

111TH CONGRESS
1ST SESSION

S. 418

To require secondary metal recycling agents to keep records of their transactions in order to deter individuals and enterprises engaged in the theft and interstate sale of stolen secondary metal, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 11, 2009

Ms. KLOBUCHAR (for herself and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To require secondary metal recycling agents to keep records of their transactions in order to deter individuals and enterprises engaged in the theft and interstate sale of stolen secondary metal, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Secondary Metal Theft Prevention Act of 2009”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Sense of the Congress.
- Sec. 4. Purposes.
- Sec. 5. Purchase transaction requirements.
- Sec. 6. Protection of personal information.
- Sec. 7. Enforcement by Federal Trade Commission.
- Sec. 8. Enforcement by State Attorneys General.
- Sec. 9. Civil penalty.
- Sec. 10. State and local law not preempted.
- Sec. 11. Definitions.
- Sec. 12. Effective date.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) Since 2006, metal theft has been on the
 4 rise, largely due to a surge in the global demand for
 5 scrap metal and a historic increase in the price of
 6 metal commodities.

7 (2) Theft of metal components is jeopardizing
 8 the integrity of critical infrastructure in the United
 9 States through theft of metal in transportation, elec-
 10 trical, and telecommunications networks.

11 (3) Theft of manhole covers, storm water
 12 grates, highway guard rails, railroad tracks, auto-
 13 mobile components, and street lamps pose a signifi-
 14 cant public safety risk.

15 (4) Many State laws call on secondary metal re-
 16 cyclers to help deter this crime and assist law en-
 17 forcement by documenting transactions and col-
 18 lecting information in order to identify the sellers of
 19 scrap metal and the material they are selling. These

1 laws have been a significant deterrent to the prob-
2 lem of metal theft.

3 (5) Although many States have enacted metal
4 theft laws, metal theft is a nationwide crime that
5 crosses state lines.

6 (6) An overarching Federal law is necessary to
7 deter metal theft across the country.

8 (7) Combating the problem of metal theft will
9 require improved communications between metal
10 businesses and law enforcement agencies.

11 (8) The secondary metal recycling industry
12 should be commended for educating the public and
13 law enforcement to the problems related to metal
14 theft, issuing “Do Not Buy” lists, partnering with
15 the National Crime Prevention Council, and creating
16 a Theft Alert System.

17 **SEC. 3. SENSE OF THE CONGRESS.**

18 It is the sense of the Congress that Federal, State,
19 and local government agencies should work with represent-
20 atives of the secondary metal recycling industry to develop
21 and improve effective countermeasures to combat the theft
22 and sale of stolen secondary metal.

23 **SEC. 4. PURPOSES.**

24 The purposes of this Act are—

1 (1) to protect consumers, businesses, critical in-
 2 frastructure, and State and local governments from
 3 the problem of secondary metal theft;

4 (2) to regulate interstate commerce by limiting
 5 trafficking in stolen secondary metal sold for the
 6 purpose of recycling or reuse;

7 (3) to permit legitimate secondary metal trans-
 8 actions to continue to take place; and

9 (4) to establish a system to document secondary
 10 metal transactions between sellers and buyers while
 11 addressing the growing problem of secondary metal
 12 theft.

13 **SEC. 5. PURCHASE TRANSACTION REQUIREMENTS.**

14 (a) DO-NOT-BUY LIST.—Unless the seller establishes
 15 by written documentation that the seller is the owner, or
 16 an employee, agent, or other person authorized to sell on
 17 behalf of the owner, it is unlawful for a secondary metal
 18 recycling agent to purchase for recycling any secondary
 19 metal that is—

20 (1) marked with name, logo, or initials of a rail-
 21 road, an electric, gas, or water company, a telephone
 22 company, cable company, or a public utility or that
 23 has been altered to remove, conceal, or obliterate
 24 such a name, logo, or initials through burning or
 25 cutting of wire sheathing or other means;

- 1 (2) marked with the name of a city, county, or
- 2 State government entity;
- 3 (3) a street light pole or fixture;
- 4 (4) a road or bridge guard rail;
- 5 (5) a highway or street sign;
- 6 (6) a water meter cover;
- 7 (7) a storm water grate;
- 8 (8) unused or undamaged building construction
- 9 or utility material;
- 10 (9) an historical marker;
- 11 (10) a grave marker or cemetery urn or vase;
- 12 (11) a utility access cover; or
- 13 (12) a bulk container for beer with a capacity
- 14 of 7.75 gallons or more.

