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Bill Analysis

Legislative Service Commission

Sub. S.B. 171 127th General Assembly (As Passed by the Senate)

Sens. Stivers, Jacobson, Schuring, Schuler, Mumper, Amstutz, Buehrer, Harris, Schaffer, Wagoner, Padgett, Goodman, Faber

BILL SUMMARY

- Establishes record-keeping requirements for scrap metal dealers separate from the record-keeping requirements for dealers in other types of secondhand goods.
- Establishes additional requirements scrap metal dealers must satisfy when purchasing or receiving special purchase articles as defined in the bill.
- Prohibits a scrap metal dealer from purchasing or receiving any articles from a person who refuses to show the dealer the person's personal identification card.
- Requires the law enforcement agency that serves the jurisdiction in which a scrap metal dealer is located to 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.
- Prohibits a scrap metal dealer from purchasing or receiving articles from any person included in the list provided by a law enforcement agency as described in the dot point immediately above.
- Prohibits any scrap metal dealer from purchasing or receiving any special purchase articles from any person who is under 18 years of age.
- Specifies that whoever violates certain prohibitions concerning purchasing or receiving scrap metal or special purchase articles is guilty of a first degree misdemeanor.

- Exempts certain government and business entities from the bill's requirements concerning the purchase or receipt of scrap metal and special purchase items.
- Requires a scrap metal dealer to 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 commits specified offenses.
- Requires a scrap metal dealer to provide a copy of the dealer's records to any law enforcement agency that requests the records or to the Director of Public Safety or Director's representative, upon request.
- Allows a person who claims to own a stolen article included in the records a scrap metal dealer submits to a law enforcement agency who has proof of filing a stolen property report with the appropriate law enforcement agency, to request those records.
- Requires a law enforcement agency to provide those records upon request, but requires the agency to 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.
- States that the requirements and prohibitions regarding scrap metal and special purchase items specified in the bill are intended as a comprehensive legislative enactment operating uniformly throughout Ohio, setting forth regulations concerning the purchase and sale of scrap metal, and prescribing a rule of conduct upon citizens generally.
- States that to assure uniform statewide scrap metal purchasing practices, a municipal corporation or other political subdivision is prohibited from enacting or enforcing any regulation or ordinance regulating the purchase or sale of scrap metal by a scrap metal dealer or that is in conflict with or in derogation of the provisions of the bill regulating secondhand and scrap metal dealers.
- Requires a dealer in specified secondhand goods to obtain a copy of a person's personal identification card when the dealer purchases or receives the goods.

- Makes the identification information requirements that a licensed pawnbroker must obtain under the Pawnbroker Law uniform and requires a licensed pawnbroker to obtain a copy of a person's personal identification card when applicable.

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CONTENT AND OPERATION

Overview of the Secondhand Dealers and Junk Yards Law

The Secondhand Dealers and Junk Yards Law (R.C. Chapter 4737.) places the following duties on persons subject to the portion of the law governing the sale and purchase of specified secondhand goods:

(1) A dealer in secondhand articles of any kind, scrap iron, old metal, canvas, rope, branded bottles, junk or lead pipe, except plow irons, old stoves, and furniture must: (a) keep a separate book, open to inspection by any law enforcement officer, written in English, (b) record in this book, at the time of the purchase or exchange of articles, a description of the articles, the name, description, and residence of the person from whom the articles were purchased and received, and the day and hour when the purchase or exchange was made, (c) consecutively number each entry in that book, commencing with number one (sec. 4737.01(B)).

(2) 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, must demand to examine the seller's driver's or commercial driver's license or state identification card and one additional type of card typically used for identification purposes (sec. 4737.01(B)).

(3) Every dealer in scrap iron, metal, and waste materials also must (a) maintain a book of records, in which the dealer must keep an accurate and complete record of all articles purchased or received by the dealer in the course of the dealer's daily business, (b) include in the records the name, description, and residence of the person from whom the articles were purchased or received and the date and hour when such purchases or exchanges were made, and (c) keep those records open for inspection by the representative of any law enforcement agency at all business hours (sec. 4737.04).

