



Senate Fiscal Agency
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BILL



ANALYSIS

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Senate Bills 721 and 722 (as reported without amendment)
Sponsor: Senator Rick Jones (S.B. 721)
Senator Jim Marleau (S.B. 722)
Committee: Regulatory Reform

(as enrolled)

Date Completed: 1-19-12

RATIONALE

Legislation enacted in 2008 regulates the sale and purchase of nonferrous metals, such as copper, bronze, and aluminum. The Nonferrous Metal Regulatory Act requires dealers to maintain records, tag and hold some metal articles under certain circumstances, and comply with other regulations; imposes requirements on sellers; and prescribes criminal and civil penalties for violations. The legislation was enacted in response to the growing problem of scrap-metal theft. A similar problem has developed with the theft of plastic bulk merchandise containers, such as those used by soft drink and bread manufacturers and distributors. Apparently, people steal the merchandise containers and sell them to plastics recyclers or grinders, costing manufacturers and distributors millions of dollars per year. It has been suggested that legislation similar to that regulating the sale of nonferrous metal be enacted to regulate the sale of plastic bulk merchandise containers.

CONTENT

Senate Bill 721 would create the "Plastic Bulk Merchandise Container Act" to do the following:

- **Specify requirements for a sale of 10 or more plastic bulk merchandise containers, including that the purchase be by check or a similar financial instrument and that the seller be at least 16 years old.**
- **Require a dealer to keep a record of each purchase of 10 or more plastic**

bulk merchandise containers in a single transaction.

- **Require a dealer to tag and hold a plastic bulk merchandise container under certain circumstances.**
- **Prescribe a misdemeanor penalty for a violation of the purchase-record or tag-and-hold requirement.**
- **Prescribe a felony penalty for a knowing purchase or sale of 10 or more stolen plastic bulk merchandise containers.**
- **Prescribe a civil remedy for a violation of the Act.**

Senate Bill 722 would amend the Code of Criminal Procedure to include the felony proposed by Senate Bill 721 in the sentencing guidelines.

Senate Bill 722 is tie-barred to Senate Bill 721, which would take effect 180 days after its enactment.

Senate Bill 721 would define "dealer" as a person, including a person who operates a business as a plastics recycler, processor, or shredder or reseller, who purchases plastic bulk merchandise containers from any seller other than the manufacturer of the containers or an authorized dealer or distributor of those containers.

"Plastic bulk merchandise container" would mean a plastic pallet, crate, container, or shell used by a producer, distributor, or retailer for the bulk transportation or storage of goods for sale at retail, including food or beverages.

Senate Bill 721

Sales Requirements

A dealer who purchased 10 or more plastic bulk merchandise containers from a person in a single transaction would have to do both of the following:

- Pay the seller of that container by check or with a similar financial instrument.
- Verify that the seller was at least 16 years old.

A dealer could not purchase 10 or more containers for cash in a single transaction or as part of a barter or other similar trade transaction.

An individual could not sell a plastic bulk merchandise container to a dealer unless, at the time of sale, he or she presented to the dealer an operator's or chauffeur's license, military identification card, Michigan ID card, passport, or other government-issued ID document that included a photograph, and allowed the dealer to make a photocopy or electronic copy of that document. Also, at the time of the sale, the seller would have to execute a written statement certifying that he or she owned or was otherwise authorized to sell the container to the dealer, and had not been convicted of a crime involving the theft, conversion, or sale of bulk plastic merchandise containers.

"Seller" would mean a person who sells, barter, or trades a plastic bulk merchandise container to a dealer.

Purchase Record

A dealer would have to prepare an accurate and legible record of each purchase of 10 or more plastic bulk merchandise containers from a person in a single transaction. A dealer would have to retain a record for at least one year; keep all of the records in a location that was readily accessible to a local, State, or Federal law enforcement agency for inspection during normal business hours; and make the records or copies of them available to any local, State, or Federal law enforcement agency that reasonably suspected that a violation of the proposed Act had occurred.

A record of purchase would have to contain the name, address, and identifying number from the seller's identification document or a legible scan or photocopy of that document. If a dealer engaged in more than one transaction with a seller, the purchaser could retain this information for that seller in a separate file and use the information in that file for future transactions. The purchase record also would have to contain all of the following:

- The date and time of the transaction.
- The quantity of plastic bulk merchandise containers purchased.
- A description of the containers and any identifying information shown on them.
- The amount paid for the containers and the method of payment.
- A signed statement that the seller was the owner of the containers or was otherwise authorized to sell them to the dealer.
- The seller's thumbprint.

A dealer would not be required to prepare and retain a record of the purchase if all of the following were met:

- The dealer had an industrial or commercial account with the seller; payments the dealer made on the account were by check or similar financial instrument; and those payments were made directly to the seller.
- The seller's personal and business identifying information was on file with the dealer and, at least every two years, the dealer periodically reviewed the information and determined that it was current and correct.

