STATE OF OKLAHOMA

2nd Session of the 51st Legislature (2008)

HOUSE BILL 2779 By: DeWitt

AS INTRODUCED

An Act relating to junk dealers; amending 21 O.S. 2001, Sections 1041, as amended by Section 1, Chapter 99, O.S.L. 2007, 1043, 1045, as amended by Section 4, Chapter 99, O.S.L. 2007, 1046, as amended by Section 5, Chapter 99, O.S.L. 2007 and 1047, as amended by Section 6, Chapter 99, O.S.L. 2007 (21 O.S. Supp. 2007, Sections 1041, 1045, 1046 and 1047), which relate to purchasing requirements and penalties for junk dealers; updating statutory references; defining term; deleting and modifying certain purchasing requirements; providing exemption for certain seller and material; deleting certain reporting requirement; increasing weight limitation for certain materials; providing exemptions to holding requirement; modifying certain reporting requirement; modifying scope of certain prohibited acts; amending 59 O.S. 2001, Sections 1401, 1402, 1406, 1406A, 1407, 1408, as amended by Section 7, Chapter 99, O.S.L. 2007, 1410, and Sections 8 and 9, Chapter 99, O.S.L. 2007 (59 O.S. Supp. 2007, Sections 1408, 1412 and 1413), which relate to junk dealers; adding definition; prohibiting denial of sales tax permit under certain circumstance; modifying recordkeeping requirements to include use of electronic systems; providing exemption to recordkeeping requirement for certain material; providing exemptions to certain holding requirement; updating statutory references; providing exemption to recordkeeping requirement for certain material; clarifying certain prohibited act; increasing dollar amount for certain payment requirement; prohibiting junk dealer from exchanging its own form of payment for cash; providing an exemption; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 2001, Section 1041, as amended by Section 1, Chapter 99, O.S.L. 2007 (21 O.S. Supp. 2007, Section 1041), is amended to read as follows:

Section 1041. A. All persons, firms or corporations, who carry on the business of buying copper, copper alloy, aluminum, aluminum alloy and items listed in Section ~~8~~ 1412 of ~~this act~~ Title 59 of the Oklahoma Statutes, commonly known as "junk dealers" as defined in Section 1401 of Title 59 of the Oklahoma Statutes, shall keep a record in a book or any other method allowed by law in their places of business and open to the inspection of 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 the seller for each item of property. ~~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 ten (10) days after purchasing the property, and keep the property open for inspection 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~~

B. As used in this section and Section 1045 of this title, "exempted seller" means any person, firm, corporation or municipal corporation who constructs, operates, or maintains electric distribution and transmission, communications facilities, or who produces or otherwise acquires scrap copper in the normal course of business including manufacturers, distributors, retailers, contractors, holders of farm-use tax permits or junk dealers.

C. The provisions of this section shall not apply to purchases made from an exempted seller.

D. The provisions of this section shall not apply to the sale or purchase of aluminum beverage cans which are obtained for recycling purposes.

E. It shall be unlawful for any junk dealer 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 1043, is amended to read as follows:

Section 1043. It shall be unlawful for any person, firm or corporation who carries on the business of buying brass, copper, iron, aluminum, or other metal, rubber, leather, belting, furniture, utensils, glassware or crockery, plumbing fixtures, electric fixtures, burlap, bags or any material, tools, guns, knives, watches

and clocks, machinery, supplies and equipment used in drilling, completing, operating or repairing oil or gas wells or mines, commonly known as "junk dealers" ~~and~~, "secondhand dealers", and "scrap metal recyclers", to purchase any such articles or any other article whatsoever from any minor without first having obtained in writing the consent of the parents or guardian of such minor to make such purchase. Such written consent shall be dated the day the purchase is made and shall be itemized so as to show each particular article or thing purchased. ~~Such "junk dealers" and "secondhand dealers" shall, on Saturday of each week, make a written report of all such purchases to the sheriff of the county where the purchase is made and shall transmit with such report the written consents to make such purchases heretofore referred to. Such reports and written consents shall be kept as a permanent record in the sheriff's office and shall be open to public inspection.~~

SECTION 3. AMENDATORY 21 O.S. 2001, Section 1045, as amended by Section 4, Chapter 99, O.S.L. 2007 (21 O.S. Supp. 2007, Section 1045), is amended to read as follows:

