of a secondary metals recycler has been stolen,
 218 the law enforcement officer may issue a hold notice to the secondary metals recycler. The
 219 hold notice shall be in writing, shall be delivered to the secondary metals recycler, shall
 220 specifically identify those items of regulated metal property that are believed to have been
 221 stolen and that are subject to the notice, and shall inform the secondary metals recycler of
 222 the information contained in this Code section. Upon receipt of the notice issued in
 223 accordance with this Code section, the secondary metals recycler receiving the notice shall
 224 not process or remove the items of regulated metal property identified in the notice, or any
 225 portion thereof, from the place of business of the secondary metals recycler for 15 calendar
 226 days after receipt of the notice by the secondary metals recycler, unless sooner released by
 227 a law enforcement officer.

228 (b) No later than the expiration of the 15 day period, a law enforcement officer may issue
 229 a second hold notice to the secondary metals recycler, which shall be an extended hold
 230 notice. The extended hold notice shall be in writing, shall be delivered to the secondary
 231 metals recycler, shall specifically identify those items of regulated metal property that are
 232 believed to have been stolen and that are subject to the extended hold notice, and shall
 233 inform the secondary metals recycler of the information contained in this Code section.
 234 Upon receipt of the extended hold notice issued in accordance with this Code section, the
 235 secondary metals recycler receiving the extended hold notice shall not process or remove

236 the items of regulated metal property identified in the notice, or any portion thereof, from
 237 the place of business of the secondary metals recycler for 30 calendar days after receipt of
 238 the extended hold notice by the secondary metals recycler, unless sooner released by a law
 239 enforcement officer.

240 (c) At the expiration of the hold period or, if extended in accordance with this Code
 241 section, at the expiration of the extended hold period, the hold is automatically released and
 242 the secondary metals recycler may dispose of the regulated metal property unless other
 243 disposition has been ordered by a court of competent jurisdiction.

244 ~~10-1-354.~~ 10-1-355.

245 (a) If the secondary metals recycler contests the identification or ownership of the
 246 regulated metal property, the party other than the secondary metals recycler claiming
 247 ownership of any regulated metal property in the possession of a secondary metals recycler
 248 may, provided that a timely report of the theft of the regulated metal property was made
 249 to the proper authorities, bring an action in the superior or state court of the county in
 250 which the secondary metals recycler is located. The petition for such action shall include
 251 a description of the means of identification of the regulated metal property utilized by the
 252 petitioner to determine ownership of the regulated metal property in the possession of the
 253 secondary metals recycler.

254 (b) When a lawful owner recovers stolen regulated metal property from a secondary metals
 255 recycler who has complied with the provisions of this article, and the person who sold the
 256 regulated metal property to the secondary metals recycler is convicted of theft by taking,
 257 theft by conversion, a violation of this article, theft by receiving stolen property, or criminal
 258 damage to property in the first degree, the court shall order the defendant to make full
 259 restitution, including, without limitation, attorneys' fees, court costs, and other expenses
 260 to the secondary metals recycler or lawful owner, as appropriate.

261 (c) When a lawful owner recovers stolen regulated metal property from a secondary metals
 262 recycler who has knowingly and intentionally not complied with the provisions of this
 263 article, and the secondary metals recycler is convicted of theft by taking, theft by
 264 conversion, theft by receiving stolen property, or a violation of this article, the court shall
 265 order the defendant to make full restitution, including, without limitation, attorneys' fees,
 266 court costs, and other expenses to the lawful owner.

267 ~~10-1-355.~~ 10-1-356.

