

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET, HONOLULU, HAWAII 96813
AREA CODE 808 • 527-6494

PETER B. CARLISLE
PROSECUTING ATTORNEY



DOUGLAS S. CHIN
FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE BRIAN TANIGUCHI, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

April 1, 2008

RE: H.B. 2589, H.D. 2, S.D. 1; RELATING TO SCRAP METAL.

Chair Taniguchi and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney submits the following comments on House Bill 2589, H.D. 2, S.D. 1.

The purpose of this bill is to add a new section to chapter 445, Hawaii Revised Statutes (HRS) which requires a scrap dealer or recycler to pay by check whenever the scrap dealer or recycler purchases copper. In addition the bill requires the seller present valid photo identification when selling the copper and that the check either be mailed to the address on the identification or picked up at the place of business of the scrap dealer or recycler. Finally, the bill adds the new section in the misdemeanor penalty provision of HRS section 445-235.

We do note that in amending the penalty provisions of HRS 445-235, the bill uses an "and" on page 2 line 16 and that another bill, H.B. 2347, H.D. 1 is intended to change the "and" to an "or" to clarify the legislative intent that a person need only violate any of the sections listed in the penalty provisions rather than all of the sections before a penalty can be imposed. We would therefore ask the legislature to conform the language in Section 3 of this bill to that of Section 2 of H.B. 2347, H.D. 1. which is attached for your reference.

Thank you for this opportunity to testify.

STAND. COM. REP. NO. **3007**

Honolulu, Hawaii

MAR 19 2008

RE: H.B. No. 2347
H.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

Madam:

Your Committee on Commerce, Consumer Protection, and Affordable Housing, to which was referred H.B. No. 2347, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO METAL,"

begs leave to report as follows:

The purpose of this measure is to ensure that law enforcement efforts to crack down on metal theft are not hampered by what appears to be an ambiguity in the law by affirming that a scrap dealer can be punished for violations involving either being unlicensed or by failing to keep or falsifying records.

Testimony in support of this measure was submitted by the Department of the Attorney General; the Department of the Prosecuting Attorney, City and County of Honolulu; and the Honolulu Police Department, City and County of Honolulu.

Your Committee finds that in its current form, section 445-235, Hawaii Revised Statutes, can be construed to mean that a person must violate both, the licensing requirements under section 445-232, Hawaii Revised Statutes, and the documentation requirements under section 445-233, Hawaii Revised Statutes, before a penalty can be imposed. Legislative history indicates the necessity for documentation of sales to combat fencing of stolen goods, and the necessity of licensing to ensure appropriate regulation of persons who buy scrap metal. Thus, amending section 445-235, Hawaii Revised Statutes, will affirm the Legislature's intent that a scrap dealer can be punished for violations

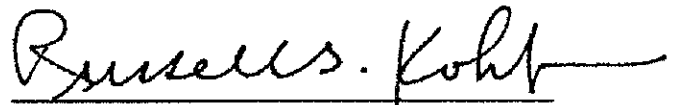
2008-1923 SSCR SMA.doc



involving either being unlicensed or by failing to keep or falsifying records.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Affordable Housing that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2347, H.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Judiciary and Labor.


Respectfully submitted on
behalf of the members of the
Committee on Commerce, Consumer
Protection, and Affordable
Housing,


RUSSELL S. KOKUBUN, Chair



The Senate
 Twenty-Fourth Legislature
 State of Hawaii

Record of Votes
 Committee on Commerce, Consumer Protection and Affordable Housing
 CPH

Bill / Resolution No.:	Committee Referral:	Date:		
H B 2347 HD1	CPH, JDL	3/13/08		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input checked="" type="checkbox"/> Pass, unamended 2312 <input type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
KOKUBUN, Russell S. (C)	✓			
IGE, David Y. (VC)	✓			
ESPERO, Will				✓
IHARA, Jr., Les				✓
SAKAMOTO, Norman				✓
TANIGUCHI, BRIAN T.	✓			
TRIMBLE, Gordon	✓			
TOTAL	4			3
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original	Yellow	Pink	Goldenrod	
File with Committee Report	Clerk's Office	Drafting Agency	Committee File Copy	

*Only one measure per Record of Votes

A BILL FOR AN ACT

RELATING TO METAL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that Act 197, Session
2 Laws of Hawaii 2007, was enacted to help law enforcement stem
3 the tide of metal thefts, particularly thefts of copper, that
4 have damaged property, left stretches of roadway in the dark,
5 and threatened the power grid. Act 197 did so, in part, by
6 amending section 445-235, Hawaii Revised Statutes, to increase
7 the penalties for scrap dealers who operate without a license or
8 who fail to keep, or falsify, records of scrap metal purchases
9 required to be kept by law.

10 The legislature also finds that, while section 445-235,
11 Hawaii Revised Statutes, had not previously been amended since
12 it was first enacted in 1976, concern has arisen recently that,
13 as written, it may be read to require that both section 445-232
14 and section 445-233, Hawaii Revised Statutes, be violated before
15 a penalty can be imposed for violation of either of them. This
16 concern arises from the fact that the reference to these two
17 sections in section 445-235, Hawaii Revised Statutes, is



1 separated by the conjunctive "and" instead of the disjunctive
2 "or."

