



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE

STATEMENT OF ESTIMATED FISCAL IMPACT

(803)734-3780 • RFA.SC.GOV/IMPACTS

This fiscal impact statement is produced in compliance with the South Carolina Code of Laws and House and Senate rules. The focus of the analysis is on governmental expenditure and revenue impacts and may not provide a comprehensive summary of the legislation.

Bill Number:	H. 4534	Amended by the House of Representatives on March 10, 2022
Author:	Rutherford	
Subject:	Nonferrous Metals	
Requestor:	Senate Judiciary	
RFA Analyst(s):	Gardner	
Impact Date:	April 22, 2022	

Fiscal Impact Summary

The amended bill restructures the various offenses involving the transportation and sale of nonferrous metals by a secondary metals recycler (SMR).

Judicial indicates that any expenses associated with a change in the number of cases or hearings in General Sessions court can be managed within existing appropriations.

This amended bill may also impact the number of cases in magistrate and municipal courts. However, the Revenue and Fiscal Affairs Office (RFA) anticipates this can be managed within normal course of court practice, and therefore, have no local expenditure impact.

This amended bill may result in an undetermined increase in General Fund revenue, Other Funds revenue, and local revenue due to the potential increase in court fines and fees as well as fees collected for the violation of any provision of the amended bill. The impact will depend on the number of cases and the difference between the existing and new penalties.

Explanation of Fiscal Impact

Amended by the House of Representatives on March 10, 2022

State Expenditure

This amended bill modifies provisions related to the sale, transport, and purchase of used, detached catalytic converters and nonferrous parts thereof (UDCC).

An employee or agent of a SMR may transport or sell nonferrous metals without obtaining a permit separate than that of the SMR. However, should the employee or agent unlawfully transport or sell such metals, the SMR employer or owner may not be criminally charged absent evidence showing that the employer or owner had direct knowledge of the illegal activity. Likewise, should a SMR employee or agent purchase nonferrous metals from a seller possessing no valid permit, the SMR employer or owner may not be criminally charged absent evidence showing that the employer or owner had direct knowledge of the illegal activity.

The amended bill also makes changes to documentation requirements related to all purchases of nonferrous metals from a seller. Failure to maintain the required documentation may result in

suspension of an SMR’s permit for up to ten days for a first offense and up to thirty days for a second or subsequent offense. However, failure to maintain proper documentation is not a criminal charge absent evidence that the SMR possesses a UDCC.

In addition, the amended bill changes the penalty structure for violations related to the unlawful purchase of a UDCC by a non-permitted entity or violations related to a seller of a UDCC intentionally providing false or fraudulent information or documentation. Please see the table below for changes related to the penalties pursuant to this amended bill.

Section 16-17-680(I)(2)(d)		
	Current	Proposed
<i>Purchase of UDCC by non-permitted entity, or violation related to UDCC seller intentionally providing false/fraudulent information or documentation</i>	1st Offense Misdemeanor; fine at court’s discretion, or imprisonment ≤ 3 years, or both	Prohibited item value < \$2,000 Misdemeanor to be tried in magistrate or municipal court; fine ≤ \$1,000, or imprisonment ≤ 30 days, or both
	2nd Offense Felony; fine at court’s discretion, or imprisonment ≤ 5 years, or both	Prohibited item value \$2,000 to ≤ \$10,000 Felony; fine at court’s discretion and imprisonment ≤ 5 years
		Prohibited item value > \$10,000 Felony; fine at court’s discretion and imprisonment for ≤10 years

This amended bill also deletes the specification that each UDCC unlawfully possessed, obtained, or transported constitutes a separate charge and removes the requirement that an individual or entity who has participated in such unlawful activity pay restitution for the value of repair or replacement of the UDCC. If law enforcement determines that a UDCC is not stolen, he may not issue a citation to an SMR. Additionally, the failure of an SMR to maintain required documentation does not constitute grounds for a criminal charge unless the SMR possesses a UDCC in violation of applicable law.