268 (a) This article shall not apply to purchases of regulated metal property from:

- 269 (1) Organizations, corporations, or associations registered with the state as charitable,
 270 philanthropic, religious, fraternal, civic, patriotic, social, or school-sponsored
 271 organizations or associations or from any nonprofit corporations or associations;
 272 (2) A law enforcement officer acting in an official capacity;
 273 (3) A trustee in bankruptcy, executor, administrator, or receiver who has presented proof
 274 of such status to the secondary metals recycler;
 275 (4) Any public official acting under judicial process or authority who has presented proof
 276 of such status to the secondary metals recycler;
 277 (5) A sale on the execution, or by virtue, of any process issued by a court if proof thereof
 278 has been presented to the secondary metals recycler; or
 279 (6) A manufacturing, industrial, or other commercial vendor that generates or sells
 280 regulated metal property in the ordinary course of its business.
 281 (b) This article shall not apply to the purchase of any battery.

282 ~~10-1-356.~~ 10-1-357.

283 It shall be unlawful for:

- 284 (1) A secondary metals recycler to engage in the purchase or sale of regulated metal
 285 property between the hours of ~~9:00~~ 7:00 P.M. and ~~6:00~~ 7:00 A.M.; and
 286 (2) Any person to give a false statement of ownership or to give a false or altered
 287 identification or vehicle tag number and receive money or other consideration from a
 288 secondary metals recycler in return for regulated metal property.

289 10-1-357.1.

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

- 291 (1) Theft by taking in violation of Code Section 16-8-2, theft by conversion in violation
 292 of Code Section 16-8-4, or theft by receiving stolen property in violation of Code Section
 293 16-8-7 if the subject of the theft was regulated metal property;
 294 (2) Criminal damage to property in the first degree in violation of paragraph (2) of
 295 subsection (a) of Code Section 16-7-22; or
 296 (3) A criminal violation of this article.

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

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

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

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

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

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

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

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

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

327 (1) Place the property under seal;

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

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

333 10-1-357.2.

334 (a) When property is seized under Code Section 10-1-357.1, the sheriff or law enforcement
 335 officer seizing the same shall report the seizure, within 20 days thereof, to the district
 336 attorney of the judicial circuit having jurisdiction in the county where the seizure was
 337 made. Within 60 days from the date he or she receives notice of the seizure, the district
 338 attorney of the judicial circuit shall cause to be filed in the superior court of the county in
 339 which the property was seized or detained an in rem complaint for forfeiture of such

340 property as provided for in this Code section. The proceedings shall be brought in the
341 name of the state by the district attorney of the circuit in which the property was seized,
342 and the complaint shall be verified by a duly authorized agent of this state in a manner
343 required by the law of this state. The complaint shall describe the property; state its
344 location; state its present custodian; state the name of the owner, if known to the duly
345 authorized agent of this state; allege the essential elements of the violation upon which the
346 forfeiture is based; and conclude with a prayer of due process to enforce the forfeiture.
347 Upon the filing of such a complaint, the court shall promptly cause process to issue to the
348 present custodian in possession of the property described in the complaint, commanding
349 him or her to seize the property described in the complaint and to hold that property for
350 further order of the court. A copy of the complaint shall be served upon the owner or
351 lessee, if known, and upon any person having a duly recorded security interest in or lien
352 upon that property. If the owner or lessee is unknown, resides outside this state, departs
353 this state, cannot after due diligence be found within this state, or conceals himself or
354 herself so as to avoid service, notice of the proceedings shall be published once a week for
355 two weeks in the newspaper in which the sheriff's advertisements are published. Such
356 publication shall be deemed notice to any and all persons having an interest in or right
357 affected by such proceeding and from any sale of the property resulting therefrom but shall
358 not constitute notice to any person having a duly recorded security interest in or lien upon
359 such property and required to be served under this Code section unless that person is
360 unknown, resides outside this state, departs this state, cannot after due diligence be found
361 within this state, or conceals himself or herself to avoid service. An owner or interest
362 holder in the property may file an answer asserting a claim against the property in the
363 action in rem. Any such answer shall be filed within 30 days after the service of the
364 summons and complaint. Where service is made by publication and personal service has
365 not been made, an owner or interest holder shall file an answer within 30 days of the date
366 of final publication. An answer shall be verified by the owner or interest holder under
367 penalty of perjury. In addition to complying with the general rules applicable to an answer
368 in civil actions, the answer shall set forth:

- 369 (1) The caption of the proceedings as set forth in the complaint and the name of the
370 claimant;
371 (2) The address at which the claimant will accept mail;
372 (3) The nature and extent of the claimant's interest in the property;
373 (4) The date, identity of transferor, and circumstances of the claimant's acquisition of the
374 interest in the property;
375 (5) The specific provision of this Code section relied on in asserting that the property is
376 not subject to forfeiture;

377 (6) All essential facts supporting each assertion; and

378 (7) The precise relief sought.