15 (b) RECORD KEEPING.—

16 (1) IN GENERAL.—A secondary metal recycling
 17 agent shall maintain a written or electronic record of
 18 each secondary metal purchase. The record shall in-
 19 clude—

- 20 (A) the agent's name and address;
- 21 (B) the date of the transaction;
- 22 (C) a description of the secondary metal
- 23 purchased, including—
- 24 (i) a general physical description;

1 (ii) a product description, such as
2 wire, tubing, extrusions, casting, or other
3 kind of product; and

4 (iii) the weight, quantity, or volume
5 purchased;

6 (D) the amount paid by the agent;

7 (E) the name and address of the person to
8 which the payment was made;

9 (F) the name of the person delivering the
10 secondary metal to the agent, including a dis-
11 tinctive number from a Federal or State gov-
12 ernment-issued photo identification card and a
13 description of the type of the identification; and

14 (G) the license tag number, State-of-issue,
15 make, and model, if available, of the vehicle
16 used to deliver the secondary metal to the
17 agent.

18 (2) REPEAT SELLERS.—A secondary metal re-
19 cycling agent may comply with the requirements of
20 paragraph (1) with respect to the second or a subse-
21 quent purchase of secondary metal from the same
22 person by—

23 (A) reference to the existing record relat-
24 ing to the seller; and

1 (B) recording any information for the
 2 transaction that is different from the existing
 3 record for that person.

4 (3) RECORD RETENTION PERIOD.—A secondary
 5 metal recycling agent shall maintain any record re-
 6 quired by this subsection for not less than 2 years
 7 from the date of the transaction to which the record
 8 relates.

9 (c) PURCHASES IN EXCESS OF \$75.—

10 (1) IN GENERAL.—A secondary metal recycling
 11 agent may not pay cash for a single purchase of sec-
 12 ondary metal in excess of \$75. For purposes of this
 13 paragraph, more than 1 purchase in any 48-hour pe-
 14 riod from the same seller shall be considered to be
 15 a single purchase.

16 (2) PAYMENT METHOD.—

17 (A) OCCASIONAL SELLERS.—Except as
 18 provided in subparagraph (B), for any purchase
 19 of secondary metal in excess of \$75 a secondary
 20 metal recycling agent shall make payment by
 21 check that—

22 (i) is payable to the seller; and

23 (ii) includes the name and address of
 24 the seller.

1 (B) ESTABLISHED COMMERCIAL TRANS-
2 ACTIONS.—A secondary metal recycling agent
3 may make payments for purchases of secondary
4 metal in excess of \$75 from a governmental or
5 commercial supplier of secondary metal with
6 which the agent has an established commercial
7 relationship by electronic funds transfer or
8 other established commercial transaction pay-
9 ment method through a commercial bank if the
10 agent maintains a written record of such pay-
11 ments that identifies the seller, the amount
12 paid, and the date of the purchase.

13 (d) PUBLIC NOTICE REQUIREMENT.—A secondary
14 metal recycling agent shall display, at its principal place
15 of business and at any site at which secondary metal is
16 accepted by or for the agent, a printed notice advising the
17 public that the sale of stolen secondary metal is prohibited
18 under Federal and State laws.

19 **SEC. 6. PROTECTION OF PERSONAL INFORMATION.**

20 (a) IN GENERAL.—A secondary metal recycling agent
21 or the agent, employee, or representative of a secondary
22 metal recycling agent may not disclose the identity of any
23 person from which the agent purchases secondary metal
24 without the consent of the seller except in response to a
25 request from a law enforcement agency or judicial process.

1 (b) SAFEGUARDS.—A secondary metal recycling
2 agent shall implement reasonable safeguards—

3 (1) to protect the security of information re-
4 quired under section 5(b)(1) maintained by that
5 agent; and

6 (2) to prevent unauthorized access to or dislo-
7 sure of that information.

8 (c) LIMITS ON LIABILITY.—A secondary metal recy-
9 cling agency shall not be liable to any seller for a dislo-
10 sure of information required under section 5(b)(1) if the
11 secondary metal recycling agent has met the requirements
12 of subsection (b) of this section.

13 **SEC. 7. ENFORCEMENT BY FEDERAL TRADE COMMISSION.**

14 (a) IN GENERAL.—Violation of any provision of this
15 Act shall be treated as a violation of a rule under section
16 18 of the Federal Trade Commission Act (15 U.S.C. 57a)
17 regarding unfair or deceptive acts or practices. The Fed-
18 eral Trade Commission shall enforce this Act in the same
19 manner, by the same means, and with the same jurisdic-
20 tion, powers, and duties as though all applicable terms and
21 provisions of the Federal Trade Commission Act (15
22 U.S.C. 41 et seq.) were incorporated into and made a part
23 of this Act.

24 (b) REGULATIONS.—

1 (1) IN GENERAL.—The Commission may pro-
 2 mulgate such regulations as it finds necessary or ap-
 3 propriate under this Act.