(4) A dealer must hold all journal brasses and other railroad metals other than purchases and sales concerning railroad scrap metal, for a period of 30 days after being purchased or acquired (sec. 4737.04).

The Secondhand Dealers and Junk Yards Law prohibits any person from purchasing or receiving by sale, barter, exchange, or otherwise, specified articles, from a minor or apprentice, knowing or having reason to believe that the person is a minor or apprentice, or from any person between the hours of 9 p.m. and 7 a.m. (sec. 4737.03, not in the bill). The provisions of the Secondhand Dealers and Junk Yards Law governing secondhand goods do not apply to the business of purchasing articles that are made of or contain gold, silver, platinum, or other precious metals or jewels (sec. 4737.011, not in the bill).

The Secondhand Dealers and Junk Yards Law also generally requires an operator of a junk yard to obtain a license from the appropriate local authority unless an exception applies. A "junk yard" under continuing law is an establishment or place of business that is maintained or operated for the purpose of storing, keeping, buying, or selling junk, and includes scrap metal processing facilities that are located within 1,000 feet of the nearest edge of the right of way of a highway in the interstate or primary system. "Junk," under continuing law, means old or scrap copper, brass, rope, rags, trash, waste, batteries, paper, rubber, iron, steel, and other old or scrap ferrous or nonferrous materials, but does not include scrap tires as defined under continuing law. (Sec. 4737.05, not in the bill.)

Generally, whoever violates the Secondhand Dealers and Junk Yards Law is fined not less than \$25 nor more than \$1,000 and the costs of prosecution (sec. 4737.99, not in the bill).

Purchase or sale of scrap metal in general

The bill removes scrap iron, old metal, and junk or lead pipe from the list of items to which the requirements specified in (1) under "**Overview of the Secondhand Dealers and Junk Yards Law**," above apply and modifies the current

law duties applicable to scrap metal dealers¹ when purchasing or receiving "special purchase articles," as defined in the bill, and scrap metal. (Sec. 4737.01.)

Under the bill, every scrap metal dealer must maintain a record book or electronic file, as added by the bill, in which the dealer must keep an accurate and complete record of all articles purchased or received by the dealer in the course of the dealer's daily business (sec. 4737.04(B)). On and after the bill's effective date, every entry in the record book or electronic file must be numbered consecutively. The bill requires every dealer to maintain the record for each article purchased or received for a minimum period of one year after the date the dealer purchases or receives the article. (Sec. 4737.04(B).)

The bill expands the list of the information that a scrap metal dealer must maintain in the dealer's records. In addition to the information described in (3)(b) under "**Overview of the Secondhand Dealers and Junk Yards Law**" above, the bill requires a scrap metal dealer to obtain a copy of that person's personal identification card. The bill defines "personal identification card" as a current and valid driver's license, military identification card, state identification card issued under Ohio's Driver's License Law (secs. 4507.50 to 4507.52), 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 Ohio's Driver's License Law and also contains a photograph of the person to whom the card is issued (secs. 4727.01(C) and 4737.01(A)). The bill also requires the dealer to record the time, rather than the hour under current law, when the scrap metal dealer purchased or received the articles. (Sec. 4737.04(B)(1) and (2).) If the seller or provider of the articles arrives at a dealer's place of business in a motor vehicle, the dealer must include the license plate number of that motor vehicle along with the state that issued the license plate in the records (sec. 4737.04(B)(3)). For metal articles that are not recyclable materials (see "**Definitions**," below), the records also must include 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. For the purchase or receipt of recyclable materials that are not special purchase articles (see "**Special purchase articles**," below), a scrap metal dealer must use the following category codes to identify in the dealer's records the recyclable materials that the dealer receives:

¹ A "scrap metal dealer," under the bill, is a person who purchases or receives scrap metal (sec. 4737.04(A)(1)).

