ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE
BILL NO. 1399

By: Liebmann, Smithson, Shelton and Wesselhoft of the House

and

Branan of the Senate

An Act relating to crimes and punishments; amending 21 O.S. 2001, Sections 1041, 1042, 1044, 1045, 1046 and 1047, which relate to record keeping, registration and purchases by junk dealers; modifying record-keeping requirements; increasing and adding penalties for certain prohibited acts; modifying registration requirements; amending 59 O.S. 2001, Section 1408, which relates to penalties for junk dealers; increasing penalty for certain prohibited act; and providing an effective date.

AUTHOR: Add the following House coauthor: Denney

AMENDMENT NO. 1. Page 1, strike the title, enacting clause and entire bill and insert

"An Act relating to crimes and punishments; amending 21 O.S. 2001, Section 1041, which relates to junk dealers; stating requirements for holding certain purchased materials; requiring certain recordkeeping; authorizing certain inspections by certain persons; amending 21 O.S. 2001, Section 1042, which relates to punishments; modifying penalties; amending 21 O.S. 2001, Section 1044, which relates to punishments; modifying penalties; amending 21 O.S. 2001, Section 1045, which relates to junk dealers; authorizing certain method of recordkeeping; requiring junk dealer to obtain certain information from sellers of certain materials; authorizing certain inspections; requiring certain report of certain materials;

amending 21 O.S. 2001, Section 1046, which relates to punishments; modifying certain penalties; amending 21 O.S. 2001, Section 1047, which relates to punishments for false information; modifying penalties; amending 59 O.S. 2001, Section 1408, which relates to penalties for junk dealers; modifying penalties; providing penalty for failure to hold certain materials for certain time period; providing list of materials requiring proof of ownership before purchase; stating exception; stating penalties for violation; requiring purchasers of certain materials to pay sellers by certain method; requiring certain sales receipt; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 21 O.S. 2001, Section 1041, is amended to read as follows:

Section 1041. All persons, firms or corporations, who carry on the business of buying ~~brass, copper, iron, rubber and leather belting, plumbing or electric fixtures, burlap or bags of any material, tools, machinery or supplies commonly used in the drilling, completing, operating or repairing oil or gas wells,~~ copper, copper alloy, aluminum, aluminum alloy and items listed in Section 8 of this act, commonly known as "junk dealers" as defined in Section 1401 of Title 59 of the Oklahoma Statutes, shall keep a record in a book ~~for the purpose, to be kept~~ or any other method allowed by law in their places of business and open to the inspection of ~~the public~~ any law enforcement official or authorized representative of any governmental entity or utility, showing the

date of each purchase of such property, the name and address of the seller, the items of property purchased, and the price paid to ~~such~~ the seller for each item of property~~; and all~~. All persons, firms and corporations carrying on such business shall keep all such property purchased upon display, and in plain sight, in their places of business, for at least ~~fifteen (15)~~ ten (10) days after purchasing ~~such~~ the property, and keep ~~such~~ the property open ~~to~~ for inspection ~~of the public~~ by persons authorized in this section, during said time, before disposing of same. Provided, however, this act shall not apply to persons, firms or corporations, carrying on a retail or wholesale business of buying new property of the character aforesaid, or to persons buying new property of the kind mentioned at retail or wholesale; provided further, that it shall be unlawful for any junk dealer~~, as defined in this act,~~ to purchase articles mentioned herein from minors without having first obtained the consent, in writing, of the parents or guardian of such minor.

SECTION 2. AMENDATORY 21 O.S. 2001, Section 1042, is amended to read as follows:

Section 1042. Any person~~, firm or corporation~~ failing or refusing to comply with the provisions of Section 1041 of this ~~act~~ title shall, upon conviction, be ~~deemed~~ guilty of a misdemeanor ~~and upon conviction shall be subject to~~ punishable by a fine of not ~~less than Fifty Dollars ($50.00) nor~~ more than ~~Two Hundred Dollars ($200.00)~~ Two Thousand Five Hundred Dollars ($2,500.00), or by

imprisonment in the county jail for a period of not more than ~~thirty (30) days~~ six (6) months, or by both such fine and imprisonment. A second violation of the provisions of Section 1041 of this title shall, upon conviction, be a misdemeanor punishable by a fine of not more than Five Thousand Dollars ($5,000.00) or by imprisonment in the county jail for a period of not more than six (6) months. A third or subsequent violation of the provisions of Section 1041 of this title shall, upon conviction, be a felony punishable by a fine of not more than Ten Thousand Dollars ($10,000.00) or by imprisonment in the custody of the Department of Corrections for a period of not more than two (2) years, or by both such fine and imprisonment.

