

## CHAPTER 83

## (HB 106)

AN ACT relating to metals.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 433 IS CREATED TO READ AS FOLLOWS:

- (1) *Every recycler, dealer in junk or metals, dealer in secondhand articles, vendor of bottles or rags, collector of or dealer in articles found in ashes, garbage, or other refuse, whether such dealers, collectors, or vendors have established places of business or operate a business of an itinerant nature, shall, with regard to any catalytic converter; metal beverage container that is capable of holding more than two (2) liters of beverage and is marketed as returnable; railroad rails, nonferrous metal, or an alloy thereof; or an object containing nonferrous metal, or an alloy thereof:*
- (a) *Keep a register that contains:*
1. *A photocopy of a valid driver's license or other government-issued identification card or document which contains the name, photograph, and signature of the seller. If the purchaser has a copy of the seller's valid photo identification on file, it shall not be necessary for the purchaser to make another copy of the identification document for each purchase if the purchaser references the number on the identification document in the register at the time of each purchase; and*
  2. *The state and license number of the motor vehicle used to transport the purchased catalytic converter, metal beverage container that is capable of holding more than two (2) liters of beverage and is marketed as returnable, railroad rail, nonferrous metal or an alloy thereof, or object containing nonferrous metal or an alloy thereof, to the place of purchase, which shall be provided by the seller of the items;*
  3. *The time and date of the transaction;*
  4. *A description in the usage of the trade of the kind and weight of the railroad rail, nonferrous metal or an alloy thereof, or object containing the nonferrous metal or an alloy thereof purchased; and*
  5. *The amount paid for the material and the unit basis of the purchase, such as by ounce or pound, etc.;*
- (b) *Not purchase any catalytic converter; metal beverage container that is capable of holding more than two (2) liters of beverage and is marketed as returnable; railroad rail, nonferrous metal, or an alloy thereof; or an object containing nonferrous metal, or an alloy thereof from a person who:*
1. *Is less than eighteen (18) years of age; or*
  2. *Is unable or refuses to provide the identification and information required in paragraph (a) of this subsection;*
- (c) *Retain the information required by this section for a period of two (2) years, after which time, the information may be retained, destroyed in a manner that protects the identity of the owner of the property and the seller of the property, or transferred to a law enforcement agency specified in paragraph (f) of this subsection;*
- (d) *If the purchaser ceases business, transfer all records and information required by this section to a law enforcement agency specified in paragraph (f) of this subsection;*
- (e) *Permit any peace officer to inspect the register, and if the peace officer deems it necessary to locate specific stolen property, may inspect the catalytic converter, metal beverage and container that is capable of holding more than two (2) liters of beverage and is marketed as returnable, railroad rail, nonferrous metal or an alloy thereof, or object containing nonferrous metal or an alloy thereof received during business hours;*
- (f) *Upon written request of the sheriff or chief of police, as appropriate, make a report containing the information required to be retained in the register under paragraph (a) of this subsection in person,*

*in digital format, in writing, or by electronic means within twenty-four (24) hours of the transaction to:*