Section 1045. A. 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, 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, a photocopy of the driver license or other form of government-issued photo identification, the vehicle description and vehicle license tag number of the person or persons from whom ~~ten (10)~~ thirty-five (35) pounds or more of copper, copper alloy, aluminum, aluminum alloy or any item listed in Section ~~8~~ 1412 of ~~this act~~ Title 59 of the Oklahoma Statutes, is purchased; vehicle license tag number and description of vehicle or conveyance in which delivered; the date and place of each purchase of copper, copper alloy, aluminum, aluminum alloy or any item listed in Section ~~8~~ 1412 of ~~this act~~ Title 59 of the Oklahoma Statutes; the description 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, register or other electronic system shall be made available to any person authorized by law for inspection at any time.

B. The purchaser of any ~~copper, copper alloy, aluminum, aluminum alloy or any~~ item listed in Section ~~8~~ 1412 of ~~this act,~~ Title 59 of the Oklahoma Statutes 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 materials and shall

permit any person authorized by law to make inspection of such materials during the 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~~ an exempted seller are not subject to 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~~.

C. Any transaction for the purchase of an item listed in Section 1412 of Title 59 of the Oklahoma Statutes, wherein a digital photographic record, video record, or other record format is used to identify the seller and the item that the seller is selling shall be exempt from the holding requirement described in subsection B of this section. The digital photographic record, video record, or other record format shall be retained for ninety (90) days and the purchaser shall permit any person authorized by law to make inspections of the record.

D. The purchaser shall ~~also~~ report in writing all purchases of more than thirty-five (35) pounds of copper, copper alloy, aluminum, aluminum alloy or item listed in Section ~~8~~ 1412 of ~~this act~~ Title 59 of the Oklahoma Statutes, 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~~ request is made. The report made to the sheriffs shall contain all of the information required to be maintained in the book ~~or~~, register, or other electronic system 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 4. AMENDATORY 21 O.S. 2001, Section 1046, as amended by Section 5, Chapter 99, O.S.L. 2007 (21 O.S. Supp. 2007, Section 1046), is amended to read as follows:

Section 1046. Failure to maintain the book, register or other electronic system, failing to maintain ~~the copper, copper alloy, aluminum, aluminum alloy or~~ any item listed in Section ~~8~~ 1412 of ~~this act,~~ Title 59 of the Oklahoma Statutes 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 Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

SECTION 5. AMENDATORY 21 O.S. 2001, Section 1047, as amended by Section 6, Chapter 99, O.S.L. 2007 (21 O.S. Supp. 2007, 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, or other electronic system provided for in Section 1045 of this title shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for not more than two (2) years, or by a fine of not more than Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

SECTION 6. AMENDATORY 59 O.S. 2001, Section 1401, is amended to read as follows:

Section 1401. As used in this act, the following terms shall have the meanings indicated:

1. "Copper material" means the metal copper or copper alloy or anything made of either copper or copper alloy;

2. "Aluminum material" means the metal aluminum or aluminum alloy or anything made of either aluminum or aluminum alloy, except aluminum cans;

3. "Junk dealer" means any person, firm or corporation being an owner, keeper or proprietor of a junk shop, junk store, salvage yard or scrap processor handling copper material; a collector or dealer in junk, salvage or other property made of copper material or

aluminum metal; anyone purchasing or handling copper material for remelting purposes; or anyone purchasing, handling or transferring vehicles for purposes of crushing, baling, shredding, flattening, recycling and reselling as bulk or processed metal;

4. "Yard" means the place where any junk dealer stores copper material or keeps the same for purpose of sale; ~~and~~

5. "Vehicle" means vehicle as defined in Section 1-186 of Title 47 of the Oklahoma Statutes; and

6. "Exempted seller" means any person, firm, corporation or municipal corporation who constructs, operates, or maintains electric distribution and transmission, communications facilities, or who produces or otherwise acquires scrap copper in the normal course of business including manufacturers, distributors, retailers, contractors, holders of farm-use tax permits or junk dealers.