379 If at the expiration of the period set forth in this subsection no answer has been filed, the
 380 court shall order the disposition of the seized property as provided for in this Code section.

381 If an answer is filed, a hearing shall be held within 60 days after service of the complaint
 382 unless continued for good cause and shall be held by the court without a jury. If the court
 383 determines that a claimant defending the complaint knew or by the exercise of ordinary
 384 care should have known that the property was to be used for an unlawful purpose
 385 subjecting it to forfeiture under this Code section, the court shall order the disposition of
 386 the seized property as provided in this Code section and that claimant shall have no claim
 387 upon the property or proceeds from the sale thereof.

388 (b)(1) When property is forfeited under Code Section 10-1-357.1, the judge of the
 389 superior court of the county where the seizure was made or of the county in which it can
 390 be proven that the crime was committed may dispose of the property by issuing an order
 391 to:

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

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

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

400 (2)(A) Money, currency, or proceeds which are realized from the sale or disposition
 401 of forfeited property shall after satisfaction of the interest of secured parties and after
 402 payment of all costs vest in the local political subdivision whose law enforcement
 403 officers seized it. If the property was seized by a municipal law enforcement agency,
 404 then the money, currency, or proceeds realized from the sale or disposition of the
 405 property shall vest in that municipality. If the property was seized by a county law
 406 enforcement agency, then the money, currency, or proceeds realized from the sale or
 407 disposition of the property shall vest in that county. If the property was seized by joint
 408 action of a county law enforcement agency and a municipal law enforcement agency,
 409 then the money, currency, or proceeds realized from the sale or disposition of the
 410 property shall vest in that county and that municipality and shall be divided equally
 411 between the county and municipality. If the property was seized by a state law
 412 enforcement agency, then the money, currency, or proceeds realized from the sale or
 413 disposition of the property shall vest in the county where the condemnation proceedings

414 are filed. Except as otherwise provided in subparagraph (B) of paragraph (1) of this
415 subsection for payment of all costs, the local government in which the money, currency,
416 or proceeds realized from the forfeited property vests shall expend or use such funds
417 or proceeds received for any official law enforcement purpose except for the payment
418 of salaries or rewards to law enforcement personnel, at the discretion of the chief officer
419 of the local law enforcement agency, or to fund victim-witness assistance programs.
420 Such property shall not be used to supplant any other local, state, or federal funds
421 appropriated for staff or operations.

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

426 10-1-358.

427 (a) It shall be unlawful to sell regulated metal property in any amount to a secondary
428 metals recycler unless the secondary metals recycler has a valid permit to purchase
429 regulated metal property issued pursuant to this Code section and it shall be unlawful for
430 any secondary metals recycler to purchase regulated metal property in any amount without
431 a valid permit to purchase regulated metal property pursuant to this Code section.

432 (b) Each secondary metals recycler shall obtain from the sheriff of each county in which
433 such secondary metals recycler's fixed sites are located a permit to purchase regulated
434 metal property. The sheriff shall issue the permit to the secondary metals recycler if the
435 secondary metals recycler has a fixed site located in the sheriff's county and declares on a
436 form provided by the sheriff that he or she is informed of and will comply with the
437 provisions of this article. The sheriff shall keep a record of all permits issued pursuant to
438 this subsection containing, at a minimum, the date of issuance and the name and address
439 of the permit holder. Such records shall be entered into an electronic data base accessible
440 statewide. Such data base shall be established through coordination with the Georgia
441 Bureau of Investigation and shall be searchable by all law enforcement officers in this state.
442 The sheriff shall be authorized to assess a reasonable permit fee on the issuance of each
443 permit for the purpose of establishing and maintaining the data base, not to exceed \$200.00.
444 Each permit shall be valid for 12 months.