3 The legislature declares that it was never the
4 legislature's intent to require that both section 445-232 and
5 section 445-233, Hawaii Revised Statutes, be violated before a
6 penalty can be imposed for violation of either of them.
7 Clearly, a scrap dealer can violate section 445-232, Hawaii
8 Revised Statutes, by being unlicensed without also violating
9 section 445-233, Hawaii Revised Statutes, by failing to keep or
10 falsifying records. The converse is also plainly true. A
11 contrary reading is also plainly inconsistent with the intent of
12 many similar provisions in the Hawaii Revised Statutes. The
13 legislature intended to eliminate the possibility of an
14 erroneous reading of section 445-235, Hawaii Revised Statutes,
15 when it enacted Act 197, Session Laws of Hawaii 2007, but, due
16 to an inadvertent error, the amending language was omitted from
17 the conference draft adopted by the house of representatives and
18 the senate.

19 It is the purpose of this Act to affirm that an offender
20 may be punished under section 445-235, Hawaii Revised Statutes,
21 for violating either section 445-232 or section 445-233, Hawaii
22 Revised Statutes.



1 SECTION 2. Section 445-235, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~§445-235~~ **Prohibitions; penalty.** Any person who violates
4 ~~[sections]~~ section 445-232 ~~[and]~~ or 445-233, or any person who
5 falsifies a statement required by section 445-233, shall be
6 guilty of a misdemeanor and shall be sentenced in accordance
7 with chapter 706, except that the court shall impose a minimum
8 sentence of:

- 9 (1) A fine of \$1,000 for the first offense;
10 (2) A fine of \$3,000 for the second offense; and
11 (3) A fine of \$5,000 and the suspension of the scrap
12 dealer's license for a period of six months for the
13 third or subsequent offense; provided that if the
14 third or subsequent offense occurs within a five-year
15 period from the occurrence of two prior offenses, the
16 scrap dealer shall be subject to license revocation."

17 SECTION 3. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 4. This Act shall take effect upon approval;
20 provided that the amendments made to section 445-235, Hawaii
21 Revised Statutes, by section 2 of this Act shall not be repealed



- 1 when that section is reenacted on July 1, 2009, pursuant to
- 2 section 7 of Act 197, Session Laws of Hawaii 2007.



Report Title:
Scrap Dealers; Violations

Description:
Affirms that penalties in section 445-235, HRS, apply if scrap dealer violates either section 445-232 or 445-233, HRS. (HB2347 HD1)



March 31, 2008

Robert A. Okuda, MGR
Okuda Metal, Inc. (808)845-6856
1804 Kahai Street
Honolulu, HI 96819

THE SENATE
COMMITTEE ON JUDICIARY AND LABOR
Testimony in support of HB2589, HD2 SD1

To the honorable members of the JDL committee:

I am very grateful for the opportunity to testify on this bill. The underlying reason why thieves steal copper is the access to "fast cash". Cash payments have always been the norm in the scrap metal recycling business. There are only six recyclers who buy copper on Oahu and we compete with each other for business. Competition forces us to pay with cash. Most of our transactions are done with people and businesses involved with construction and demolition, sometimes homeowners that do renovations and repairs. "Cash" has always been our way of business and we only pay by check when it is requested by the customer. Thieves gravitate to "fast cash".

Please help us transform this industry into a more respectable and safer one by making it unlawful to pay with cash. Issuing checks will slow the payment process and also create an audit trail that could help law enforcement in their investigations. We support the contents of this bill.

Thank you for this opportunity.

Sincerely,



Robert A. Okuda

LATE**testimony**

From: Bruce Iverson [biverson@reynoldsrecycling.com]
Sent: Monday, March 31, 2008 4:11 PM
To: testimony
Subject: Testimony in support of HB 2589 HD2, SD1 Relating to Scrap Metal

To: **Senator Brian T. Taniguchi, Chair**
Senator Clayton Hee, Vice Chair
Committee on Judiciary and Labor

Fr: **Terry G. Telfer, President**
Reynolds Recycling

Date: **Tuesday, April 1, 2008, Room 016, 10 AM**

Re: **Testimony in support of HB 2589 HD2, SD1 Relating to Scrap Metal**

Aloha. Thank you for the opportunity to testify on this bill.

Reynolds Recycling operates the largest network of redemption and scrap metal recycling centers in Hawaii. We believe that Reynolds, and other reputable recycling center operators have continued to insure that all purchases of non-ferrous (aluminum, brass, and copper) scrap metals follow all current laws and rules set forth by the DOH. The implementation of Act 197 last year mandated notarized proofs of ownership. The new law is working. Reynolds has helped law enforcement officials catch several thieves over the past year.

Most of our customers are residential recyclers, bringing in small amounts of copper from home remodel projects. Most have still not heard of the new law regarding copper sale, and when they do, some already decide that getting a notarized form to prove ownership is odious and not worth their while.

While the current copper law has made an impact on copper theft, much of the cost of that burden has been born by the recycler.

Reynolds currently pays most transactions over a set amount are paid by check, so many of our copper sales are already paid using checks.

In meetings held between the AG's office, the Police Department, and members of the recycling industry, all parties, except one recycler, agreed that for non-ferrous metals other than copper:

- 1) Further requirements (i.e. notarized proof of ownership, photos, etc.) for the purchase are NOT needed at this time.**
- 2) A requirement to pay for non-copper items by checks is not necessary,**
- 3) A holding period for non-copper checks is also not merited.**

As a leader in Hawaii's recycling industry, Reynolds Recycling remains committed to protecting Hawaii's future by recycling today, and supports measures that increase public safety and confidence in the recycling system.

We support HB 2589 HD2, SD1 in its current form. Please do not hesitate to contact me at 487-2802, if you have any questions or concerns.

Terry G. Telfer, President
Reynolds Recycling, Inc.

3/31/2008