

# AN ACT

To amend sections 1333.99, 4737.01, 4737.04, and 4737.99 and to enact sections 1333.71, 4737.041, 4737.042, 4737.043, and 4737.044 of the Revised Code to make certain changes to the laws regulating secondhand dealers and scrap metal dealers.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 1333.99, 4737.01, 4737.04, and 4737.99 be amended and sections 1333.71, 4737.041, 4737.042, 4737.043, and 4737.044 of the Revised Code be enacted to read as follows:

Sec. 1333.71. No person shall sell or purchase a plastic crate or tray that is used for the carrying of retail containers of milk or baked goods and that has embossed upon it a company logo.

Sec. 1333.99. (A) Whoever violates sections 1333.01 to 1333.04 of the Revised Code is guilty of a minor misdemeanor.

(B) Whoever violates section 1333.12 or 1333.71 of the Revised Code is guilty of a misdemeanor of the fourth degree.

(C) Whoever violates section 1333.36 of the Revised Code is guilty of a misdemeanor of the third degree.

(D) A prosecuting attorney may file an action to restrain any person found in violation of section 1333.36 of the Revised Code. Upon the filing of such an action, the common pleas court may receive evidence of such violation and forthwith grant a temporary restraining order as may be prayed for, pending a hearing on the merits of said cause.

(E) Whoever violates division (A)(1) of section 1333.52 or section 1333.81 of the Revised Code is guilty of a misdemeanor of the first degree.

(F) Whoever violates division (A)(2) or (B) of section 1333.52 of the Revised Code is guilty of a misdemeanor of the second degree.

(G) Except as otherwise provided in this division, whoever violates section 1333.92 of the Revised Code is guilty of a misdemeanor of the first degree. If the value of the compensation is five hundred dollars or more and less than five thousand dollars, whoever violates section 1333.92 of the Revised Code is guilty of a felony of the fifth degree. If the value of the

compensation is five thousand dollars or more and less than one hundred thousand dollars, whoever violates section 1333.92 of the Revised Code is guilty of a felony of the fourth degree. If the value of the compensation is one hundred thousand dollars or more, whoever violates section 1333.92 of the Revised Code is guilty of a felony of the third degree.

Sec. 4737.01. (A) "Personal identification card" means a current and valid driver's license, military identification card, state identification card issued under sections 4507.50 to 4507.52 of the Revised Code, or a state identification card issued by another state on the condition that that card contains information substantially similar to the information contained on a state identification card issued under sections 4507.50 to 4507.52 of the Revised Code and also contains a photograph of the person to whom the card is issued.

(B) A person other than a scrap metal dealer, as defined in section 4737.04 of the Revised Code, purchasing, selling, exchanging, or receiving secondhand articles of any kind other than special purchase articles as defined in section 4737.04 of the Revised Code, scrap iron, ~~old and scrap metal, canvas, rope, branded bottles, junk or lead pipe, except plow irons, old stoves, and furniture,~~ shall post in a conspicuous place in or upon his the person's shop, store, wagon, boat, or other place of business, a sign having his the person's name and occupation legibly inscribed thereon, and shall keep a separate record book, ~~open to inspection by any law enforcement officer, or electronic file~~ in which shall be written, in the English language, at the time of the purchase or exchange of such articles, a description thereof, the name, description, and residence of the person from whom purchased and received, and the day and ~~hour~~ time when such purchase or exchange was made, and shall make and keep a copy of the person's personal identification card. Every entry shall be numbered consecutively, commencing with number one.

~~(B) Any person, prior to purchasing any secondhand article of furniture or secondhand electrical or gas appliance or equipment for the purpose of resale to the general public, shall demand to examine the seller's driver's or commercial driver's license or identification card issued under sections 4507.50 to 4507.52 of the Revised Code and one additional type of card typically used for identification purposes.~~

~~The purchaser shall keep a written record of the number of the license or identification card and the type and number of the other identification card accepted together with the date of purchase, the name and address of the seller, and a description of the article purchased. The purchaser shall retain the ~~written~~ record book or electronic file and copies of personal~~

identification cards for at least one year after the purchase or exchange date and shall make the record or file and copies available for inspection by any law enforcement officer at all reasonable times. For the purposes of this division, the purchaser may utilize the written record he is required to keep where applicable under division (A) of this section and add to it the information required by this division.