SECTION 7. AMENDATORY 59 O.S. 2001, Section 1402, is amended to read as follows:

Section 1402. A. Any junk dealer and any person, firm, corporation or other legal entity desiring to become a junk dealer shall prior to the commencement of business file a verified application and obtain a sales tax permit, as provided by Section 1364 of Title 68 of the Oklahoma Statutes, from the Oklahoma Tax Commission. Each junk dealer shall maintain at least one yard and, if such junk dealer maintains or desires to maintain more than one yard, the junk dealer shall obtain, in addition to the original

sales tax permit, a duplicate sales tax permit for each additional yard.

B. The Oklahoma Tax Commission shall maintain a list of junk dealers to whom sales tax permits have been issued. The list shall be made available to the public upon request.

C. No person, firm, corporation or other legal entity desiring to become a junk dealer shall be denied a sales tax permit, as provided by Section 1364 of Title 68 of the Oklahoma Statutes, on the ground that the annual sales of the person, firm, corporation, or other legal entity are insufficient in quantity or dollar value to warrant such permit.

SECTION 8. AMENDATORY 59 O.S. 2001, Section 1406, is amended to read as follows:

Section 1406. ~~(a)~~ A. Every junk dealer shall keep a separate book ~~or~~, register, or other electronic system in which he or she shall enter the following information: name, address, age, ~~driver's~~ driver license number, or, if ~~driver's~~ the driver license is not available, similar definite identification of the person or persons from whom thirty-five (35) pounds or more of copper or copper 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 is purchased; license tag number of vehicle or conveyance in which delivered; the date and place of each purchase of such copper or

copper alloy; the description should include the weight of ~~said~~ the copper or copper alloy purchased, including whether the same is in wire, cable, bars, rods, or tubing and if any installation is thereon the names and addresses of the persons, groups of persons or corporations from whom seller purchased ~~said~~ the copper or copper alloy. ~~Such~~ The 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~~ authorized representative of any governmental entity or utility for inspection at any time.

~~(b)~~ B. A junk dealer who purchases copper material shall also report, in writing, all purchases of thirty-five (35) pounds or more of copper material not exempt from the ten-day holding period to the sheriff of the county in which ~~said~~ the purchases are made, if requested in writing by ~~said~~ the sheriff. The report shall be made in writing to ~~said~~ the sheriff within forty-eight (48) hours after any such ~~purchase~~ request is made and shall contain all of the information required to be maintained in the book or register provided for herein.

C. The provisions of this section shall not apply to purchases made from an exempted seller.

SECTION 9. AMENDATORY 59 O.S. 2001, Section 1406A, is amended to read as follows:

Section 1406A. A. Every junk dealer shall keep a separate book ~~or~~, register, or other electronic system in which the junk dealer shall enter the following information: name, address, age, driver license number, or, if the driver license is not available, similar definite identification, as approved by rule of the Oklahoma Tax Commission, of the person or persons from whom a vehicle is purchased; license tag number of the vehicle or conveyance in which delivered; the date and place of each purchase of a vehicle; and a description of the vehicle purchased including make, model, vehicle identification number and license tag number. The person selling the vehicle shall be required to present to the junk dealer the title of the vehicle verifying ownership of the vehicle or a verified bill of sale from the owner of the vehicle or other proof of ownership. Such book ~~or~~, register, or data from the electronic system shall be made available to any law enforcement official for inspection at any time.

B. Any purchases, transfers or handling between junk dealers with permits ~~and/or~~ or licensed automotive dismantlers and parts recyclers shall be exempt from the provisions of this section.

SECTION 10. AMENDATORY 59 O.S. 2001, Section 1407, is amended to read as follows:

Section 1407. A. Each purchase of thirty-five (35) pounds or more of copper or copper 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 shall be held separate and apart so that such copper and copper alloy 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 copper or copper alloy, during which period the purchaser shall not change the form of said copper or copper alloy and shall permit any law enforcement officer or ~~the representatives of persons, firms, corporations or municipal corporations~~ authorized representative of any governmental entity or utility to make inspection of such copper material during said ten-day holding period~~; provided~~.

B. Provided, however, that all such purchases made from ~~persons, firms, corporations or municipal corporations who construct, operate, maintain or sell electric distribution and transmission communications facilites, or produce scrap copper material in the normal course of business or the sale of copper material by one licensed junk dealer to another~~ an exempted seller are not subject to said ten-day holding period~~; but 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~~.

