

Legislative Analysis



SCRAP METAL DEALERS AMENDMENTS

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House Bill 4593 as enacted
Public Act 99 of 2014
Sponsor: Rep. Paul Muxlow

House Bill 4595 as enacted
Public Act 217 of 2013
Sponsor: Rep. Jim Ananich

House Committee: Regulatory Reform
Senate Committee: Economic Development
Complete to 7-7-14

A SUMMARY OF HOUSE BILLS 4593 & 4595 AS ENACTED

BRIEF SUMMARY:

The bills rename the Nonferrous Metal Regulatory Act as the Scrap Metal Regulatory Act and make the following changes to the act:

- Expand the act to cover the sale of ferrous and nonferrous scrap metals.
- Modify the types of information required to be included in purchase transaction records.
- Allow scrap metal dealers to use electronic record-keeping systems to maintain purchase transaction records.
- Prohibit the buying and selling of certain types of personal property.
- Provide for specific methods of payment available to dealers when purchasing scrap metal.

The bills take effect July 1, 2014. Each of the bills is explained in more detail below.

DETAILED SUMMARY:

House Bill 4593 would amend the Nonferrous Metal Regulatory Act to make the following changes:

Renaming of the act

The bill would rename the act the "Scrap Metal Regulatory Act." Currently, the act only regulates the purchase and sale of nonferrous metals; the bill would expand the regulatory authority to include both ferrous and nonferrous metals. [Common non-ferrous metals are aluminum, copper, lead, zinc, nickel, titanium, cobalt, chromium and precious metals. Ferrous metals are those containing iron, such as steel.]

Key New or Revised Definitions

"Industrial or commercial customer" means a person that operates from a fixed location and is a seller of scrap metal to a scrap metal dealer under a written agreement that provides for regular or periodic sale, delivery, purchase, or receiving of scrap metal.

"Purchase transaction" means a purchase by a scrap metal dealer of scrap metal, or the purchase by a scrap metal dealer of property described in Section 10 if the knowing purchase or offer to purchase is not prohibited by that section. (This does not include the purchase of junk cars or car parts, or the purchase of scrap metal by a mill, foundry, die caster or other manufacturer facility from an industrial or commercial customer for use in the production of metal articles or materials.)

"Scrap Metal" means ferrous or nonferrous metal, or items that contain ferrous or nonferrous metal, that are sold or offered for sale for the value of the ferrous or nonferrous metal they contain rather than their original intended use; ferrous or nonferrous metal removed from or obtained by cutting, demolishing, or disassembling a building, structure, or manufactured item; or other metal that cannot be used for its original intended purpose but can be processed for reuse in a mill, foundry, die caster, or other manufacturing facility.

"Scrap metal dealer" means a person or governmental unit that buys scrap metal and is not a first purchaser. The term includes, but is not limited to, a person, whether or not licensed under state law or local ordinance, that operates a business as a scrap metal recycler, scrap processor, secondhand and junk dealer, or other person that purchases any amount of scrap metal on a regular, sporadic, or one-time basis.

"Seller" means a person that either regularly, sporadically, or on a one-time basis receives consideration from any other person from the purchase by a scrap metal dealer of scrap metal offered by that seller.

Record keeping requirements

The bill requires the following information to be included in that record [Note: underlined information reflects information not presently required by law]:

- The name and address of the seller and the person delivering the scrap metal (if different from the seller).
- The name, address, and identifying number from the ID presented by the seller or deliverer, if different from the seller. A legible scan or photocopy of the identification meets this requirement.
- The license plate number of the vehicle, if delivered in this way.
- Date and time of the purchase transaction.
- Weight, quantity, or volume of the scrap metal purchased, described and calculated in accordance with the custom of the trade.
- The name of the scale operator who weighs and inspects prospective scrap metal and the name of the employee who purchases or authorizes the purchase of scrap metal if the purchaser is not the scale operator.

- A photograph or digital, electronic, or video image of the purchased scrap metal. If the scrap metal and the delivery vehicle are weighed, an overhead photograph or image of the vehicle and the metal on the scale would be sufficient; if only the scrap metal is weighed, a photograph of the scrap metal on the scale would be sufficient. In both cases, the photograph described would be sufficient to meet the requirements of the bill, even if each item of scrap metal is not shown in the image.
- The consideration paid and the method of payment.
- The signed statement certifying the seller is authorized to sell the scrap metal.
- A legible thumbprint of the seller or the individual delivering the scrap metal on behalf of the seller.
- A digital photograph of the seller, or the individual delivering the scrap metal on behalf of the seller.

For repeat customers, the dealer may retain a copy of the above information in a separate file and use that information when recording purchase transactions.

When purchase transaction records are not required

Scrap metal dealers will not have to maintain purchase transaction records for transactions with industrial or commercial customers where (1) the payment is made directly to the customer, (2) the personal and business identifying information of the customer is on file with the scrap metal dealer and conforms to a written description of the types of scrap metal normally purchased by the dealer from that customer, and (3) the customer's information is reviewed and validated at least every two years.

Electronic record keeping

Scrap metal dealers may use an electronic record keeping system in order to comply with the requirement to maintain records for each purchase transaction for at least one year, as long as the system allows for immediate access to each seller's transaction activities, documents, and images, including electronic copies of purchase transaction records, payment information, and the seller's image.

If a dealer is found in violation of these record keeping requirements, and the violation is the result of a malfunction of an electronic record keeping system, it would be an affirmative defense in an action against the dealer that the dealer diligently pursued repair of the system after the occurrence of the malfunction and implemented and maintained a manual record keeping system while the electronic system was malfunctioning.