- "Number one copper," which includes clean copper pipe, clean copper wire, or other number one copper that does not have solder, paint, or coating;
- "Number two copper," which includes unclean copper pipe, unclean copper wire, or other number two copper;
- "Sheet copper," which includes copper roofing, copper gutters, copper downspouts, and other sheet copper;
- "Insulated copper wire";
- "Aluminum or copper radiators," which includes aluminum radiators, aluminum copper radiators, and copper radiators;
- "Red brass," which includes red brass valves and other red brass;
- "Yellow brass," which includes yellow brass fixtures, yellow brass valve and fitting, ornamental brass, and other yellow brass;
- "Aluminum sheet";
- "Aluminum extrusions," which includes aluminum bleachers, aluminum benches, aluminum frames, aluminum pipe, and other aluminum extrusions;
- "Cast aluminum," which includes aluminum grills, lawnmower decks made of aluminum, aluminum motor vehicle parts and rims, and other cast aluminum;
- "Clean aluminum wire";
- "Unclean aluminum wire";
- "Aluminum exteriors," which includes aluminum siding, aluminum gutters and downspouts, aluminum shutters, aluminum trim, and other aluminum exterior items;
- "Contaminated aluminum";
- "Stainless steel," which includes, sinks, appliance housing, dishes, pots, pans, pipe, and other items made out of stainless steel;
- "Large appliances," which includes consumer and other appliances;

- "Miscellaneous steel," which includes steel grates, steel farm machinery, steel industrial machinery, steel motor vehicle frames, and other items made out of steel;
- "Sheet irons," which includes bicycles, motor vehicle body parts made of iron, and other items made using sheet iron;
- "Motor vehicle nonbody parts," which includes motor vehicle batteries, radiators, and other nonbody motor vehicle parts;
- "Catalytic converters";
- "Lead";
- "Electric motors." (Sec. 4737.04(B)(4) and (5).)

In addition to keeping the records open for inspection by the representative of any law enforcement agency during all business hours, as under current law, the bill requires a scrap metal dealer to also keep those records open for the Director of Public Safety or the Director's designated representative. Under the bill, a scrap metal dealer must 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 under the bill are not considered public records for purposes of the Public Records Law (sec. 149.43, not in the bill). 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 must provide those records upon a request made by such a person or that person's agent, but the law enforcement agency must 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 must 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 the bill. (Sec. 4737.04(D).)

Under the bill, 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 bill's requirements, on the condition that the dealer retains that recorded information and makes it available in accordance with the requirements to make copies available under the bill. (Sec. 4737.042.)

Prohibitions

The bill prohibits a scrap metal dealer from purchasing or receiving any articles from a person who refuses to show the dealer the person's personal identification card. The law enforcement agency that serves the jurisdiction in which the dealer is located must 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. The bill prohibits any scrap metal dealer from purchasing or receiving articles from any person identified on the list the dealer receives from the law enforcement agency. Additionally, the bill prohibits a scrap metal dealer from purchasing or receiving more than one catalytic converter per day from the same person. (Sec. 4737.04(E).) Whoever violates these prohibitions is guilty of a first degree misdemeanor (sec. 4737.99(C)).

Notice

The bill requires every scrap metal dealer to 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 described above;
- (3) Commits a theft as described under the Criminal Laws (sec. 2913.02). (Sec. 4737.04(F).)²

² Continuing law prohibits any person, with purpose to deprive the owner of property or services, from knowingly obtaining or exerting control over either the property or services in any of the following ways: (1) without the consent of the owner or person authorized to give consent, (2) beyond the scope of the express or implied consent of the owner or person authorized to give consent, (3) by deception, (4) by threat, or (5) by intimidation. Whoever violates this prohibition is guilty of theft, and the penalties for theft vary based on the property stolen, the quantity of the property stolen, and the value of the property stolen. (Sec. 2913.02, not in the bill.)