445 (c) Any person convicted of violating this Code section shall be guilty of a misdemeanor
446 of a high and aggravated nature. Each violation shall constitute a separate offense.

447 ~~10-1-357.~~ 10-1-359.

448 ~~(a) Any person selling regulated metal property to a secondary metals recycler in violation~~
 449 ~~of any provision of this article shall be guilty of a misdemeanor unless the value of the~~
 450 ~~regulated metals property, in its original and undamaged condition, in addition to any costs~~
 451 ~~which are, or would be, incurred in repairing or in the attempt to recover any property~~
 452 ~~damaged in the theft or removal of such regulated metal property, is in an aggregate~~
 453 ~~amount which exceeds \$500.00, in which case such person shall be guilty of a felony and,~~
 454 ~~upon conviction, shall be punished by a fine of not more than \$5,000.00 or by~~
 455 ~~imprisonment for not less than one nor more than five years, or both.~~

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

464 (a) Except as provided for in subsection (c) of Code Section 10-1-358, any person who
 465 buys or sells regulated metal property in violation of any provision of this article:

466 (1) For a first offense, shall be guilty of a misdemeanor;

467 (2) For a second offense, shall be guilty of a misdemeanor of a high and aggravated
 468 nature; and

469 (3) For a third or subsequent offense, shall be guilty of a felony and, upon conviction
 470 thereof, shall be imprisoned for not less than one nor more than ten years.

471 (b) Any person who buys or sells regulated metal property in violation of any provision
 472 of this article shall be liable to any person who was the victim of a crime involving such
 473 regulated metal property for the full value of the regulated metal property and any repairs
 474 and related expense necessitated by the crime, plus court costs and reasonable attorney's
 475 fees.

476 ~~10-1-358.~~ 10-1-359.1.

477 The General Assembly finds that although this article is a matter of state-wide concern,
 478 local regulation may nonetheless be appropriate in order to enhance further the ability of
 479 law enforcement personnel to perform their duties. ~~This article supersedes and preempts~~
 480 ~~all~~ Consequently, this article shall be supplementary to local regulation and shall not
 481 supersede or preempt any rules, regulations, codes, ordinances, and other laws adopted by

482 any county, municipality, consolidated government, or other local governmental agency
 483 regarding the sale or purchase of regulated metal property."

484 **SECTION 1-1A.**

485 Article 1 of Chapter 8 of Title 16 of the Official Code of Georgia Annotated, relating to theft,
 486 is amended by adding a new Code section to read as follows:

487 "16-8-22.

488 (a) As used in this Code section, the term 'burial object' means any item reasonably
 489 believed to have been placed at a human burial or interment site including, without
 490 limitation, any memorial, tombstone, grave marker, shrine, statue, urn, or other metal burial
 491 place adornments.

492 (b) Only licensed funeral directors, registered cemetery owners, and burial object
 493 manufacturers and distributors, or individuals authorized by such persons, shall be
 494 authorized to sell burial objects as scrap metal. Any person other than such authorized
 495 persons who sells such items as scrap metal shall be guilty of a felony and, upon
 496 conviction, shall be sentenced to incarceration for not fewer than five years.

497 (c) Any purchaser of scrap metals shall employ due diligence to ensure that any person
 498 selling burial objects has the proper credentials. Any purchaser of scrap metals who
 499 negligently fails to comply with this subsection shall be guilty of a felony and, upon
 500 conviction, shall be sentenced to incarceration for not fewer than five years."

