

**SUBSTITUTE FOR
SENATE BILL NO. 1358**

A bill to regulate the purchase and sale of certain nonferrous metals; to provide for certain disclosures by certain persons regarding certain transactions; to require the creation of certain records for certain purposes and for the use of certain databases by certain persons; and to provide for penalties and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "nonferrous metal regulatory act".

3 Sec. 3. As used in this act:

4 (a) "Dealer" means any person who purchases nonferrous metals
5 from any seller that is not a first purchaser. Dealer includes, but
6 is not limited to, a person, whether or not licensed under state
7 law or local ordinance, that operates a business as a scrap metal

1 recycler, scrap processor, secondhand and junk dealer, or other
2 person who purchases any amount of nonferrous metal on a regular,
3 sporadic, or 1-time basis. Dealer does not include an automotive
4 recycler regulated by and complying with section 217 of the
5 Michigan vehicle code, 1949 PA 300, MCL 257.217; section 18 of the
6 motor vehicle service and repair act, 1974 PA 300, MCL 257.1318; or
7 section 2 of 1986 PA 119, MCL 257.1352, when engaging in activities
8 that meet the definition of automotive recycler as defined in
9 section 2a of the Michigan vehicle code, 1949 PA 300, MCL 257.2a.

10 (b) "Ferrous metal" means a metal that contains significant
11 quantities of iron or steel.

12 (c) "First purchaser" means the first buyer of a manufactured
13 product containing nonferrous metal in a retail or business-to-
14 business transaction. A person purchasing nonferrous metal in
15 violation of this act is not considered a first purchaser.

16 (d) "Industrial or commercial account" means any person,
17 operating from a fixed location, that is a seller of ferrous or
18 nonferrous metal to a scrap metal recycler pursuant to a written
19 agreement.

20 (e) "Nonferrous metal" means a metal that does not contain
21 significant quantities of ferrous metal but contains copper, brass,
22 platinum-based metals, aluminum, bronze, lead, zinc, nickel, or
23 alloys of those metals.

24 (f) "Person" means an individual, partnership, corporation,
25 limited liability company, joint venture, trust, association, or
26 other legal entity.

27 (g) "Record" means a paper, electronic, or other generally

1 accepted method of storing information in a retrievable form.

2 (h) "Scrap metal recycler" means a person that purchases worn
3 or superfluous nonferrous metal, whether regarded as a scrap
4 processor, core buyer, or other similar business operation.

5 (i) "Scrap processor" means that term as defined in section 3
6 of 1917 PA 350, MCL 445.403.

7 (j) "Seller" means any individual or person that either
8 regularly, sporadically, or on a 1-time basis receives
9 consideration from any other person from the purchase by a dealer
10 of nonferrous metal offered by that seller.

11 Sec. 5. (1) A dealer shall do all of the following:

12 (a) Produce and maintain records as required under section
13 7(2).

14 (b) Participate in a database meeting the requirements of
15 section 11.

16 (c) Tag and hold any nonferrous metal as provided for in
17 section 9.

18 (d) Pay a seller by check, electronic transfer, ATM card or
19 bar code, or other method capable of being traced from the dealer
20 to the seller. Payment by cash or currency of more than \$50.00,
21 barter, or trade is not considered a payment that complies with the
22 requirement of this subdivision. Payment of cash in any amount in a
23 transaction involving predominantly copper articles is considered a
24 violation of this subdivision.

25 (2) A seller shall do all of the following:

26 (a) Present to the dealer an operator's or chauffeur's
27 license, military identification card, Michigan identification

1 card, passport, or other government-issued identification
2 containing a photograph and allow the dealer to make a photocopy or
3 electronic copy of the identification.

4 (b) Allow the dealer to make a thumbprint, to be used only for
5 identification purposes by the dealer and for investigation
6 purposes by a law enforcement agency. In the case of a repeat
7 seller, a copy of the thumbprint may be kept on file with the
8 dealer and be used for future transactions.

9 (c) Execute a signed statement indicating that the seller is
10 the owner of, or is otherwise authorized to sell, the nonferrous
11 metal offered for purchase to the dealer.

12 (d) Attest to the lack of any criminal convictions involving
13 the theft, conversion, or sale of nonferrous metals.

14 Sec. 7. (1) Except as otherwise provided in this subsection, a
15 dealer shall produce and maintain an accurate and legible record of
16 each purchase transaction. The dealer shall maintain the records
17 produced under this section for at least 1 year, shall keep the
18 records in a location that is readily accessible to a local, state,
19 or federal law enforcement agency for inspection during normal
20 business hours, and shall make the records, or copies of those
21 records, available to any local, state, or federal law enforcement
22 agency upon reasonable suspicion of violation of this act.

23 (2) The record of a purchase transaction regarding nonferrous
24 metal shall contain all of the following:

25 (a) The name, address, and identifying number from the
26 seller's operator's or chauffeur's license, military identification
27 card, Michigan identification card, passport, or other government-

1 issued identification containing a photograph. A legible scan or
2 photocopy of the identification is considered satisfactory in
3 fulfilling the requirement of this subdivision. In the case of a
4 repeat seller, a copy of the information may be kept on file with
5 the dealer and be used for future transactions.

6 (b) The license plate number of the vehicle delivering the
7 nonferrous metal.

8 (c) The date and time of the transaction.

9 (d) A description of the predominant types of metal purchases,
10 made in accordance with the custom of the trade.

11 (e) The weight, quantity, or volume of metal, made in
12 accordance with the custom of the trade.

13 (f) The consideration paid and the method of payment.

14 (g) A signed statement from the seller that the seller is the
15 owner of the metal or is otherwise authorized to sell the metal
16 subject to the transaction.