Special purchase articles

The bill specifies additional requirements a scrap metal dealer must follow when purchasing or receiving special purchase articles. "Special purchase article" means all of the following:

- Beer kegs;
- 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;
- Grave markers, sculptures, plaques, and vases made out of metal, the appearance of which suggest that the articles have been obtained from a cemetery;
- 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;
- Historical, commemorative, and memorial markers and plaques made out of metal;
- Four-wheel metal carts, commonly referred to as "grocery carts," that are generally used by individuals to collect and transport consumer goods while shopping;
- 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. (Sec. 4737.04(A)(2).)

A scrap metal dealer who purchases or receives special purchase articles must comply with the requirements specified under "**Purchase or sale of scrap metal in general**" above with respect to each special purchase article and do all of the following with respect to each special purchase article:

- (1) Take a photograph of each special purchase article;
- (2) Obtain from the seller or provider of the special purchase article proof that the seller or provider owns the special purchase article;

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

(4) Withhold payment for the purchase of the special purchase articles for a period of two days after the day the articles are purchased. (Sec. 4737.041.)

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, the scrap metal dealer must make records describing the special purchase articles the scrap metal dealer purchased or received after the alleged date of the 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 must 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. 4737.041.)

The bill prohibits any scrap metal dealer from purchasing or receiving any special purchase article without complying with the record-keeping requirements described under "**Purchase or sale of scrap metal in general**" above or with the requirements described under (1) and (2) immediately above. Additionally, the bill prohibits any scrap metal dealer from purchasing or receiving any special purchase articles from any person who is under 18 years of age. (Sec. 4737.04(E).) Whoever violates these prohibitions is guilty of a first degree misdemeanor. (Sec. 4737.99(C).)

Exceptions

Under the bill, the requirements specified under "**Purchase or sale of scrap metal in general**" and "**Special purchase articles**" above do not apply with respect to any of the following:

(1) 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;

(2) The sale of common recycled matter (see "**Definitions**," below);

(3) 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;

(4) 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;

(5) 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:

(a) 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.

(b) 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.

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

- The business is registered with the Secretary of State.
- The business advertises its services in a newspaper of general circulation, 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.

(d) The government unit provides proof of compliance with (b) immediately above or the business provides proof of compliance with (c) immediately above to the scrap metal dealer with whom the government unit or business transacts business. (Sec. 4737.043.)

Authority of municipal corporations and other political subdivisions

The bill states that 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, the requirements and prohibitions described under "**Purchase or sale of scrap metal in general**" and "**Special purchase articles**" above are intended as a comprehensive legislative enactment operating uniformly throughout Ohio, setting forth regulations concerning the purchase and sale of scrap metal, and prescribing a rule of conduct upon citizens generally. The bill further states that to assure uniform statewide scrap metal purchasing practices, no municipal corporation or other political subdivision can enact or

enforce any regulation or ordinance regulating the purchase or sale of scrap metal by a scrap metal dealer or that is in conflict with or in derogation of the provisions of the bill governing the receipt or purchase of scrap metal and special purchase articles (see **COMMENT**). (Sec. 4737.044.)

Changes to the duties of secondhand dealers and pawnbrokers

As described in (1) under "**Overview of the Secondhand Dealers and Junk Yards Law**" above, a dealer in specified secondhand goods must obtain certain information about the person from whom the dealer receives or purchases the goods, including the person's name, description, and residence (sec. 4737.01(A)). Under the Pawnbrokers Law (R.C. Chapter 4727.), a licensed pawnbroker must include on the appropriate form for each pawn or purchase a driver's license number, military identification number, or other personal identification number in addition to other information specified under continuing law (sec. 4727.08(B)(6)). If a person other than a pledgor redeems an item pledged by the pledgor, a licensed pawnbroker must record that person's driver's license number or other personal identification number in addition to other information specified in continuing law. Additionally, in the event a pledgor sells, transfers, or assigns a pledge, a licensed pawnbroker must record the driver's license number and other information regarding the person who is redeeming the pledge. (Sec. 4727.11(B) and (D).)

The bill makes the types of identification card information that a licensed pawnbroker must obtain uniform by requiring a licensed pawnbroker to make a copy of a person's, pledgor's, or seller's personal identification card. The bill also requires a secondhand dealer to make and keep a copy of a person's personal identification card in addition to the information the secondhand dealer must obtain under current law. (Secs. 4727.08(C), 4727.11(B) and (D), and 4737.01(B).)