C. Any transaction for the purchase of copper or copper alloy, wherein a digital photographic record, video record, or other record format is used to identify the seller and the item that the seller

is selling shall be exempt from the holding requirement described in subsection A of this section. The digital photographic record, video record, or other record format shall be retained for ninety (90) days and the purchaser shall permit any person authorized by law to make inspections of the record.

SECTION 11. AMENDATORY 59 O.S. 2001, Section 1408, as amended by Section 7, Chapter 99, O.S.L. 2007 (59 O.S. Supp. 2007, 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, shall, upon conviction, be guilty of a misdemeanor punishable by a fine of not more than Five Hundred Dollars ($500.00); provided that each day of operation without a license constitutes a separate offense.

B. Any junk dealer failing to maintain records, as required by Sections 1406 and 1406A of this title, shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment in the county jail for not more than one (1) year, or by a fine of 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 1406A of this title shall be considered a separate violation of this section.

C. Any person who fails to hold copper~~,~~ or copper alloy, ~~aluminum, aluminum alloy and~~ as required by subsection A of Section 1407 of this title, or who fails to hold any materials listed in

Section ~~8~~ 1412 of this ~~act~~ title, 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 Sections 1406 and 1406A of this title shall, upon conviction, be guilty of a misdemeanor punishable by a fine of not more than Five Hundred Dollars ($500.00).

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 12. AMENDATORY 59 O.S. 2001, Section 1410, is amended to read as follows:

Section 1410. A. Every junk dealer shall keep a separate book ~~or~~, register, or other electronic system in which the dealer shall enter the following information: name, address, age, ~~driver's~~ driver license number, or, if ~~driver's~~ the driver license is not available, similar definite identification of the person or persons

from whom thirty-five (35) pounds or more of aluminum or aluminum alloy is purchased; license tag number of vehicle or conveyance in which delivered; the date and place of each purchase of such aluminum; a description including the weight of the aluminum purchased, the names and addresses of the persons, groups of persons or corporations from whom seller purchased said aluminum. The book ~~or~~, register, or data from the electronic system shall be made available to any law enforcement official for inspection at any time.

B. A junk dealer who purchases aluminum shall also report, in writing, all purchases of thirty-five (35) pounds or more of aluminum to the sheriff of the county in which the purchases are made, if requested in writing by the sheriff. The report shall be made in writing to the sheriff within forty-eight (48) hours after said request is made and shall contain all of the information required to be maintained in the book ~~or~~, register or electronic system provided for in this section.

C. The provisions of this section shall not apply to purchases made from an exempted seller. Further, the provisions of this section shall not apply to the sale or purchase of aluminum beverage cans which are obtained for recycling purposes.

SECTION 13. AMENDATORY Section 8, Chapter 99, O.S.L. 2007 (59 O.S. Supp. 2007, Section 1412), is amended to read as follows:

Section 1412. 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~~ written evidence of ownership, or proof that the seller is an ~~employee, agent, or contractor of a governmental entity, utility company, cemetery, railroad, manufacturer,~~ exempted seller 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, including transmission and distribution cable and wire, 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.~~ 6. A historical marker;

~~8.~~ 7. Railroad equipment, including, but not limited to, a tie plate, switch plate, E clip or rail tie junction;

~~9.~~ 8. 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.~~ 9. A copper or aluminum condensing or evaporating coil from a heating or air conditioning unit;

~~11.~~ 10. An aluminum or stainless steel container or bottle designed to hold propane for fueling fork lifts;

~~12.~~ 11. Metal bleachers or other seating facilities used in recreational areas or sporting arenas;

~~13.~~ 12. Automotive catalytic converters;

~~14. Plumbing~~ 13. New plumbing or electrical fixtures;

~~15. Tools~~ 14. New tools; and

~~16.~~ 15. 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 14. AMENDATORY Section 9, Chapter 99, O.S.L. 2007 (59 O.S. Supp. 2007, Section 1413), is amended to read as follows:

Section 1413. A. 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~~ this title, 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)~~ Five Hundred Dollars ($500.00) per transaction. Such payment may be provided at the time of purchase or by mail, as determined by the junk dealer or salvage dealer. No junk dealer shall be permitted to exchange its own check, bank draft, or money order for cash. 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.

B. This section shall not apply to purchases made from an exempted seller.

SECTION 15. This act shall become effective November 1, 2008.

51-2-8935 GRS 12/31/07