"Industrial or commercial account" would mean a person who sells plastic or plastic articles to a dealer from a fixed location pursuant to a written agreement with the dealer.

Tag & Hold Requirement

A dealer would have to tag and hold a plastic bulk merchandise container purchased from a seller for at least seven days, if any of the following applied:

- The container had altered or obliterated serial numbers, and the person who

delivered the container did not have a written receipt or documentation for it.

- There was identifying information shown on the container; the dealer knew or reasonably should have known that the container was or had been the property of a specific business, because of that information; and the person delivering the container did not have a written receipt or documentation for it.
- The container was subject to a notification or bulletin from any law enforcement agency that the dealer received before the purchase.

The tag-and-hold requirement would not apply to a dealer's purchase of a plastic bulk merchandise container from another dealer, if the other dealer complied with the requirement concerning that container.

If the tag-and-hold requirement did not apply to a dealer's initial purchase of a plastic bulk merchandise container, it would not apply to the resale of that container by the dealer to another dealer.

"Documentation" would mean a signed statement that indicates where a person obtained a plastic bulk merchandise container offered for sale, indicates that a person is authorized to sell a container, or provides other evidence that reasonably demonstrates ownership of a plastic bulk merchandise container offered for sale and the source of the container.

Penalties & Civil Remedy

If a dealer violated the purchase-record or tag-and-hold requirement and knew, or had reason to know, that he or she was in violation of the requirement, the dealer would be guilty of a misdemeanor punishable by up to 93 days' imprisonment and/or a maximum fine of \$500.

If a person bought or sold 10 or more plastic bulk merchandise containers in a single transaction and knew or had reason to know that they were stolen, the person would be guilty of a felony punishable by up to five years' imprisonment and/or a maximum fine of \$5,000 for a first offense. A second or subsequent offense would be punishable by up to five years' imprisonment and/or a maximum fine of \$10,000.

If a person's action violated the proposed Act, and he or she knew or had reason to know that the action violated the Act, the person would be responsible for a State civil infraction and could be ordered to pay a civil fine of up to \$5,000.

A person could bring an action for monetary damages suffered from a violation of the proposed Act by a seller or dealer. The court could award costs regarding any aspect of an action. If the violation involved the theft of 10 or more plastic bulk merchandise containers, the court would have to award treble damages for the value of the stolen containers. "Value of the plastic bulk merchandise containers stolen" would mean the highest of the following:

- The replacement cost of the stolen containers.
- The cost of repairing the damage caused by the theft.
- The total of the replacement and repair costs.

The remedies under the proposed Act would be cumulative and would not affect the ability or right of any person to bring any action under any civil, criminal, or regulatory act or ordinance that was otherwise not prohibited by law.

The Act would not exempt or release any person from obtaining and maintaining a license under any other statute or ordinance or from complying with the requirements of any other statute or ordinance.

Senate Bill 722

Under the bill, purchasing or selling stolen plastic bulk merchandise containers would be a Class E felony against the public order, with a statutory maximum sentence of five years' imprisonment.

MCL 777.14h (S.B. 722)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Similar to the theft of scrap metal from such places as public utility facilities, abandoned

buildings, and construction sites, the stealing of plastic bulk merchandise containers from wholesalers, distributors, and retailers is becoming a growing and expensive problem. The Michigan Soft Drink Association estimates that the loss of containers used to transport and store multiple beverage bottles costs the State's soft drink industry more than \$3 million each year. Bread manufacturers and distributors also lose money because their plastic baskets are stolen. The cost of stolen plastic merchandise containers affects the cost of producing, distributing, and selling products that use those containers, ultimately resulting in higher prices to consumers.

Senate Bill 721, which is patterned after the Nonferrous Metal Regulatory Act passed in 2008, should help to deter the theft of plastic bulk merchandise containers by requiring people who sell these containers to plastics recycling or grinding operations to provide identification and attest to ownership of the containers. Like the 2008 legislation, the bill also would require a dealer to tag and hold a plastic bulk merchandise container under certain circumstances and would prescribe criminal penalties and civil sanctions for violating the proposed Act. This would help manufacturers and distributors to conduct their business more affordably, thereby holding down costs to retail consumers.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed offenses. An offender convicted of the Class E felony offense under the bills would receive a sentencing guidelines minimum sentence range of 0-3 months to 24-38 months. Local governments would incur the costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,500, as well as the cost of incarceration in a State facility at an average annual cost of \$34,000. Additional penal fine revenue and State civil infraction fine revenue would benefit public libraries.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

Fiscal Analyst: Dan O'Connor