The bill permits a licensed pawnbroker or a secondhand dealer to 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 bill's requirements, on the condition that the licensed pawnbroker or the secondhand dealer retains that recorded information and makes it available in accordance with the bill's requirements to make copies available. (Secs. 4727.22 and 4737.042.)

The bill also modifies a secondhand dealer's duties as described in (1) under "**Overview of the Secondhand Dealers and Junk Yards Law**" above with respect to any secondhand articles the dealer receives other than special purchase articles, scrap iron, or scrap metal. The bill requires the secondhand dealer to maintain

either a record book, as under current law, or an electronic file, as added by the bill, in which the information described in (1) under "Overview of the Secondhand Dealers and Junk Yards Law" above must be maintained. Additionally, the bill requires a secondhand dealer to record the time, instead of the hour under current law, that the purchase or exchange of a secondhand article was made. The bill requires a secondhand dealer to retain the record book or electronic file and copies of personal identification cards for at least one year after the purchase or exchange date and must make all of that information available for inspection by any law enforcement officer at all reasonable times. (Sec. 4737.01(B).)

Definitions

The bill defines the following terms:

(1) "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, but 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;

(2) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes (sec. 1309.102, not in the bill);

(3) "Motor vehicle" means any vehicle, including mobile homes and recreational vehicles, that is propelled or drawn by power other than muscular power or power collected from overhead electric trolley wires, but does not include utility vehicles as defined under the Motor Vehicles, Aeronautics, and Watercraft Law (R.C. Chapter 4501.), motorized bicycles, road rollers, traction engines, power shovels, power cranes, and other equipment used in construction work and not designed for or employed in general highway transportation, well-drilling machinery, ditch-digging machinery, farm machinery, and trailers that are designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a public road or highway for a distance of no more than ten miles and at a speed of 25 miles per hour or less (sec. 4501.01, not in the bill);

(4) "Recyclable materials" means the metal materials for which a category is specified under "Purchase or sale of scrap metal in general" above, on the

condition that those metal materials are not special purchase articles. (Sec. 4737.04(A).)

Creation of a joint select committee to study bill's effectiveness

The bill requires that during the first year of the 129th General Assembly (2011), the House Speaker or Senate President must initiate creation of a joint select committee of the House and Senate, in accordance with the Joint Rules for the 129th General Assembly, to consider the bill's effectiveness in deterring crime and the costs of compliance to industries affected by the bill.

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

The joint select committee must issue a report summarizing the bill's effectiveness and impacts. The joint committee must submit the report to House Speaker and Senate President. The Legislative Service Commission must assist the committee in preparing and finalizing the report. (Section 3.)

COMMENT

The effect of the declaration of the General Assembly's intent is not entirely clear. The Ohio Supreme Court in *American Financial Services Assn. et al. v. Cleveland* (2006), 112 Ohio St.3d 170 stated that a statement of intent to preempt a field of legislation is a statement that a court may consider but it "does not trump the constitutional authority of municipalities to enact legislation pursuant to the Home Rule Amendment, provided the local legislation is not in conflict with general laws." Citing *Fondessy Ents., Inc. v. Oregon* (1986), 23 Ohio St.3d 213, the Court noted that "the constitutional authority of municipalities to enact local police regulations emanates from the Constitution and 'cannot be extinguished by a legislative provision.'" The Court reaffirmed that the conflict analysis as mandated by the Constitution should be used in resolving home-rule cases. The *Canton* case, cited in the bill, announced a four-part test defining what constitutes a general law for purposes of a court's home-rule analysis. The four-part test serves to aide a court in construing the parameters of the home rule amendment in

light of a particular municipal action. It is not clear whether a court would uphold a legislative determination of the four-part test.

HISTORY

ACTION	DATE
Introduced	05-15-07
Reported, S. Insurance, Commerce, & Labor	02-07-08
Passed Senate (24-8)	03-12-08

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