501 **SECTION 1-2.**

502 Code Section 40-3-36 of the Official Code of Georgia Annotated, relating to cancellation
 503 of certificate of title for scrap, dismantled, or demolished vehicles, salvage certificate of title,
 504 administrative enforcement, and removal of license plates, is amended by revising
 505 paragraphs (2) and (3) of subsection (a) as follows:

506 "(2) Notwithstanding any other provision of this article to the contrary, if the owner or
 507 authorized agent of the owner has not obtained a title in his or her name for the vehicle
 508 to be transferred, or has lost the title for the vehicle to be transferred, he or she may sign
 509 a statement swearing that, in addition to the foregoing conditions, the vehicle is worth
 510 \$850.00 or less and is at least 12 model years old. The statement described in this
 511 paragraph may be used only to transfer such a vehicle to a secondary metals recycler
 512 under Code Section 10-1-351, a licensed used motor vehicle parts dealer under Code
 513 Section 43-47-7, or a licensed scrap metal processor under Code Section 43-43-1. The
 514 department shall promulgate a form for the statement which shall include, but not be
 515 limited to:

- 516 (A) A statement that the vehicle shall never be titled again; it must be dismantled or
 517 scrapped;
- 518 (B) A description of the vehicle, including the year, make, model, vehicle identification
 519 number, and color;
- 520 (C) The name, address, and driver's license number of the owner;
- 521 (D) A certification that the owner:
- 522 (i) Never obtained a title to the vehicle in his or her name; or
- 523 (ii) Was issued a title for the vehicle, but the title was lost or stolen;
- 524 (E) A certification that the vehicle:
- 525 (i) Is worth \$850.00 or less;
- 526 (ii) Is at least 12 model years old; and
- 527 (iii) Is not subject to any secured interest or lien;
- 528 (F) An acknowledgment that the owner realizes this form will be filed with the
 529 department and that it is a felony, punishable by imprisonment for not fewer than one
 530 nor more than three years or a fine of not less than \$1,000.00 nor more than \$5,000.00,
 531 or both, to knowingly falsify any information on this statement;
- 532 (G) The owner's signature and the date of the transaction;
- 533 (H) The name, address, and National Motor Vehicle Title Information System
 534 identification number of the business acquiring the vehicle;
- 535 (I) A certification by the business that \$850.00 or less was paid to acquire the vehicle;
 536 and
- 537 (J) A certification that the business has verified by an on-line method determined by
 538 the commissioner that the vehicle is not currently subject to any secured interest or lien;
 539 provided, however, that such certification shall not be required until such an on-line
 540 method has been established and is available; and
- 541 ~~(J)~~(K) The business agent's signature and date along with a printed name and title if the
 542 agent is signing on behalf of a corporation.
- 543 (3) The secondary metals recycler, used motor vehicle parts dealer, or scrap metal
 544 processor shall mail or otherwise deliver the statement required under paragraph (2) of
 545 this subsection to the department within 72 hours of the completion of the transaction,
 546 requesting that the department cancel the Georgia certificate of title and registration."

547

SECTION 1-3.

548 Code Section 40-3-56 of the Official Code of Georgia Annotated, relating to satisfaction
 549 of security interests and liens, is amended by revising paragraph (1) of subsection (a) and
 550 revising subsection (c) as follows:

551 "(a)(1) If any security interest or lien listed on a certificate of title is satisfied, the holder
552 thereof shall, within ten days ~~after demand~~, execute a release in the form the
553 commissioner prescribes and mail or deliver the release to the commissioner and the
554 owner, provided that as an alternative to a handwritten signature, the commissioner may
555 authorize use of a digital signature as long as appropriate security measures are
556 implemented which assure security and verification of the digital signature process, in
557 accordance with regulations promulgated by the commissioner. For the purposes of the
558 release of a security interest or lien the 'holder' of the lien or security interest is the parent
559 bank or other lending institution and any branch or office of the parent institution may
560 execute such release."