1. *The sheriff of the county in which the purchase was made and the sheriff of the county in which the business is located; and*
  2. *When the purchase was made in a city, county, urban-county, charter county, consolidated local government, or unified local government, to the police department of the city, county, urban-county, charter county, consolidated local government, or unified local government in which the purchase is made and the police department of the city, county, urban-county, charter county, consolidated local government, or unified local government in which the business is located, unless there is no police department in that jurisdiction;*
- (g) *Comply with a written request pursuant to paragraph (f) of this subsection until a written notice to cease sending the reports required by paragraph (f) of this subsection is received by the purchaser. A request may relate to:*
1. *All records of purchases;*
  2. *Records of a specific class of metals or items purchased;*
  3. *Records of purchases during a specific period of time; or*
  4. *Records of a specific purchase or purchases; and*
- (h) *Retain the property in its original form or a photograph or digital image of the property for a period of three (3) business days from the date of purchase unless notified by a peace officer having reasonable cause to believe that the property may be stolen property, in which case, the property may be seized as evidence by the peace officer or, if not seized, shall be retained for an additional thirty (30) days unless earlier notified by a peace officer that the property may be sold;*
- (2) *A sheriff or police department receiving records pursuant to this section shall retain the records for two (2) years, after which time, it may either retain or destroy the records in a manner that protects the identity of the owner of the property, the seller of the property, and the purchaser of the property.*
- (3) *Any record required to be made or reported pursuant to this section may be kept and reported in hard copy or digital or in electronic format.*
- (4) *This section shall not apply to the purchase, sale, or transfer of:*
- (a) *A motor vehicle, aircraft, or other item that is licensed by the state or federal government pursuant to a legitimate transfer of title or issuance of a junk title;*
  - (b) *A firearm, part of a firearm, firearm accessory, ammunition, or ammunition component;*
  - (c) *A knife, knife parts, accessory or sheath for a knife, or knifemaking products;*
  - (d) *A nonreturnable used beverage container or food container;*
  - (e) *Jewelry, household goods containing metal, garden tools, and similar household items, except for a catalytic converter or metal beverage container that is capable of holding more than two (2) liters of liquid and which is marketed as returnable, which takes place at a flea market or yard sale;*
  - (f) *A single transaction involving a purchase price of ten dollars (\$10) or less, but more than two (2) transactions with the same person involving a purchase price of ten dollars (\$10) or less in one (1) seven (7) day period shall be reportable transactions;*
  - (g) *Material disposed of as trash or refuse that contains or may contain a catalytic converter, metal beverage container that is capable of holding more than two (2) liters of beverage and is marketed as returnable, railroad rail, or nonferrous metals or an alloy thereof, or an object that contains or may contain a railroad rail or nonferrous metals or an alloy thereof, which is collected by a municipal waste department or by a licensed waste hauler and no payment is made to the person from whom the material is collected by the person or agency collecting the material;*
  - (h) *A catalytic converter; metal beverage container that is capable of holding more than two (2) liters of beverage and marketed as returnable; railroad rail, nonferrous metal, or alloy thereof; or an object*

*containing railroad rail, nonferrous metal, or an alloy thereof from a person who has maintained a record pursuant to this section to a person who is to further recycle the metal or object containing the metal;*

- (i) *A catalytic converter, metal beverage container that is capable of holding more than two (2) liters of beverage and marketed as returnable, railroad rail, nonferrous metal or an alloy thereof, or object containing nonferrous metal or an alloy thereof, under a written contract with an organization, corporation, or association registered with the Commonwealth as a charitable, philanthropic, religious, fraternal, civic, patriotic, social, or school sponsored organization;*
- (j) *A purchase, pursuant to a written contract, from a manufacturing, industrial or other commercial vendor that generates catalytic converters, metal beverage containers capable of holding more than two (2) liters of beverage and which marketed as returnable, railroad rail, nonferrous metal or an alloy thereof, or object containing nonferrous metal in the ordinary course of business;*
- (k) *An item purchased by, pawned to, or sold by a pawnbroker licensed pursuant to KRS Chapter 226, engaging in the business authorized by that chapter; or*
- (l) *Any ferrous metal item, except for a catalytic converter; metal beverage container that is capable of holding more than two (2) liters of beverage and is marked as returnable; or railroad rails.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 433 IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of failure to maintain a register of metals and objects containing metal when the person fails or refuses to:
 
  - (a) *Obtain the information required by Section 1 of this Act;*
  - (b) *Keep the records required by Section 1 of this Act for the period of time required in Section 1 of this Act;*
  - (c) *Provide the required records to the police department or sheriff as required by Section 1 of this Act;*
  - (d) *Provide access to a peace officer to records required to be kept pursuant to Section 1 of this Act; or*
  - (e) *Dispose of the records required to be maintained pursuant to Section 1 of this Act in a manner meeting the requirements of Section 1 of this Act.**
- (2) *A person guilty of failure to maintain a register of metals and objects containing metal shall be fined not more than one hundred dollars (\$100) or be imprisoned in the county jail for not more than thirty (30) days, or both.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 433 IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of unlawful acts relating to purchase or disposition of metals when the person violates any provision of Section 1 of this Act other than the recordkeeping provisions.*
- (2) *A person guilty of unlawful acts relating to the purchase or disposition of metals shall be fined not more than one hundred dollars (\$100) or imprisoned in the county jail for not more than thirty (30) days, or both.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 433 IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of providing fraudulent identification for the sale of metals when the person provides to any person required to keep a record of the purchase of metals pursuant to Section 1 of this Act:
 
