



GOV. MSG. NO 663

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

April 23, 2008

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on April 23, 2008, the following bill was signed into law:

HB2347 HD1

A BILL FOR AN ACT RELATING TO METAL.
(ACT 32)

Sincerely,



LINDA LINGLE

Approved by the Governor

on APR 23 2008

HOUSE OF REPRESENTATIVES
TWENTY-FOURTH LEGISLATURE, 2008
STATE OF HAWAII

ACT 032

H.B. NO. 2347
H.D. 1

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.

APPROVED this 23 day of APR, 2008



GOVERNOR OF THE STATE OF HAWAII