Additionally, the amended bill changes the penalty structure for violations related to the unlawful purchase of a UDCC without a permit from the local sheriff’s office, at the SMR’s fixed site, or at a seller’s fixed site if the seller is unlicensed and/or the SMR has no permit. Please see the table below for changes related to the penalties pursuant this amended bill.

Section 16-17-680(I)(3)(e)		
	Current	Proposed
<i>Purchase of UDCC without permit from local sheriff's office, or when sale occurs at SMR's or seller's fixed site if seller is unlicensed and/or SMR has no permit</i>	1st Offense Misdemeanor; fine ≤ \$200 or imprisonment ≤ 30 days, or both	Prohibited item value < \$2,000 Misdemeanor to be tried in magistrate or municipal court; fine ≤ \$1,000, imprisonment ≤ 30 days, or both
	2nd Offense Misdemeanor; fine ≤ \$500, imprisonment ≤ 1 year, or both	Prohibited item value \$2,000 to ≤ \$10,000 Felony; fine at court's discretion and imprisonment ≤ 5 years
	3rd Offense Misdemeanor; fine at court's discretion, imprisonment, imprisonment ≤ 3 years, or both	Prohibited item value > \$10,000 Felony; fine at court's discretion and imprisonment for ≤10 years

Further, this amended bill deletes the specification that each UDCC unlawfully obtained or possessed by the SMR constitutes a separate charge and removes the requirement that the SMR in violation pay restitution for the value of repair or replacement of the UDCC or otherwise be held liable as provided by law. A law enforcement officer can inspect a permitted or licensed SMR's documentation within twenty-four hours of notice or earlier if he is in possession of a valid warrant.

The amended bill also requires an SMR to maintain records of all transactions involving exempt items such as the purchase or sale of aluminum cans. Failure to maintain such documentation subjects the SMR to permit suspension for up to thirty days for a first offense and up to six months for a second offense. This violation does not constitute grounds for a criminal charge unless the SMR possesses a UDCC in violation of applicable law.

Judicial. The amended bill restructures the various offenses involving the transportation and sale of nonferrous metals. Judicial indicates that while there is no data to estimate the number of cases or hearings that may be heard in General Sessions courts, they expect to manage any General Fund expenditure impact using existing resources. In FY 2020-21 the total case filings for unlawfully purchasing or attempt to purchase a catalytic converter or any nonferrous part were as follows:

CDR Code	Code Section	Statute Description	Total Filings FY 2020-21
4042	16-17-680 (I) (2)	Metals / Unlawfully purchase or attempt to purchase a catalytic converter or any nonferrous part - 1st offense	58
4043	16-17-680 (I) (2)	Metals / Unlawfully purchase or attempt to purchase a catalytic converter or any nonferrous part - 2nd offense	0
4044	16-17-680 (I) (3)	Metals / Secondary metals recycler unlawfully purchases a catalytic converter or any nonferrous part - 1st offense	0
4045	16-17-680 (I) (3)	Metals / Secondary metals recycler unlawfully purchases a catalytic converter or any nonferrous part - 2nd offense	0
4046	16-17-680 (I) (3)	Metals / Secondary metals recycler unlawfully purchases a catalytic converter or any nonferrous part - 3rd offense	0

State Revenue

This amended bill may result in a change in the fines and fees collected in court. Court fines and fees are distributed to the General Fund, Other Funds, and local funds. As there is no data to estimate the number of cases or hearings that may be heard in court, RFA anticipates this amended bill may result in an undetermined impact to General Fund revenue, Other Funds revenue, and local revenue due to the modifications in fines and fees collected in court.

Local Expenditure

This amended bill may result in a change in the number of cases heard in magistrate and municipal court. RFA anticipates any change to court dockets can be managed within the normal court practices. Therefore, RFA anticipates this amended bill will have no local expenditure impact.

Local Revenue

This amended bill may result in a change in the fines and fees collected in court. Court fines and fees are distributed to the General Fund, Other Funds, and local funds. RFA anticipates this amended bill may result in an undetermined impact to local revenue due to the modifications in fines and fees collected in court. The revenue impact will depend on the number of cases heard in magistrate and municipal court and the difference between the existing and new penalties.



Frank A. Rainwater, Executive Director