  - (a) *A false name or other information required to be disclosed;*
  - (b) *A false, fraudulent, altered, or counterfeit identification document;*
  - (c) *A false, fraudulent, altered, or counterfeit vehicle license plate; or*
  - (d) *A false, fraudulent, altered, or counterfeit ownership document.**
- (2) *Providing fraudulent identification for the sale of metals is a Class A misdemeanor.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

*The Attorney General shall have concurrent jurisdiction with Commonwealth's attorneys and county attorneys in the investigation and prosecution of offenses under Sections 1 to 4 of this Act.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 16 IS CREATED TO READ AS FOLLOWS:

- (1) *The Department of Kentucky State Police shall design the electronic and paper forms utilized in subsection (1) of Section 1 of this Act and any other forms and instructions necessary to implement Section 1 of this Act.*
- (2) *The Department of Kentucky State Police shall make the forms and instructions utilized in subsection (1) of this section available on the department's Internet Web Site for downloading by any person.*
- (3) *The Department of Kentucky State Police shall make single copies of the forms and instructions utilized in subsection (1) of this section available as public records, at the same rate charged for other public records. The department shall not be required to make multiple copies of the forms or instructions for any person, but may do so at the same rate charged for other public records.*
- (4) *Any person may make copies of the forms and instructions required by subsection (1) of this section and may charge for the copies. No person, other than the Commonwealth, shall apply for a copyright on the forms or instructions provided by the Department of Kentucky State Police. The Department of Kentucky State Police may, in the name of the Commonwealth, apply for a copyright on the forms and instructions which it produces pursuant to this section.*
- (5) *A purchaser required to generate, maintain, and transmit records pursuant to Section 1 of this Act may:*
  - (a) *Utilize the forms designed by the Department of Kentucky State Police; or may*
  - (b) *Generate his or her own forms which shall contain at least the information required by Section 1 of this Act and which may contain additional information required by a local government or by the purchaser; or shall*
  - (c) *Use a form specified by a local government which has adopted an ordinance in accordance with the provisions of Section 7 of this Act provided the form contains at least the information required by Section 1 of this Act and which may contain additional information required by the local government.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

*A city, county, urban-county, charter county, unified county, or consolidated local government may adopt an ordinance relating to the purchase of metals and metal containing products provided the ordinance:*

- (1) *Contains at least the provisions specified in Sections 1 to 4, Section 5, and Section 6 of this Act, but which may contain additional provisions; and*
- (2) *Does not specify a lesser penalty for a similar offense than specified in Sections 1 to 4, Section 5, and Section 6 of this Act or provides that the penalty specified in Sections 1 to 4 of this Act shall apply.*

➔Section 8. KRS 365.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of KRS 365.015 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100), or imprisoned for not less than ten (10) days nor more than thirty (30) days, or both, and each day that the violation continues shall constitute a separate offense.
- (2) Any person who violates any of the provisions of KRS 365.020 to 365.050 shall, for each offense, be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or imprisoned for not more than six (6) months, or both. Any person who, as agent of any person or as director, officer, or agent of any corporation assists or aids in a violation of any of such provisions by the person or corporation for which he is director, officer, or agent, shall be responsible therefor equally with such person or corporation, and, in a prosecution brought by the local Commonwealth's attorney against him under this subsection, it shall be sufficient to allege and prove the unlawful intent of the person or corporation for whom he acts.
- (3) Any person who violates any of the provisions of KRS 365.100 shall be fined not less than two hundred dollars (\$200) for each offense.
- (4) Any person who violates any of the provisions of KRS 365.110 shall be fined not less than ten dollars (\$10) nor more than fifty dollars (\$50) for each offense.