17 (h) A thumbprint of the seller. In the case of a repeat
18 seller, a copy of the thumbprint may be kept on file with the
19 dealer and be used for future transactions.

20 (3) In the case of a seller that is an industrial or
21 commercial account, the dealer is not required to produce the
22 record described in subsection (2) so long as the personal and
23 business identifying information of the industrial or commercial
24 account seller is on file with the dealer and conforms to a written
25 description of the type of nonferrous metal or articles customarily
26 purchased by the dealer from that seller, and the information is
27 periodically reviewed at least every 2 years and validated as

1 current or updated by the dealer.

2 Sec. 9. (1) A dealer shall tag and hold, for 7 calendar days,
3 any article containing nonferrous metal purchased from a seller and
4 that is offered for purchase under any of the following
5 circumstances:

6 (a) The article has altered or obliterated serial numbers, and
7 the person delivering the article does not have a written receipt
8 or documentation.

9 (b) Where, due to the identification on the article or due to
10 the type of article, the dealer would reasonably be considered to
11 have knowledge that the article is, or was, the property of a
12 governmental entity, and the person delivering the article does not
13 have a written receipt or documentation.

14 (c) Where, due to the identification on the article, the
15 dealer would reasonably be considered to have knowledge that the
16 article is, or was, the property of a business, and the person
17 delivering the article does not have a written receipt or
18 documentation.

19 (d) The article is a commemorative, decorative, or other
20 cemetery-related or apparently ceremonial article, and the person
21 delivering the article does not have a written receipt or
22 documentation.

23 (e) The article is subject to a notification or bulletin from
24 any law enforcement agency that is received by the dealer prior to
25 the purchase of the article.

26 (f) Where the article is copper wiring, whether burned or with
27 sheathing, and the person delivering the article does not have a

1 written receipt or documentation.

2 (2) The tag and hold requirements of this section require the
3 dealer to also create and maintain the records required under
4 section 7 regarding those articles.

5 (3) The tag and hold requirements of subsection (1) do not
6 apply to any of the following:

7 (a) Any article containing nonferrous metal that does not
8 conform to the circumstances described in subsection (1).

9 (b) Any article that has been the subject of tag and hold by 1
10 dealer in compliance with this section if that article is resold to
11 another dealer. In addition, any article that was not initially
12 subject to the tag and hold provisions of this section is not
13 thereafter subject to the tag and hold provisions if that article
14 is resold to another dealer.

15 (4) Except in the case where the seller has specific written
16 documentation that the seller is the owner, agent, or person with
17 authority to possess and sell certain articles, a seller shall not
18 sell or offer for sale, and a dealer shall not purchase, any
19 article containing nonferrous metal that is marked with any form of
20 the name, initials, markings, or logo of a governmental entity,
21 utility, cemetery, or railroad; any beer kegs; or any public
22 fixtures. Any sale is subject to the provisions of this act.

23 (5) As used in this section:

24 (a) "Documentation" means a signed statement that indicates
25 where the person obtained the article or other evidence that
26 reasonably demonstrates ownership of the article and the source of
27 the article.

1 (b) "Public fixtures" means articles containing nonferrous
2 metal that are used or located in areas open to the public and
3 include, but are not limited to, utility access covers; street
4 light poles and fixtures; road and bridge guard rails; highway or
5 street signs; water meter covers; traffic directional and control
6 signs; traffic light signals; telecommunications cable; utility-
7 related articles; and historical markers.

8 Sec. 11. (1) A dealer shall register with or subscribe to, and
9 maintain that registration or subscription with, an internet-based
10 database available to dealers, law enforcement agencies, and the
11 general public that lists and tracks, at a minimum, thefts of
12 nonferrous metal and articles containing nonferrous metals. The
13 database may be reasonably limited in terms of time and
14 geographical area.

15 (2) The existing database established by the institute of
16 scrap recycling industries, inc., referred to as the ISRI theft
17 alert system, is considered an appropriate internet-based database.
18 A dealer may register with or subscribe to any other database that
19 provides substantially the same services as the database described
20 in subsection (1).

21 Sec. 13. (1) A person who violates section 7(1) is guilty of a
22 misdemeanor punishable by a fine of not more than \$500.00 or
23 imprisonment for not more than 93 days, or both.

24 (2) A person who buys or sells nonferrous metal articles,
25 knowing that they are stolen, is guilty of a felony punishable by
26 imprisonment for not more than 5 years or a fine of not more than
27 \$5,000.00, or both.

1 Sec. 15. A person violating this act is responsible for a
2 state civil infraction and may be ordered to pay a civil fine of
3 not more than \$5,000.00.

4 Sec. 17. (1) A person may bring a private cause of action, in
5 a court of competent jurisdiction, for monetary damages suffered
6 from violation of this act by a seller or a dealer, or both.

7 (2) The court shall award treble damages for the value of the
8 nonferrous metal article stolen. The court may award costs
9 regarding any aspect of an action brought under subsection (1). As
10 used in this subsection, "value of the nonferrous metal article
11 stolen" means the greatest of the following:

12 (a) The replacement cost of the stolen article.

13 (b) The cost of repairing the damage caused by the larceny of
14 that article.

15 (c) The total of subdivisions (a) and (b).

16 Sec. 19. (1) The remedies under this act are cumulative and do
17 not affect the ability or right of any other person, local
18 governmental unit, or state or federal governing unit to bring any
19 action under this or any other civil, criminal, or regulatory act
20 or ordinance that is otherwise not prohibited by law.

21 (2) This act does not exempt or release any person from the
22 following:

23 (a) Obtaining and maintaining a license under any other act or
24 ordinance.

25 (b) Complying with any strictures contained in any other act
26 or ordinance.

27 Sec. 21. This act does not take effect unless Senate Bill No.

1 720 of the 94th Legislature is enacted into law.