561 "(c) Except for liens and security interests listed on certificates of title for mobile homes,
562 cranes, or vehicles which weigh more than 10,000 pounds gross vehicle weight, which
563 shall be satisfied only in conformity with subsections (a) and (b) of this Code section, any
564 lien or security interest for a vehicle which is 11 model years old or less shall be considered
565 satisfied and release shall not be required after ten years from the date of issuance of a title
566 on which such lien or security interest is listed. For a vehicle which is 12 model years old
567 and greater, any lien or security interest shall be considered satisfied and a release shall not
568 be required after four years from the date of issuance of a title on which such lien or
569 security interest is listed. None of the provisions of this Code section shall preclude the
570 perfection of a new lien or security agreement, or the perfection of an extension of a lien
571 or security agreement beyond a period of ten years for a vehicle which is 11 model years
572 old or less or beyond a period of more than four years for a vehicle which is 12 model years
573 old or greater, by application for a new certificate of title on which such lien or security
574 agreement is listed. In order to provide for the continuous perfection of a lien or security
575 interest originally entered into for a period of more than ten years for a vehicle which is 11
576 model years old or less or more than four years for a vehicle which is 12 model years old
577 and greater, other than a mobile home, crane, or vehicle which weighs more than 10,000
578 pounds gross vehicle weight, an application for a second title on which the lien or security
579 interest is listed must be submitted to the commissioner or the commissioner's duly
580 authorized tag agent before ten years from the date of the original title on which such lien
581 or security interest is listed. Otherwise the lien or security interest shall be perfected as of
582 the date of receipt of the application by the commissioner or the commissioner's duly
583 authorized county tag agent."

584

PART II

585

SECTION 2-1.

586 Code Section 40-3-36 of the Official Code of Georgia Annotated, as amended by
 587 Section 21(b) of Ga. L. 2011, p. 355, relating to cancellation of certificate of title for scrap,
 588 dismantled, or demolished vehicles, salvage certificate of title, administrative enforcement,
 589 and removal of license plates, is amended by revising paragraphs (2) and (3) of subsection
 590 (a) as follows:

591 "(2) Notwithstanding any other provision of this article to the contrary, if the owner or
 592 authorized agent of the owner has not obtained a title in his or her name for the vehicle
 593 to be transferred, or has lost the title for the vehicle to be transferred, he or she may sign
 594 a statement swearing that, in addition to the foregoing conditions, the vehicle is worth
 595 \$850.00 or less and is at least 12 model years old. The statement described in this
 596 paragraph may be used only to transfer such a vehicle to a licensed used motor vehicle
 597 parts dealer under Code Section 43-47-7 or scrap metal processor under Code Section
 598 43-43-1. The department shall promulgate a form for the statement which shall include,
 599 but not be limited to:

600 (A) A statement that the vehicle shall never be titled again; it must be dismantled or
 601 scrapped;

602 (B) A description of the vehicle including the year, make, model, vehicle identification
 603 number, and color;

604 (C) The name, address, and driver's license number of the owner;

605 (D) A certification that the owner:

606 (i) Never obtained a title to the vehicle in his or her name; or

607 (ii) Was issued a title for the vehicle, but the title was lost or stolen;

608 (E) A certification that the vehicle:

609 (i) Is worth \$850.00 or less;

610 (ii) Is at least 12 model years old; and

611 (iii) Is not subject to any secured interest or lien;

612 (F) An acknowledgment that the owner realizes this form will be filed with the
 613 department and that it is a felony, punishable by imprisonment for not fewer than one
 614 nor more than three years or a fine of not less than \$1,000.00 nor more than \$5,000.00,
 615 or both, to knowingly falsify any information on this statement;

616 (G) The owner's signature and the date of the transaction;

617 (H) The name, address, and National Motor Vehicle Title Information System
 618 identification number of the business acquiring the vehicle;