- (5) Any agent or employee of a corporation or any other person who violates any of the provisions of subsection (2) of KRS 365.220 shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense, and each day's continuance of the violation shall constitute a separate offense.
- (6) A conviction of a corporation of violating any of the provisions of KRS 365.210 or 365.220 shall operate to forfeit its charter or right to do business in this state. Proceedings may be instituted by the Commonwealth's attorney in any district in this state to forfeit the charter or right to do business in this state of any corporation violating any of the provisions of KRS 365.210 or 365.220, and to subject the corporation charged, if found guilty, to the penalty imposed in subsection (7) of this section.
- (7) Any company that violates any of the provisions of KRS 365.230 shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), and if it is a corporation it shall, upon conviction, forfeit its charter.
- ~~(8) Failure to maintain the register or to make the report to the sheriff and police department as required by KRS 365.250 shall be a misdemeanor punishable by a fine of not more than one hundred dollars (\$100) or by imprisonment for not more than thirty (30) days, or both, and shall be prima facie evidence that such dealer, collector, or vendor received the used copper metal, copper wire, or copper cable not registered or reported, knowing it to be stolen in violation of KRS 514.110.~~
- ~~(9)~~ Any person or entity that transacts a transient business as defined in KRS 365.650 without first having obtained a permit in accordance with the provisions of KRS 365.660, 365.665, 365.680 or 365.685 or who knowingly advertises, offers for sale, or sells any goods, wares, or merchandise in violation of the provisions of KRS 365.650 to 365.695, is guilty of a misdemeanor and shall, upon conviction, be fined not more than five hundred dollars (\$500) or shall be imprisoned in the county jail for not more than six (6) months, or both.

➔Section 9. KRS 365.690 is amended to read as follows:

- (1) The Attorney General or county attorney may enforce the provisions of KRS 365.650 to 365.695 by civil action for injunctive relief in the Circuit Court of his county. In the action to obtain the injunction, it shall be sufficient to allege and prove that a violation of KRS 365.650 to 365.695 has occurred or is about to occur, and it shall not be necessary to allege or prove that any person has been damaged or sustained any loss as a result of any violation of KRS 365.650 to 365.695.
- (2) When the provisions of KRS 365.650 to 365.695 are enforced through civil action, the Attorney General or county attorney may ask for and the court may assess a civil penalty for the benefit of the Commonwealth, not to exceed the sum of two thousand dollars (\$2,000). The penalty shall be in lieu of all penalties set forth in KRS 365.990~~(8)~~~~(9)~~.
- (3) Nothing in KRS 365.650 to 365.695 shall be construed to limit or restrict the exercise of powers or the performance of duties the Attorney General is authorized to exercise or perform under any provision of law.

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 243 IS CREATED TO READ AS FOLLOWS:

*No recycler, scrap metal dealer, or scrap yard operator may purchase any metal beer keg, whether damaged or undamaged, except from the brewer or its authorized representative, if:*

- (1) *The keg is clearly marked as the property of a brewery manufacturer; or*
- (2) *The keg's identification markings have been made illegible.*

➔Section 11. KRS 243.990 is amended to read as follows:

- (1) Any person who, by himself or acting through another, directly or indirectly, violates any of the provisions of KRS 243.020 to 243.670, for which no other penalty is provided, shall, for the first offense, be guilty of a Class B misdemeanor; and for the second and each subsequent violation, he shall be guilty of a Class A misdemeanor. The penalties provided for in this subsection shall be in addition to the revocation of the offender's license.
- (2) Any person who, by himself or through another, directly or indirectly, violates subsection (1) of KRS 243.020 shall, for the first offense, be guilty of a Class B misdemeanor; for the second offense, he shall be guilty of a Class A misdemeanor; and for the third and each subsequent offense, he shall be guilty of a Class D felony.
- (3) Any person who violates subsection (3) of KRS 243.020 shall be guilty of a violation.

- (4) Any person who violates KRS 243.620 with respect to a license issued under KRS 243.050 shall be guilty of a violation.
- (5) Any person who violates any of the provisions of KRS 243.720 or 243.730 or any regulation issued thereunder shall be guilty of a Class A misdemeanor.
- (6) Any person who violates any provision of KRS 243.710 to 243.850 shall be subject to the uniform civil penalties imposed pursuant to KRS 131.180.
- (7) In every case, any tax imposed by KRS 243.710 to 243.720 which is not paid on or before the due date shall bear interest at the tax interest rate as defined in KRS 131.010(6) from the due date until the date of payment.
- (8) *Any person who violates the provisions of Section 10 of this Act shall be subject to a fine not to exceed one thousand dollars (\$1,000).*

➔Section 12. The following KRS section is repealed:

365.250 Register containing name of person from whom copper metal, copper wire, or copper cable is purchased required of dealers, vendors, and collectors of junk, metals, and used articles -- Contents of register -- Inspection of register -- Reports to sheriff and police department.

**Signed by Governor April 11, 2008.**