

## CHAPTER 91

( HB 390 )

AN ACT relating to metal.

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:

*As used in Sections 1 to 4 of this Act, unless the context otherwise requires:*

- (1) *"Applicant" means a secondary metals recycler seeking an application for a certificate of registration with the Office of Occupations and Professions of the Public Protection Cabinet, as provided in Section 2 of this Act. If the secondary metals recycler is owned by a corporation, limited liability corporation, limited liability partnership, incorporated association, or any other entity organized for the purpose of engaging in business as a secondary metals recycler, "applicant" means the officers of these entities;*
- (2) *"Ferrous metals" means any metal containing significant quantities of iron or steel;*
- (3) *"Nonferrous metals" means metal not containing significant quantities of iron, including but not limited to copper, brass, aluminum, bronze, lead, zinc, nickel, and alloys thereof;*
- (4) *"Name-based background check" means a statewide search of the centralized criminal history record information system by the Department of Kentucky State Police, utilizing the name, date of birth, and Social Security number of the applicant;*
- (5) *"Restricted metals" means any of the following metal items:*
  - (a) *Manhole covers;*
  - (b) *Electric light poles or other utility poles;*
  - (c) *Guardrails;*
  - (d) *Street signs, traffic signs, or traffic signals;*
  - (e) *Whole road tiles;*
  - (f) *Funeral markers or funeral vases;*
  - (g) *Railroad equipment, including but not limited to a tie plate, signal house, control box, switch plate, e-clip, or rail tie junction;*
  - (h) *Condensing or evaporating coils made from copper, aluminum, or aluminum-copper, including the tubing or rods from a heating or air conditioning unit that is not from a window air conditioning unit or automobile air conditioning unit;*
  - (i) *Stainless steel beer kegs;*
  - (j) *A catalytic converter or any nonferrous part of a catalytic converter unless purchased as part of a vehicle; or*
  - (k) *Storm drain covers; and*
- (6) (a) *"Secondary metals recycler" means:*
  1. *Any person who is engaged in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential monetary value;*
  2. *Any person who has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential monetary value, other than by the exclusive use of hand tools, by methods including but not limited to processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content thereof; or*

3. *Any recycler, dealer in junk or metals, dealer in secondhand articles, vendor of bottles or rags, or collector of or dealer in articles found in ashes, garbage, or other refuse, whether a dealer, collector, or vendor operates an established place of business or an itinerant business.*
- (b) *"Secondary metals recycler" shall not include a municipal solid waste department or any entity which has been issued a municipal solid waste transporter license by the Kentucky Transportation Cabinet and which gathers or obtains ferrous or nonferrous metals in a vehicle registered in Kentucky to transport solid waste.*

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

- (1) (a) *Each secondary metals recycler shall submit to a name-based background check as provided in subsection (2) of this section and obtain a certificate of registration from the Office of Occupations and Professions of the Public Protection Cabinet within sixty (60) days of the effective date of administrative regulations promulgated pursuant to this section.*
- (b) *The application for certificate of registration shall be in a form and format determined by the Office of Occupations and Professions of the Public Protection Cabinet and shall contain at a minimum the following:*
1. *The name of the secondary metals recycling business;*
  2. *The name or names of each applicant;*
  3. *The address of each secondary metals recycling business owned by the applicant; and*
  4. *Contact information for the purposes of Section 4 of this Act.*
- (c) *Any person listed on an application for a certificate of registration shall be at least eighteen (18) years of age prior to the date that the application is submitted.*
- (d) *Any corporation, limited liability corporation, limited liability partnership, incorporated association, or any other entity engaged in business as, or organized for the purpose of engaging in business as, a secondary metals recycler submitting an application must be organized and qualified to do business in the Commonwealth.*
- (e) *The Office of Occupations and Professions of the Public Protection Cabinet shall charge each applicant a reasonable fee established by administrative regulation equal to the actual administrative costs of processing an application for a certificate of registration.*
- (f) *If an applicant is the owner of more than one (1) secondary metals recycling location, the Office of Occupations and Professions of the Public Protection Cabinet shall charge a fee for each location that is no greater than the actual administrative costs of processing the application for certificate of registration. Upon approval of the application, the Office of Occupations and Professions of the Public Protection Cabinet shall issue a certificate of registration for each location.*
- (g) *Each applicant that receives a certificate of registration from the Office of Occupations and Professions of the Public Protection Cabinet as provided in this section shall be required to pay an annual renewal fee equal to the actual administrative costs of processing the renewal of the certificate for registration.*
- (h) *The list of secondary metals recyclers registered with the Office of Occupations and Professions of the Public Protection Cabinet as provided in this section shall be public information and available upon written request to the Office of Occupations and Professions of the Public Protection Cabinet.*
- (2) (a) *Prior to approval of the application, the Office of Occupations and Professions of the Public Protection Cabinet shall require a name-based background check on each applicant.*
- (b) *Each applicant shall provide written authorization to the Department of Kentucky State Police to perform a name-based background check and release the results to the Office of Occupations and Professions of the Public Protection Cabinet.*
- (c) *Any request for a name-based background check shall be on a form or through a process approved by the Department of Kentucky State Police, which may charge a fee to be paid by the applicant in an amount no greater than the actual cost of processing the request.*
- (d) *The Office of Occupations and Professions of the Public Protection Cabinet shall not issue a certificate of registration to an applicant if the name-based background check results reveal that the*