Sec. 4737.04. (A) As used in this section and sections 4737.041, 4737.042, and 4737.043 of the Revised Code:

(1) "Scrap metal dealer" means the owner or operator of a business that purchases or receives scrap metal.

(2) "Special purchase article" means all of the following:

(a) Beer kegs;

(b) Cable, wire, electrical components, and other equipment used in providing cable service or any utility service, including, but not limited to, copper or aluminum coverings, housings, or enclosures related thereto;

(c) Grave markers, sculptures, plaques, and vases made out of metal, the appearance of which suggest that the articles have been obtained from a cemetery;

(d) Guard rails for bridges, highways, and roads; highway and street signs; street light poles and fixtures; manhole covers, water meter covers, and other similar types of utility access covers; traffic directional and control signs and light signals, metal marked with the name of a political subdivision of the state, and other metal articles that are purchased and installed for use upon authorization of the state or any political subdivision of the state;

(e) Historical, commemorative, and memorial markers and plaques made out of metal;

(f) Four-wheel metal carts, commonly referred to as "grocery carts," that are generally used by individuals to collect and transport consumer goods while shopping;

(g) Four-wheel metal carts, commonly referred to as "metal bossies," that are used to transport or merchandise food products that are stored in crates, shells, or trays.

(3) "Common recycled matter" means bottles and other containers made out of steel, tin, or aluminum and other consumer goods that are metal that are recycled by individual consumers and not in the bulk or quantity that could be supplied or recycled by large business establishments. "Common recycled matter" does not include a metal tray used by a product producer, distributor, retailer, or agent of a product producer, distributor, or retailer as a means for the bulk transportation, storage, or carrying of retail containers

of milk, baked goods, eggs, or bottled beverage products.

(4) "Consumer goods" has the same meaning as in section 1309.102 of the Revised Code.

(5) "Recyclable materials" means the metal materials described in division (B)(5) of this section, on the condition that those metal materials are not special purchase articles.

(6) "Motor vehicle" has the same meaning as in section 4501.01 of the Revised Code.

(B) Every scrap metal dealer in scrap iron, metal, and waste materials shall maintain a record book of records or electronic file, in which he the dealer shall keep an accurate and complete record of all articles purchased or received by him the dealer in the course of his the dealer's daily business. On and after the effective date of this amendment, every entry in the record book or electronic file shall be numbered consecutively. Every dealer shall maintain the record for each article purchased or received for a minimum period of one year after the date the dealer purchased or received the article. Said records shall contain all of the name, description, following:

(1) Name and residence of the person from whom said articles were purchased or received and the a copy of that person's personal identification card;

(2) The date and hour when such purchases or exchange were made time the scrap metal dealer purchased or received the articles;

(3) If the seller or provider of the articles arrives at the dealer's place of business in a motor vehicle, the license plate number of that motor vehicle along with the state that issued the license plate;

(4) For metal articles that are not recyclable materials, a full and accurate description of each article purchased or received by the dealer that includes identifying letters or marks written, inscribed, or otherwise included on the article and the name and maker of the article if known;

(5) For recyclable materials that are not special purchase articles, a scrap metal dealer shall use the following category codes to identify the recyclable materials that the dealer receives:

(a) "Number one copper," which includes clean copper pipe, clean copper wire, or other number one copper that does not have solder, paint, or coating;

(b) "Number two copper," which includes unclean copper pipe, unclean copper wire, or other number two copper;

(c) "Sheet copper," which includes copper roofing, copper gutters, copper downspouts, and other sheet copper;

(d) "Insulated copper wire";

(e) "Aluminum or copper radiators," which includes aluminum radiators, aluminum copper radiators, and copper radiators;

(f) "Red brass," which includes red brass valves and other red brass;