- 619 (I) A certification by the business that \$850.00 or less was paid to acquire the vehicle;
 620 ~~and~~
- 621 (J) A certification that the business has verified by an on-line method determined by
 622 the commissioner that the vehicle is not currently subject to any secured interest or lien;
 623 provided, however, that such certification shall not be required until such an on-line
 624 method has been established and is available; and
- 625 ~~(K)~~ (K) The business agent's signature and date along with a printed name and title if
 626 the agent is signing on behalf of a corporation.
- 627 (3)(A) The secondary metals recycler, used motor vehicle parts dealer, or scrap metal
 628 processor shall mail or otherwise deliver the statement required under paragraph (2) of
 629 this subsection to the department within 72 hours of the completion of the transaction,
 630 requesting that the department cancel the Georgia certificate of title and registration.
- 631 (B) Notwithstanding the requirement to mail or otherwise deliver the statement
 632 required under paragraph (2) of this subsection to the department, the department shall
 633 provide a mechanism for the receipt of the information required to be obtained in the
 634 statement by electronic means, at no cost to the secondary metals recycler, used motor
 635 vehicle parts dealer, or scrap metal processor, in lieu of the physical delivery of the
 636 statement, in which case the secondary metals recycler, used motor vehicle parts dealer,
 637 or scrap metal processor shall maintain the original statement for a period of not less
 638 than two years.
- 639 (C) Within 48 hours of each day's close of business, the secondary metals recycler,
 640 used motor vehicle parts dealer, or scrap metal processor who purchases or receives
 641 motor vehicles for scrap or for parts shall deliver in a format approved by the
 642 department, either by facsimile or by other electronic means to be made available by
 643 the department by January 1, 2012, a list of all such vehicles purchased that day for
 644 scrap or for parts. That list shall contain the following information:
- 645 (i) The name, address, and contact information for the reporting entity;
 - 646 (ii) The vehicle identification numbers of such vehicles;
 - 647 (iii) The dates such vehicles were obtained;
 - 648 (iv) The names of the individuals or entities from whom the vehicles were obtained,
 649 for use by law enforcement personnel and appropriate governmental agencies only;
 - 650 (v) A statement of whether the vehicles were, or will be, crushed or disposed of, or
 651 offered for sale or other purposes;
 - 652 (vi) A statement of whether the vehicle is intended for export out of the United
 653 States; and
 - 654 (vii) The National Motor Vehicle Title Information System identification number of
 655 the business acquiring the vehicle.

656 There shall be no charge to either a secondary metals recycler, used motor vehicle parts
 657 dealer, or scrap metal processor associated with providing this information to the
 658 department.

659 (D) For purposes of this subsection, the term 'motor vehicle' shall not include a vehicle
 660 which has been crushed or flattened by mechanical means such that it is no longer the
 661 motor vehicle as described by the certificate of title, or such that the vehicle
 662 identification number is no longer visible or accessible, in which case the purchasing
 663 or receiving secondary metals recycler, used motor vehicle parts dealer, or scrap metal
 664 processor shall verify that the seller has reported the vehicles in accordance with this
 665 subsection. Such verification may be in the form of a certification from the seller or
 666 contract between the seller and the purchasing or receiving secondary metals recycler,
 667 used motor vehicle parts dealer, or scrap metal processor which clearly identifies the
 668 seller by a government issued photograph identification card, or employer identification
 669 number, and shall be maintained for a period of not less than two years.

670 (E) The information obtained by the department in accordance with this subsection
 671 shall be reported to the National Motor Vehicle Title Information System, in a format
 672 which will satisfy the requirement for reporting this information, in accordance with
 673 rules adopted by the United States Department of Justice in 28 C.F.R. 25.56.

674 (F) The information obtained by the department in accordance with this subsection
 675 shall be made available only to law enforcement agencies, and for purposes of
 676 canceling certificates of title, and shall otherwise be considered to be confidential
 677 business information of the respective reporting entities.

678 (G) All records required under the provisions of this Code section shall be maintained
 679 for a period of two years by the reporting entity and shall include a scanned or
 680 photocopied copy of the seller's or seller's representative's driver's license or state
 681 issued identification card."

682 **PART III**

683 **SECTION 3-1.**

684 (a) Except as provided in subsection (b) of this section, this Act shall become effective
 685 July 1, 2012, and shall apply to all offenses committed on or after such date.

686 (b) Part II of this Act shall become effective only upon Section 21(b) of Ga. L. 2011,
 687 p. 355 becoming effective.

688 **SECTION 3-2.**

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