*applicant has been convicted of, or entered a plea of guilty, an Alford plea, or a plea of nolo contendere to, a felony involving theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, or obtaining property by false pretenses, any felony drug offense, or knowingly and intentionally violating the laws of the Commonwealth relating to registration as a secondary metals recycler.*

- (3) *A secondary metals recycler's certificate of registration shall be conspicuously displayed at the location of the secondary metals recycler listed on the application for certificate of registration or at each location if the secondary metals recycler owns more than one (1) business location.*
- (4) *The Office of Occupations and Professions of the Public Protection Cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement the provisions of this section.*
- (5) *The Office of Occupations and Professions of the Public Protection Cabinet shall not be responsible for any disciplinary action against any secondary metals recycler seeking an application for certificate of registration.*

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

- (1)
  - (a) *A secondary metals recycler shall not enter into any cash transaction for the purchase of any restricted metals as defined in Section 1 of this Act.*
  - (b) *Payment by a secondary metals recycler for the purchase of restricted metals shall be made by check issued to the seller and payable to the seller.*
  - (c) *Each check for payment shall be mailed by the secondary metals recycler directly to the street address of the seller. Payment shall not be mailed to a post office box.*
  - (d) *Each check shall be mailed by the secondary metals recycler to the seller no sooner than one (1) day after the purchase transaction.*
- (2) *At the close of each business day a secondary metals recycler shall make a report describing any purchases of restricted metals as defined in Section 1 of this Act, in digital format, in writing, or by other electronic means to:*
  - (a) *The sheriff of the county in which the purchase transaction was made by a secondary metals recycler and the sheriff of the county where the secondary metals recycler is located; and*
  - (b) *The police department of the city, county, charter county government, urban-county government, consolidated local government, or unified local government in which the purchase transaction was made and the police department of the city, county, charter county government, urban-county government, consolidated local government, or unified local government in which the secondary metals recycler is located.*
  - (c) *The information required by this subsection shall remain confidential, and this information shall include the following disclosure: "This information is for the designated recipient only and may contain privileged, proprietary, or otherwise private information. If you are not the intended recipient of this information, you are hereby notified that any use, distribution, copying, or disclosure of this communication is strictly prohibited. If you have received this information in error, please notify the sender and purge the communication immediately."*
- (3) *A secondary metals recycler shall not purchase any restricted metals without obtaining reasonable proof that the seller owns the property, such as a receipt or bill of sale, or reasonable proof that the seller is an employee, agent, or contractor of a governmental entity, utility company, cemetery, railroad, manufacturer, or other person, business, or entity owning the property and that the seller is authorized to sell the item of restricted metal. A secondary metals recycler may retain on file an official document on the letterhead of the person, business, or entity indicating that the seller is authorized to sell the restricted metal item. Such a letter must be dated within three hundred sixty-five (365) days of the transaction.*
- (4) *The requirements for the purchase of restricted metals according to the provisions of subsections (1) and (2) of this section shall also apply to the purchase of copper wire or coaxial cable belonging to a utility or cable provider, such as communication, transmission, distribution, or service wire, by a secondary metals recycler.*
- (5) *The provisions of subsections (1) and (3) of this section shall not apply to nonreturnable used beverage containers.*