4 (2) INITIAL GUIDANCE.—Within 6 months after
 5 the date of enactment of this Act, the Commission
 6 shall promulgate a final rule—

7 (A) setting forth the minimum require-
 8 ments for the documentation required by sec-
 9 tion 5(a);

10 (B) establishing criteria for record reten-
 11 tion under section 5(b)(3);

12 (C) establishing requirements for treat-
 13 ment of a seller as a governmental or commer-
 14 cial supplier with an established commercial re-
 15 lationship under section 5(c)(2)(B);

16 (D) establishing public notice requirements
 17 under section 5(d); and

18 (E) establishing criteria for safeguards
 19 under section 6(b).

20 **SEC. 8. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

21 (a) IN GENERAL.—A State, as *parens patriae*, may
 22 bring a civil action on behalf of its residents in an appro-
 23 priate district court of the United States to enforce the
 24 provisions of this Act whenever the attorney general of the
 25 State has reason to believe that the interests of the resi-

1 dents of the State have been or are being threatened or
2 adversely affected by the violation of this Act or a regula-
3 tion under this Act by a secondary metal recycling agent
4 doing business in that State.

5 (b) NOTICE.—

6 (1) NOTICE REQUIRED.—At least 30 days be-
7 fore filing an action under subsection (a), the attor-
8 ney general of the State involved shall provide to the
9 Federal Trade Commission—

10 (A) written notice of the action; and

11 (B) a copy of the complaint for the action.

12 (2) AUTHORIZATION TO PROCEED.—The State
13 may bring the action if it does not receive a request
14 from the Federal Trade Commission, within 30 days
15 after the Commission receives the notice, not to pro-
16 ceed with its action.

17 (c) FEDERAL PROCEEDINGS.—After receiving notice
18 under subsection (b), the Commission may—

19 (1) request that the State not proceed with the
20 action pending the final disposition of a pending
21 Federal proceeding or action;

22 (2) initiate an action in the appropriate United
23 States district court and move to consolidate all
24 pending actions, including State actions, in such
25 court;

1 (3) intervene in the action brought under sub-
2 section (a); or

3 (4) file petitions for appeal of a decision in such
4 action.

5 (c) PENDING FEDERAL PROCEEDINGS.—If the Fed-
6 eral Trade Commission has instituted an enforcement ac-
7 tion against a secondary metal recycling agent for a viola-
8 tion of this Act or any regulation under this Act, a State
9 may not bring an action, during the pendency of the Com-
10 mission’s enforcement action, under this section against
11 that secondary metal recycling agent for any violation al-
12 leged in the Commission’s enforcement action.

13 (d) CONSTRUCTION.—For purposes of bringing any
14 civil action under subsection (a), nothing in this section
15 regarding notification shall be construed to prevent the at-
16 torney general of a State from exercising the powers con-
17 ferred on such attorney general by the laws of that State
18 to—

19 (1) conduct investigations;

20 (2) administer oaths or affirmations; or

21 (3) compel the attendance of witnesses or the
22 production of documentary and other evidence.

23 (e) VENUE; SERVICE OF PROCESS.—

24 (1) VENUE.—Any action brought under sub-
25 section (a) may be brought in—

1 (A) the district court of the United States
 2 that meets applicable requirements relating to
 3 venue under section 1391 of title 28, United
 4 States Code; or

5 (B) another court of competent jurisdic-
 6 tion.

7 (2) SERVICE OF PROCESS.—In an action
 8 brought under subsection (a), process may be served
 9 in any district in which the defendant—

10 (A) is an inhabitant; or

11 (B) may be found.

12 **SEC. 9. CIVIL PENALTY.**

13 The knowing violation of any provision of this Act
 14 is punishable by a civil penalty of not to exceed \$10,000.

15 **SEC. 10. STATE AND LOCAL LAW NOT PREEMPTED.**

16 Nothing in this Act preempts any State or local law
 17 regulating the sale or purchase of secondary metal.

18 **SEC. 11. DEFINITIONS.**

19 In this Act:

20 (1) SECONDARY METAL.—The term “secondary
 21 metal” means—

22 (A) wire or cable commonly used by com-
 23 munications and electrical utilities; and

24 (B) copper, aluminum, or other metal (in-
 25 cluding any metal combined with other mate-

1 rials) that is valuable for recycling or reuse as
2 raw metal.

3 (2) SECONDARY METAL RECYCLING AGENT.—

4 The term “secondary metal recycling agent” means
5 any person engaged in the business of purchasing
6 secondary metal for reuse or recycling, without re-
7 gard to whether that person is engaged in the busi-
8 ness of recycling or otherwise processing the pur-
9 chased secondary metal for reuse.

10 **SEC. 12. EFFECTIVE DATE.**

11 Except as required by section 7(b)(2), this Act shall
12 take effect 6 months after the date of enactment.

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