SECTION 3. AMENDATORY 21 O.S. 2001, Section 1044, is amended to read as follows:

Section 1044. Any person~~, firm or corporation~~ failing or refusing to comply with the provisions of Section 1043 of this ~~act~~ title shall, upon conviction, be ~~deemed~~ guilty of a misdemeanor ~~and upon conviction shall be subject to~~ punishable by a fine of not ~~less~~ more than ~~Fifty ($50.00) Dollars nor more than Two Hundred ($200.00) Dollars~~ Two Thousand Five Hundred Dollars ($2,500.00), or by imprisonment in the county jail for a period of not more than ~~thirty (30) days~~ six (6) months, or by both such fine and imprisonment. A second violation of the provisions of Section 1043 of this title shall, upon conviction, be a misdemeanor punishable by a fine of not

more than Five Thousand Dollars ($5,000.00) or imprisonment in the county jail for a period of not more than six (6) months. A third or subsequent violation of the provisions of Section 1043 of this title shall, upon conviction, be a felony punishable by a fine of not more than Ten Thousand Dollars ($10,000.00) or by imprisonment in the custody of the Department of Corrections for a period of not more than two (2) years, or by both such fine and imprisonment.

SECTION 4. AMENDATORY 21 O.S. 2001, Section 1045, is amended to read as follows:

Section 1045. Every owner, keeper or proprietor of a junk shop, junk store, salvage yard, scrap processor, junk cart or other vehicle or boat, or collector of or dealer in junk, salvage or other secondhand property, shall keep a separate book ~~or~~, register or other electronic system used to record and maintain the data required by this section, in which he or she shall enter the following information: name, address, age, ~~driver's~~ a photocopy of the driver license ~~number, if driver's license not available similar definite~~ or other form of government-issued photo identification, the vehicle description and vehicle license tag number of the person or persons from whom ~~thirty five (35)~~ ten (10) pounds or more of copper, copper alloy, aluminum ~~or~~, aluminum alloy ~~utilized by persons, firms, corporations or municipal corporations engaged in the transmission and distribution of electric energy, or engaged in telephone, telegraph or other communications~~ or any item listed in

Section 8 of this act, is purchased; vehicle license tag number and description of vehicle or conveyance in which delivered; the date and place of each purchase of ~~such~~ copper, copper alloy, aluminum ~~or~~, aluminum alloy or any item listed in Section 8 of this act; the description ~~should~~ shall include the weight of the materials purchased, including whether the same is in wire, cable, bars, rods, sheeting or tubing and, if any insulation is thereon, the names and addresses of the persons, groups of persons or corporations from whom seller purchased the materials. Such book ~~or~~, register or other electronic system shall be made available to any ~~law enforcement official or the representatives of persons, firms, corporations or municipal corporations described above~~ person authorized by law for inspection at any time. The purchaser of any ~~such~~ copper, copper alloy, aluminum ~~or~~, aluminum alloy or any item listed in Section 8 of this act, shall hold the purchases separate and apart so that such materials shall be readily identifiable from all other purchases for a period of not less than ten (10) days from the date of purchase of such materials during which period the purchaser shall not change the form of the ~~copper, copper alloy, aluminum or aluminum alloy~~ materials and shall permit any ~~law enforcement officer or the representatives of persons, firms, corporations or municipal corporations described above~~ person authorized by law to make inspection of such materials during the ~~said~~ ten-day holding period; provided, however, that all such

purchases made from persons, firms, corporations or municipal corporations who construct, operate, or maintain electric distribution and transmission, communications facilities or produce scrap copper or aluminum in their normal course of business or the sale of copper or aluminum material by one licensed junk dealer to another are not subject to ~~said~~ the ten-day holding period; and there shall be required from such persons, firms, corporations or municipal corporations a bill of sale or other written evidence of title of such purchases. The purchaser shall also report in writing all purchases of ~~such~~ copper, copper alloy, aluminum ~~or~~, aluminum alloy or item listed in Section 8 of this act, to the sheriff of the county in which the purchases are made, if requested in writing by the sheriff, within forty-eight (48) hours after any such purchase is made. The report made to the sheriffs shall contain all of the information required to be maintained in the book or register provided for herein. The provisions of this section shall not apply to the sale or purchase of aluminum beverage cans which are obtained for recycling purposes.

SECTION 5. AMENDATORY 21 O.S. 2001, Section 1046, is amended to read as follows:

Section 1046. Failure to maintain the book ~~or~~, register or other electronic system, failing to maintain the copper, copper alloy, aluminum ~~or~~, aluminum alloy or any item listed in Section 8 of this act, separate and in the original form purchased for a

period of ten (10) days so that such materials can be readily identifiable, or failure to report to the sheriff in the manner and time required in Section 1045 of this title shall be deemed a violation of the provisions of Section 1045 of this title and shall be punishable, upon conviction, by imprisonment in the county jail for a period of time not exceeding six (6) months, or by a fine of not more than ~~Five Hundred Dollars ($500.00)~~ Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

SECTION 6. AMENDATORY 21 O.S. 2001, Section 1047, is amended to read as follows:

Section 1047. Any person who shall knowingly give false information with respect to information required to be maintained in the book or register provided for in Section ~~1~~ 1045 of this title shall, upon conviction, be guilty of a ~~misdemeanor and shall be imprisoned~~ felony punishable by imprisonment in the custody of the Department of Corrections for not more than ~~six (6) months~~ two (2) years, or ~~fined~~ by a fine of not more than ~~Five Hundred Dollars ($500.00)~~ Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

SECTION 7. AMENDATORY 59 O.S. 2001, Section 1408, is amended to read as follows:

Section 1408. A. Anyone acting as a junk dealer without a permit, as required by Section 1402 of this title, ~~is~~ shall, upon conviction, be guilty of a misdemeanor ~~and, upon conviction thereof,~~

~~is subject to~~ punishable by a fine of not more than ~~Fifty Dollars ($50.00)~~ Five Hundred Dollars ($500.00); provided that each ~~day's~~ day of operation without a license constitutes a separate offense.