(g) "Yellow brass," which includes yellow brass fixtures, yellow brass valve and fitting, ornamental brass, and other yellow brass;

(h) "Aluminum sheet";

(i) "Aluminum extrusions," which includes aluminum bleachers, aluminum benches, aluminum frames, aluminum pipe, and other aluminum extrusions;

(j) "Cast aluminum," which includes aluminum grills, lawnmower decks made of aluminum, aluminum motor vehicle parts and rims, and other cast aluminum;

(k) "Clean aluminum wire";

(l) "Unclean aluminum wire";

(m) "Aluminum exteriors," which includes aluminum siding, aluminum gutters and downspouts, aluminum shutters, aluminum trim, and other aluminum exterior items;

(n) "Contaminated aluminum";

(o) "Stainless steel," which includes, sinks, appliance housing, dishes, pots, pans, pipe, and other items made out of stainless steel;

(p) "Large appliances," which includes consumer and other appliances;

(q) "Miscellaneous steel," which includes steel grates, steel farm machinery, steel industrial machinery, steel motor vehicle frames, and other items made out of steel;

(r) "Sheet irons," which includes bicycles, motor vehicle body parts made of iron, and other items made using sheet iron;

(s) "Motor vehicle nonbody parts," which includes motor vehicle batteries, radiators, and other nonbody motor vehicle parts;

(t) "Catalytic converters";

(u) "Lead";

(v) "Electric motors.;"

(C) All journal brasses, and other railroad metals, other than purchases and sales under sections 4973.13 to 4973.16, ~~inclusive,~~ of the Revised Code, shall be held by the dealer for a period of thirty days after being purchased or acquired.

Such (D) The records required under division (B) of this section shall be open for inspection by the representative of any law enforcement agency at and the director of public safety or the director's designated representative during all business hours. A scrap metal dealer shall provide a copy of those records to any law enforcement agency that requests the records or to the

director or director's representative, upon request. Records submitted to any law enforcement agency pursuant to this section are not public records for purposes of section 149.43 of the Revised Code. A person who claims to own a stolen article that may be identified in those records, or an agent of that person, who provides proof of having filed a stolen property report with the appropriate law enforcement agency, may request those records. The law enforcement agency shall provide those records upon a request made by such a person or that person's agent, but the law enforcement agency shall redact information that reveals the name of the seller of any article and the price the dealer paid for any article the dealer purchased or the estimated value of any article the dealer received. The law enforcement agency shall determine which records to provide, based upon the time period that the alleged theft is reported to have taken place. A law enforcement agency may charge or collect a fee for providing records as required by this section.

(E)(1) No scrap metal dealer shall purchase or receive any metal articles from a person who refuses to show the dealer the person's personal identification card.

(2) The law enforcement agency that serves the jurisdiction in which a scrap metal dealer is located shall provide a list, as that agency determines appropriate, of the names and descriptions of persons known to be or who are suspected to be thieves or receivers of stolen property. No scrap metal dealer shall purchase or receive articles from any person identified on the list the dealer receives from the law enforcement agency.

(3) No scrap metal dealer shall purchase or receive any special purchase articles from any person who is under eighteen years of age.

(4) No scrap metal dealer shall purchase or receive any special purchase article without complying with division (B) of this section and division (B), (C), or (D) of section 4737.041 of the Revised Code.

(5) No scrap metal dealer shall purchase or receive more than one catalytic converter per day from the same person except from a motor vehicle dealer as defined in section 4517.01 of the Revised Code.

(6) No scrap metal dealer shall treat a transaction as exempt from section 4737.04 or 4737.041 of the Revised Code unless the seller provides evidence of satisfying division (D)(3) of section 4737.043 of the Revised Code.

(F) Every scrap metal dealer shall post a notice in a conspicuous place on the dealer's premises notifying persons who may wish to transact business with the dealer of the penalties applicable to any person who does any of the following:

(1) Provides a false personal identification card to the dealer;

(2) With purpose to defraud, provides any other false information to the dealer in connection with the dealer's duty to maintain the records required under division (B) of this section;

(3) Violates section 2913.02 of the Revised Code.

