

FAILURE OF SECONDARY METALS RECYCLER TO MAINTAIN RECORDS OF PURCHASES OF REGULATED METALS. G.S. 66-11(B). FELONY. MISDEMEANOR.

NOTE WELL: This instruction is for offenses occurring on or after October 1, 2009.

NOTE WELL: See G.S. 15A-928 for provisions regarding indictment, bifurcated trial, verdict, and judgment.

The defendant has been charged with failure to maintain records of purchases of regulated metals.

For you to find the defendant guilty of this offense, the State must prove [three] [four] things beyond a reasonable doubt:

First, that the defendant is a secondary metals recycler.¹

Second, that the defendant purchased regulated metals property. Regulated metals property means all ferrous and nonferrous metals.

(And) Third, that the defendant failed to

- a) [Maintain a record of the name and address of the secondary metals recycler]
- b) [Maintain a record of the name, initials, or other identification of the individual entering the information]
- c) [Maintain a record of the date of the transaction]
- d) [Maintain a record of the weight of the regulated metals property purchased]

1. "Secondary metals recycler" means any person, firm, or corporation in the State:
a. That, from a fixed location or otherwise, is engaged in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or
b. That has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, by methods including, but not limited to, the processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content of the metals, but not including the exclusive use of hand tools.

FAILURE OF SECONDARY METALS RECYCLER TO MAINTAIN RECORDS OF PURCHASES OF REGULATED METALS. G.S. 66-11(b). FELONY. MISDEMEANOR. *(Continued)*

- e) [Maintain a record of the description made in accordance with the custom of the trade of the type of regulated metals property purchased]
- f) [Maintain a record of the physical address where the regulated metals were obtained by the seller]
- g) [Maintain a record of a statement signed by the [seller] [seller's agent] certifying that the [seller] [seller's agent] has the lawful right to sell and dispose of the property]
- h) [Maintain a record of the amount of consideration given for the regulated metals property]
- i) [Maintain a record of the name and address of the vendor of the regulated metals property and the license plate number of the vehicle used to deliver the regulated metals]
- j) [Maintain a [photocopy] [electronic scan] of the [drivers license] [[state] [federally] issued photo identification card] of the person delivering the regulated metals property to the secondary metals recycler]²
- k) [Maintain [a copy of] [the original] receipt signed by the person delivering the materials]

***NOTE WELL:** (Use the following element only for transactions involving [catalytic converters that are not attached to a vehicle] [central air conditioner evaporator [coils] [condensers]]:*

2. If the secondary metals recycler has a copy of the valid photo identification of the person delivering the regulated metals property on file, the secondary metals recycler must examine the photo identification, but may reference the photo identification that is on file without making a separate photocopy or electronic scan for each subsequent transaction. If the person delivering the regulated metals property does not have a drivers license or a state or federally issued photo identification card, the secondary metals recycler shall not complete the transaction.

FAILURE OF SECONDARY METALS RECYCLER TO MAINTAIN RECORDS OF PURCHASES OF REGULATED METALS. G.S. 66-11(b). FELONY. MISDEMEANOR. *(Continued)*

- l) A clear impression of the index finger of the person delivering the materials that is [in ink and free of any smearing] [taken electronically]³
- m) [Keep and maintain the records of the purchase of regulated metals for at least two years from the date of the purchase of the regulated metals property]

NOTE WELL: Use the following element only if the defendant has a prior conviction of or has pleaded guilty to a violation of G.S. 66-11.

((And) Fourth, that on (name date) the defendant, in (name court) [was convicted of] [pled guilty to] (name violation) that was committed on (name date).)

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant was a secondary metals recycler, the defendant purchased regulated metals property, and the defendant failed to

- a) [Maintain a record of the name and address of the secondary metals recycler]
- b) [Maintain a record of the name, initials, or other identification of the individual entering the information]
- c) [Maintain a record of the date of the transaction]
- d) [Maintain a record of the weight of the regulated metals property purchased]
- e) [Maintain a record of the description made in accordance with the custom of the trade of the type of regulated metals property purchased]
- f) [Maintain a record of the physical address where the regulated metals were obtained by the seller]

3. If the secondary metals recycler has a copy of the fingerprint of the person delivering the nonferrous metal on file, the secondary metals recycler must examine the photo identification but may reference the fingerprint that is on file without making a separate fingerprint for each subsequent transaction.

FAILURE OF SECONDARY METALS RECYCLER TO MAINTAIN RECORDS OF PURCHASES OF REGULATED METALS. G.S. 66-11(b). FELONY. MISDEMEANOR. *(Continued)*

- g) [Maintain a record of a statement signed by the [seller] [seller's agent] certifying that the [seller] [seller's agent] has the lawful right to sell and dispose of the property]
- h) [Maintain a record of the amount of consideration given for the regulated metals property]
- i) [Maintain a record of the name and address of the vendor of the regulated metals property and the license plate number of the vehicle used to deliver the regulated metals]
- j) [Maintain a [photocopy] [electronic scan] of the [drivers license] [[state] [federally] issued photo identification card] of the person delivering the regulated metals property to the secondary metals recycler]
- k) [Maintain [a copy of] [the original] receipt signed by the person delivering the materials]

NOTE WELL: (Use the following element only for transactions involving [catalytic converters that are not attached to a vehicle] [central air conditioner evaporator [coils] [condensers]]:

- l) A clear impression of the index finger of the person delivering the materials that is [in ink and free of any smearing] [taken electronically]
- m) [Keep and maintain the records of the purchase of regulated metals for at least two years from the date of the purchase of the regulated metals property],

(and that on *(name date)* the defendant, in *(name court)* [was convicted of] [pled guilty to] *(name violation)* that was committed on *(name date)*), it would be your duty to return a verdict

FAILURE OF SECONDARY METALS RECYCLER TO MAINTAIN RECORDS OF PURCHASES OF REGULATED METALS. G.S. 66-11(b). FELONY. MISDEMEANOR. *(Continued)*

of guilty. If you do not so find or if you have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

