

# SENATE BILL No. 1358

May 28, 2008, Introduced by Senators SANBORN, BROWN, THOMAS, GILBERT, JELINEK, VAN WOERKOM, CROPSEY, BARCIA and GLEASON and referred to the Committee on Economic Development and Regulatory Reform.

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. Dealer includes, but is not limited to, a person,  
6       whether or not licensed under state law or local ordinance, that  
7       operates a business as a scrap metal recycler, scrap processor,

1 auto recycler, secondhand and junk dealer, or other person who  
2 purchases any amount of nonferrous metal on a regular, sporadic, or  
3 1-time basis.

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

6 (c) "Industrial or commercial account" means any person,  
7 operating from a fixed location, that is a seller of ferrous or  
8 nonferrous metal to a scrap metal recycler pursuant to a written  
9 agreement.

10 (d) "Nonferrous metal" means a metal that does not contain  
11 significant quantities of ferrous metal but contains copper, brass,  
12 aluminum, bronze, lead, zinc, nickel, or alloys of those metals.

13 (e) "Person" means an individual, partnership, corporation,  
14 limited liability company, joint venture, trust, association, or  
15 other legal entity.

16 (f) "Record" means a paper, electronic, or other generally  
17 accepted method of storing information in a retrievable form.

18 (g) "Scrap metal recycler" means a person that purchases worn  
19 or superfluous nonferrous metal, whether regarded as a scrap  
20 processor, auto recycler, core buyer, or other similar business  
21 operation.

22 (h) "Scrap processor" means that term as defined in section 3  
23 of 1917 PA 350, MCL 445.403.

24 (i) "Seller" means any individual or person that either  
25 regularly, sporadically, or on a 1-time basis receives  
26 consideration from any other person from the purchase by a dealer  
27 of nonferrous metal offered by that seller.

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

2           (a) Produce and maintain records as required under section  
3   7(2) .

4           (b) Participate in a database meeting the requirements of  
5   section 11.

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

8           (d) Pay a seller by check, electronic transfer or ATM card, or  
9   other method capable of being traced from the dealer to the seller.  
10   Payment by cash or currency of more than \$150.00, barter, or trade  
11   is not considered a payment that complies with the requirement of  
12   this subdivision.

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

14          (a) Present to the dealer an operator's or chauffeur's  
15   license, military identification card, Michigan identification  
16   card, passport, or other government-issued identification  
17   containing a photograph and allow the dealer to make a photocopy or  
18   electronic copy of the identification.

19          (b) Allow the dealer to make a thumbprint, to be used only for  
20   identification purposes by the dealer and for investigation  
21   purposes by a law enforcement agency.

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

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

27          Sec. 7. (1) Except as otherwise provided in this subsection, a

1 dealer shall produce and maintain an accurate and legible record of  
2 each purchase transaction. The dealer shall maintain the records  
3 produced under this section for at least 1 year, shall keep the  
4 records in a location that is readily accessible to a local, state,  
5 or federal law enforcement agency for inspection during normal  
6 business hours, and shall make the records, or copies of those  
7 records, available to any local, state, or federal law enforcement  
8 agency that is engaged in an investigation regarding the  
9 transaction.

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

12 (a) The name, address, and identifying number from the  
13 seller's operator's or chauffeur's license, military identification  
14 card, Michigan identification card, passport, or other government-  
15 issued identification containing a photograph. A legible scan or  
16 photocopy of the identification is considered satisfactory in  
17 fulfilling the requirement of this subdivision. In the case of a  
18 repeat seller, a copy of the information may be kept on file with  
19 the dealer and be used for future transactions.

20 (b) The license plate number of the vehicle delivering the  
21 nonferrous metal.

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

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

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

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

1 (g) A signed statement from the seller that the seller is the  
2 owner of the metal or is otherwise authorized to sell the metal  
3 subject to the transaction.

4 (h) A thumbprint of the seller. In the case of a repeat  
5 seller, a copy of the thumbprint may be kept on file with the  
6 dealer and used for future transactions for up to 1 year.

7 (3) In the case of a seller that is an industrial or  
8 commercial account, the dealer is not required to produce the  
9 record described in subsection (2) so long as the personal and  
10 business identifying information of the industrial or commercial  
11 account seller is on file with the dealer and conforms to a written  
12 description of the type of nonferrous metal or articles customarily  
13 purchased by the dealer from that seller, and the information is  
14 periodically reviewed and validated as current or updated by the  
15 dealer.

16 Sec. 9. (1) A dealer shall tag and hold, for at least 7  
17 calendar days, any article containing nonferrous metal purchased  
18 from a seller that is not a dealer, and that is offered for  
19 purchase under any of the following circumstances:

20 (a) The article has altered or obliterated serial numbers, and  
21 the person delivering the article does not have a written receipt  
22 or other documentation that indicates where the person obtained the  
23 article.

24 (b) Where, due to the identification on the article or due to  
25 the type of article, the dealer would reasonably be considered to  
26 have knowledge that the article is, or was, the property of a  
27 governmental entity, and the person delivering the article does not

1 have a written receipt or other documentation that indicates where  
2 the person obtained the article.

3 (c) Where, due to the identification on the article, the  
4 dealer would reasonably be considered to have knowledge that the  
5 article is, or was, the property of a business, and the person  
6 delivering the article does not have a written receipt or other  
7 documentation that indicates where the person obtained the article.

8 (d) The article is a commemorative, decorative, or other  
9 cemetery-related or apparently ceremonial article, and the person  
10 delivering the article does not have a written receipt of other  
11 documentation that indicates where the person obtained the article.

12 (e) The article is subject to a theft alert report or bulletin  
13 received by the dealer from any law enforcement agency or any  
14 member of the public.

15 (2) Any article containing predominantly nonferrous metal that  
16 does not conform to the circumstances described in subsection (1)  
17 is not subject to the tag and hold requirement of that subsection.

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

26 (4) As used in this section, "public fixtures" means articles  
27 containing nonferrous metal that are used or located in areas open

1 to the public and include, but are not limited to, utility access  
2 covers; street light poles and fixtures; road and bridge guard  
3 rails; highway or street signs; water meter covers; traffic  
4 directional and control signs; traffic light signals;  
5 telecommunications cable; utility-related articles; and historical  
6 markers.

7       Sec. 11. (1) A dealer shall participate in, and maintain  
8 participation in, an internet-based database available to dealers,  
9 law enforcement agencies, and the general public that lists and  
10 tracks, at a minimum, thefts of nonferrous metal and articles  
11 containing nonferrous metals.

12       (2) The existing database established by the institute of  
13 scrap recycling industries, inc., referred to as the ISRI theft  
14 alert system, is considered an appropriate internet-based database.  
15 A dealer may participate in any other database that provides  
16 substantially the same services as the database described in  
17 subsection (1). A dealer participating in a database described in  
18 this subsection is considered in compliance with subsection (1) and  
19 may use due diligence as a defense to any criminal or civil action  
20 brought under this act against the dealer.

21       Sec. 13. 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       Sec. 15. A person violating this act is responsible for a  
25 state civil infraction and may be ordered to pay a civil fine of  
26 not more than \$5,000.00.

27       Sec. 17. (1) A person may bring a private cause of action, in

1 a court of competent jurisdiction, for monetary damages suffered  
2 from violation of this act by a seller or a dealer, or both.

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

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

9 (b) The cost of repairing the damage caused by the larceny of  
10 that article.

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

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

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

19 (a) Obtaining and maintaining a license under any other act or  
20 ordinance.

21 (b) Complying with any strictures contained in any other act  
22 or ordinance.