(G)(1) Except as otherwise provided in the second paragraph of division (E) of this section, a chief of police, marshal, or other chief law enforcement officer, a sheriff, constable, or chief of police of a township police department or police district police force, and a deputy, officer, or employee of the law enforcement agency served by the marshal or the municipal or township chief, the office of the sheriff, or the constable is immune from liability in a civil action, including an action for defamation, libel, or slander, to recover damages for injury, death, or loss to persons or property or reputation allegedly caused by an act or omission in connection with compiling and providing the list required by division (E) of this section.

(2) The immunity described in division (G)(1) of this section does not apply to a person described in that division if, in relation to the act or omission in question, any of the following applies:

(a) The act or omission was manifestly outside the scope of the person's employment or official responsibilities.

(b) The act or omission was with malicious purpose, in bad faith, or in a wanton or reckless manner.

(c) Liability for the act or omission is expressly imposed by a section of the Revised Code.

Sec. 4737.041. A scrap metal dealer shall do all of the following with respect to each special purchase article the scrap metal dealer purchases or receives:

(A) Comply with the requirements of this section in addition to complying with the requirements of section 4737.04 of the Revised Code;

(B) Take a photograph of each special purchase article;

(C) Obtain from the seller or provider of the special purchase article proof that the seller or provider owns the special purchase article;

(D) If payment is rendered for the special purchase articles, issue a check for the purchase of the special purchase articles;

(E) Withhold payment for the purchase of the special purchase articles for a period of two days after the day the special purchase articles are purchased;

(F) If an asserted owner of stolen special purchase articles or that owner's agent provides proof of having filed a stolen property report with the appropriate law enforcement agency, make records describing special purchase articles the scrap metal dealer purchased or received after the

alleged date of theft available for inspection to the asserted owner or owner's agent for a period of six months after the alleged date of theft of the articles, except that the scrap metal dealer shall withhold the name of the person from whom the special purchase articles were purchased or received and the amount paid for the special purchase articles.

Sec. 4737.042. A scrap metal dealer and a person who purchases, sells, exchanges, or receives secondhand articles may use an electronic device that decodes and records information contained in the metallic strip on a personal identification card to record a person's name, address, and photograph in lieu of making a copy of a person's personal identification card to comply with the requirements of sections 4737.01, 4737.04, and 4737.041 of the Revised Code, on the condition that the dealer or person retains that recorded information and makes it available in accordance with the requirements to make copies available under those sections.

Sec. 4737.043. Sections 4737.04 and 4737.041 of the Revised Code do not apply with respect to any of the following:

(A) The donation of articles to nonprofit organizations or to any other person, on the condition that the person donating the articles receives no payment or any other valuable consideration in exchange for or due to donating the articles;

(B) The sale or donation of common recycled matter;

(C) Sales transacted between a scrap metal dealer and an organization that is exempt from federal taxation under section 501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 285, 26 U.S.C. 501(c)(3), as amended, and that collects, for its own fundraising purposes, scrap ferrous and nonferrous metals for recycling rather than disposal;

(D) Sales transacted between a scrap metal dealer and a government unit or another business, including a demolition company, public utility company, or another scrap metal dealer, on the condition that the government unit or business satisfies the following criteria:

(1) In the course of providing the government unit's or business's services to others or maintaining the government unit's or business's property, whether onsite or offsite, the government unit or business generates scrap ferrous and nonferrous metals for recycling rather than disposal.

(2) If the sales transaction involves a government unit, reference to the government unit as a bona fide unit of government can be readily found by the public.

(3) If the sales transaction involves a business, the business satisfies one of the following criteria:

(a) The business is registered with the secretary of state.

(b) The business has been issued a license under section 5739.17 of the Revised Code.

(c) The business advertises its services in a newspaper of general circulation once a week for not less than six consecutive months or provides a receipt showing payment for such advertising, a telephone book, electronic media that is available to the public, or some other type of media that is owned and operated by a person other than the business and, if an individual operates the business, the individual advertising the business has a specific place of business that is not the individual's permanent home residence.