(6) *The provisions of this section shall not apply to the following:*

- (a) *The purchase of restricted metals from a secondary metals recycler;*
- (b) *The purchase of restricted metals from an organization, corporation, or association registered with the Commonwealth as a charitable, philanthropic, religious, fraternal, civic, patriotic, social, or school sponsored organization;*
- (c) *The purchase of restricted metals pursuant to a written contract, from a manufacturing, industrial, or other commercial vendor that generates restricted metals in the ordinary course of business; or*
- (d) *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.*

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

- (1) *A secondary metals recycler shall maintain at its place of business, or otherwise have immediate access to, an e-mail address, facsimile, or other equipment of similar function on which notifications of stolen restricted metals, ferrous metals, and nonferrous metals may be expeditiously received from law enforcement officials or electronic metal theft notification systems.*
- (2) *The equipment shall be operable at all times during the secondary metal recycler's customary business hours. The secondary metals recycler shall notify the Office of Occupations and Professions of the Public Protection Cabinet within two (2) days of any change to the contact information used for the purposes of this section.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 512 IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of unlawful acts relating to acquiring metals when the person intentionally and without permission cuts, mutilates, defaces, or otherwise injures any personal or real property of another, including any fixtures or improvements, for the purpose of obtaining any restricted metal, nonferrous metal, or ferrous metal as defined in Section 1 of this Act, in any amount.*
- (2) *Unlawful acts relating to acquiring metals is:*
  - (a) *A Class B misdemeanor with a fine of not more than two hundred fifty dollars (\$250) or imprisonment in the county jail for less than ninety (90) days, or both, if the direct injury to the property, the amount of loss in value to the property, the amount of repairs necessary to return the property to its condition before the act, or the property loss, including fixtures or improvements, is less than three thousand dollars (\$3,000); or*
  - (b) *A Class D felony with a fine of not less than one thousand dollars (\$1,000) and not more than ten thousand dollars (\$10,000) or double his or her gain from commission of the offense, whichever is the greater, or imprisonment for not less than one (1) year but not more than five (5) years, or both, if the direct injury to the property, the amount of loss in value to the property, the amount of repairs necessary to return the property to its condition before the act, or the property loss, including fixtures or improvements, is three thousand dollars (\$3,000) or more.*

➔Section 6. KRS 15.232 is amended 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 KRS 433.890 to 433.896 *and Sections 1 to 4 and Section 5 of this Act.*

➔Section 7. KRS 65.871 is amended 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 KRS 15.232, 16.066, *Sections 1 to 4 of this Act, Section 5 of this Act*, and 433.890 to 433.896, but which may contain additional provisions; and
- (2) Does not specify a lesser penalty for a similar offense than specified in KRS 15.232, 16.066, *Section 5 of this Act*, and 433.890 to 433.896 or provides that the penalty specified in KRS 433.890 to 433.896 *and Section 5 of this Act* shall apply.

➔Section 8. (1) The General Assembly hereby recommends the creation of a Recyclable Metals Theft Prevention Working Group.

- (2) The Recyclable Metals Theft Prevention Working Group may include:
- (a) The commissioner of the Kentucky State Police or his or her designee;
  - (b) A representative of the Kentucky Sheriffs' Association;
  - (c) A representative of the Kentucky Association of Chiefs of Police;
  - (d) A representative of the Associated General Contractors of Kentucky;
  - (e) A representative of the Kentucky Recycling Association;
  - (f) A representative of the Kentucky League of Cities;
  - (g) A representative of the Kentucky Association of Counties;
  - (h) A representative of the Kentucky Municipal Utilities Association;
  - (i) A representative of the cable industry;
  - (j) A representative of a utility company;
  - (k) A representative of the telecommunications industry; and
  - (l) A representative of the railroad industry.
- (3) The first meeting of the Recyclable Metals Theft Prevention Working Group may be no later than August 15, 2012. The working group may meet at least twice a year.

**Signed by Governor April 11, 2012.**