B. Any junk dealer failing to maintain records, as required by ~~Section~~ Sections 1406 ~~of this title~~ and ~~Section 6~~ 1406A of this ~~act, and any junk dealer failing to hold copper material, as required by Section 1407 of this title, is~~ title, shall, upon conviction, be guilty of a misdemeanor ~~and, upon conviction thereof, is subject to~~ punishable by imprisonment in the county jail for not more than one (1) year, or by a fine of ~~Five Hundred Dollars ($500.00)~~ not more than Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment. Each separate purchase or transfer of a vehicle in violation of Section ~~6~~ 1406A of this ~~act~~ title shall be considered a separate violation of this section.

C. Any person who fails to hold copper, copper alloy, aluminum, aluminum alloy and any materials listed in Section 8 of this act, for ten (10) days as required by law, shall, upon conviction, be guilty of a misdemeanor punishable by a fine of not more than Two Thousand Five Hundred Dollars ($2,500.00). Any person convicted of a second violation of this subsection shall be guilty of a misdemeanor punishable by a fine of Five Thousand Dollars ($5,000.00). A third or subsequent violation of this subsection shall be punishable by a fine of Ten Thousand Dollars ($10,000.00).

D. Any person who knowingly gives false information with respect to the information required in ~~Section~~ Sections 1406 ~~of this title~~ and ~~in Section 6~~ 1406A of this ~~act is~~ title shall, upon conviction, be guilty of a misdemeanor ~~and, upon conviction thereof, is subject to~~ punishable by a fine of not ~~to exceed~~ more than Five Hundred Dollars ($500.00).

~~D.~~ E. Each conviction of a junk dealer or salvage dealer for violation of any provision of this act shall be reported to the Oklahoma Tax Commission by the clerk of the court rendering such verdict.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1412 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A junk dealer or salvage dealer licensed or permitted to do business in this state shall not purchase any of the following items without obtaining proof that the seller owns the property, either by receipt, bill of sale or other proof of ownership, or 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 the seller is authorized to sell the item on behalf of the person, business or entity owning the property:

1. A manhole cover;

2. An electric light pole and its fixtures and hardware or any other hardware associated with the electric utility system;

3. A guard rail;

4. A street sign, traffic sign or traffic signal and its fixtures or hardware;

5. Communications, transmission and service wire;

6. A funeral marker or funeral vase;

7. A historical marker;

8. Railroad equipment, including, but not limited to, a tie plate, switch plate, E clip or rail tie junction;

9. Any metal item that is marked with any form of the name, initials or logo of a governmental entity, utility company, cemetery or railroad;

10. A copper or aluminum condensing or evaporating coil from a heating or air conditioning unit;

11. An aluminum or stainless steel container or bottle designed to hold propane for fueling fork lifts;

12. Metal bleachers or other seating facilities used in recreational areas or sporting arenas;

13. Automotive catalytic converters;

14. Plumbing or electrical fixtures;

15. Tools; and

16. Machinery or supplies commonly used in the drilling, completing, operating or repairing of oil or gas wells.

B. Any person convicted of a violation of this section shall be punishable by a fine of not more than Two Thousand Five Hundred Dollars ($2,500.00). A second or subsequent violation of this section shall be punishable by a fine of not more than Five Thousand Dollars ($5,000.00). A third violation of this section shall be punishable by a fine of Ten Thousand Dollars ($10,000.00) and forfeiture of the junk dealer's or salvage dealer's license or permit.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1413 of Title 59, unless there is created a duplication in numbering, reads as follows:

Any junk dealer or salvage dealer licensed or permitted to do business in this state shall be required to pay the seller of any material, regulated by the provisions of Section 1401 et seq. of Title 59 of the Oklahoma Statutes, Section 1041 of Title 21 of the Oklahoma Statutes, or this act, with a check, bank draft, money order, electronic transfer of funds or any other legal means other than cash for any amount in excess of Twenty-five Dollars ($25.00) per transaction. Such payment may be provided at the time of purchase or by mail, as determined by the junk dealer or salvage dealer. If payment is to be made by mail, the junk dealer or salvage dealer shall provide the seller with a sales receipt at the time such items are accepted.

SECTION 10. This act shall become effective July 1, 2007.

SECTION 11. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval."

Passed the Senate the 12th day of April, 2007.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2007.

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Presiding Officer of the House of Representatives