(4) The government unit provides proof of compliance with division (D)(2) of this section or the business provides proof of compliance with division (D)(3) of this section to the scrap metal dealer with whom the government unit or business transacts business.

(E) Sales transacted between a scrap metal dealer and a person whose primary business is to create products that result in bulk quantities of ferrous and nonferrous metal used for recycling rather than disposal.

(F) Sales of catalytic converters transacted between a scrap metal dealer and a motor vehicle dealer as defined in section 4517.01 of the Revised Code.

Sec. 4737.044. No municipal corporation or other political subdivision shall enforce any regulation that is in conflict with sections 4737.01 to 4737.043 of the Revised Code. Consistent with the power of municipal corporations to exercise their rights under Article XVIII, Section 3 of the Ohio Constitution and recognizing the need for uniform commercial practices across this state, by analogy to *Am. Financial Servs. Assn et al. v. Cleveland*, 112 Ohio St. 3d 170, 2006-Ohio-6043, citing *Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005, syllabus, no municipal corporation or other political subdivision shall enact or enforce a regulation or ordinance applicable to a scrap metal dealer requiring a scrap metal dealer to individually identify and retain any scrap metal purchased or received, a practice otherwise known as "tag and hold."

Sec. 4737.99. (A) Except as specified in ~~division~~ divisions (B) and (C) of this section, whoever violates sections 4737.01 to 4737.11 of the Revised Code, shall be fined not less than twenty-five nor more than one thousand dollars and the costs of prosecution.

(B) Whoever violates division (F)(2) of section 4737.10 of the Revised Code is guilty of a misdemeanor of the fourth degree.

(C) Whoever fails to comply with or violates section 4737.01 or 4737.041 or division (B), (C), (E), or (F) of section 4737.04 of the Revised

Code is guilty of a misdemeanor of the third degree. If the offender one time previously has violated or failed to comply with section 4737.01 or 4737.041 or division (B), (C), (D), (E), or (F) of section 4737.04 of the Revised Code, the violation or failure is a misdemeanor of the second degree. If the offender two or more times previously has violated or failed to comply with section 4737.01 or 4737.041 or division (B), (C), (D), (E), or (F) of section 4737.04 of the Revised Code, the violation or failure is a misdemeanor of the first degree.

SECTION 2. That existing sections 1333.99, 4737.01, 4737.04, and 4737.99 of the Revised Code are hereby repealed.

SECTION 3. During the first year of the 129th General Assembly, the President of the Senate or Speaker of the House of Representatives shall initiate creation of a joint select committee of the Senate and House of Representatives for the purpose of considering the effectiveness of this act in deterring crime and the costs of complying with this act to industries affected by this act. The President of the Senate and Speaker of the House of Representatives shall create the joint select committee in accordance with the Joint Rules of the Senate and House of Representatives for the 129th General Assembly for creation of a joint select committee.

The joint select committee shall hold public hearings at which time representatives of the Ohio Municipal League, the Ohio Prosecuting Attorneys Association, and the Ohio Sheriff's Association; representatives of the scrap metal recycling industry; and other interested parties may present testimony on the affect of this act on metals theft rates, theft deterrence, criminal enforcement and prosecution, and economic and administrative burdens on industry. The joint select committee shall provide advance notice of its hearings to, and shall solicit comments in advance of those hearings from, the Ohio Municipal League, Ohio Prosecuting Attorneys Association, Ohio Sheriff's Association, representatives of the scrap metal recycling industry, and other interested parties that the joint select committee determines should receive notice.

The joint select committee shall issue a report summarizing the effectiveness and impacts of this act and submit the report to the President of the Senate and Speaker of the House of Representatives. The Legislative Service Commission shall assist the joint select committee in preparing and finalizing the report required by this section.

SECTION 4. The provisions of law contained in this act, and their applications, are severable. If any provision of law contained in this act, or if any application of any provision of law contained in this act, is held invalid, the invalidity does not affect other provisions of law contained in this act and their applications that can be given effect without the invalid provision or application.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

Am. Sub. S. B. No. 171

127th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_