

ACT 32

H.B. NO. 2347

A Bill for an Act Relating to Metal.

Be It Enacted by the Legislature of the State of Hawaii:

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

The legislature also finds that, while section 445-235, Hawaii Revised Statutes, had not previously been amended since it was first enacted in 1976, concern has arisen recently that, as written, it may be read to require that both section 445-232 and section 445-233, Hawaii Revised Statutes, be violated before a penalty can be imposed for violation of either of them. This concern arises from the fact that the reference to these two sections in section 445-235, Hawaii Revised Statutes, is separated by the conjunctive “and” instead of the disjunctive “or.”

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

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

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

“§445-235 Prohibitions; penalty. Any person who violates ~~[sections]~~ section 445-232 ~~[and]~~ or 445-233, or any person who falsifies a statement required by

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section 445-233, shall be guilty of a misdemeanor and shall be sentenced in accordance with chapter 706, except that the court shall impose a minimum sentence of:

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

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

SECTION 4. This Act shall take effect upon approval; provided that the amendments made to section 445-235, Hawaii Revised Statutes, by section 2 of this Act shall not be repealed when that section is reenacted on July 1, 2009, pursuant to section 7 of Act 197, Session Laws of Hawaii 2007.

(Approved April 23, 2008.)