Under the bill, scrap metal companies or their representatives would have the option of, at their expense and in consultation with the Michigan State Police, developing or contracting for the developing of an electronic, web-based database provided it meets certain requirements. If more than one version of such a database is created, then the MSP would decide which version would be used. Additionally, the bill authorizes the collection of a "reasonable fee" from scrap dealers who are required to subscribe to this database.

If an internet-based electronic database system is implemented, and a scrap metal company knowingly fails to comply with its related requirements, then that company is responsible for a state civil infraction and shall pay a civil fine or \$500 for its first violation, \$1,000 for its second violation, and \$5,000 for its third and any subsequent violations.

Notice to employees

A scrap metal dealer is required to ensure that it makes available to each of its employees that purchases or weighs scrap metal to be sold to the dealer, each theft alert or similar notice that a theft has occurred, and that the employees review any recent alerts that have not been previously reviewed on a daily basis.

Acceptable forms of payment

Under the bill, scrap metal dealers are only permitted to pay with one of the following in a purchase transaction:

- Check or money order. A dealer must make and retain a photograph or digital or electronic image of the delivery of the check or money order to the seller or the individual acting on behalf of the seller, which includes the face of that seller or individual.
- Electronic payment card or encrypted receipt that can only be converted to cash at an ATM that is (1) located on the dealer's premises, (2) used for the sole purpose of providing cash in connection with a purchase transaction, and (3) provides a digital or electronic image of the cash being dispensed that includes the face of that seller or individual.

If a purchase transaction involving scrap metal totals \$25 or more, or if the total dollar amount of multiple purchase transactions between a buyer and seller meets or exceeds \$25, then the dealer is prohibited from delivering payment to the seller for the items in person, and must pay the seller by mailing one of the following items to the seller at the address shown on the seller's ID:

- A check or money order.
- An electronic payment card or encrypted receipt.
- A nontransferable receipt that the seller may at the scrap dealer's premises for either a check or money order or an electronic payment card or encrypted receipt.

[Note: industrial and commercial customers would not be subject to the payment restrictions for the above-mentioned items, nor would buyers be required to mail them payment for transactions exceeding the dollar limits.]

Payment-restricted items

Dealers can only pay for the following items with either a direct deposit or electronic transfer into the seller's account at a financial institution, a check or money order, or with an electronic payment card or encrypted receipt as described above:

- Catalytic converters, unless the seller is an automotive recycler, a manufacturer or wholesaler of catalytic converters, or a muffler shop, tire store, or other retail business that sells catalytic converters separately or as part of an exhaust system.
- Air conditioners, air conditioner evaporator coils, or condensers, or parts of these devices.
- Copper wire, including wire that is burned in whole or in part to remove the insulation, copper pipe, or copper fittings.

These payment-restricted items are subject to the \$25 per transaction/per day limits described in Section 6, subsection 5, of the bill. If this dollar amount is reached, it triggers a requirement that the allowable forms of payment be mailed to the address listed on the seller's ID. This provision does not apply to industrial or commercial customers, however.

Transactions involving commercial or industrial customers

In transactions involving a commercial or industrial customer, a scrap metal dealer and the customer could mutually agree to use any of the following forms of payment:

- Check, money order, payment card, or encrypted receipt.
- Bank wire transfer or other electronic delivery.

Examination of identification

Dealers in a purchase transaction must examine the identification presented by a seller or individual acting on behalf of the seller, and if the identification presented displays the date of birth of the individual, the dealer must confirm the individual is at least 16 years old based on that date of birth.

Purchase transaction record

Section 7 of the act requires scrap metal dealers to maintain accurate and legible records of each purchase transaction. The bill defines a purchase transaction as "a purchase of scrap metal, or the purchase of property described in Section 10 if the knowing purchase or offer to purchase that property is not prohibited by that section, by a scrap metal dealer." (Details on Section 10 follow below.) The term does not include any of the following:

- The purchase of one or more used or secondhand, distressed, or salvage vehicles or vehicle parts by a used or secondhand vehicle dealer or used or secondhand vehicle parts dealer that is licensed as a dealer under Section 248 of the Michigan Vehicle Code, and is acting within the scope of that dealer's license. (MCL 257.248)
- The purchase of one or more used or secondhand, distressed, or salvage vehicles, vehicle parts, or vehicle scrap by a vehicle scrap metal processor, vehicle salvage pool operator, or foreign salvage vehicle dealer that is licensed as a dealer under Section 248 of the Michigan Vehicle Code, and is acting within the scope of that dealer's license. (MCL 257.248)

- The purchase of one or more used or secondhand, distressed, or salvage vehicles, vehicle parts, or vehicle scrap by an automotive recycler that is licensed as a dealer under Section 248 of the Michigan Vehicle Code, if the transaction is authorized under Section 217c of the code, Section 18 of the Motor Vehicle Service and Repair Act (MCL 257.1318), or Section 2 of PA 119 of 1986 (MCL 257.1352).
- The purchase of scrap metal by a mill, foundry, die caster, or other manufacturing facility that purchases scrap metal from an industrial or commercial customer for its own use in the production of metal articles or materials and does not in the ordinary course of its business purchase scrap metal for resale.
- The purchase of scrap metal from a governmental unit.

Restricted scrap metal items

Under Section 10 of the bill, individuals are prohibited from knowingly selling or attempting to sell, and dealers are prohibited from knowingly buying or attempting to buy, any of the following types of materials or items:

- Public fixtures, unless the seller is a governmental unit or has written authorization from the governmental unit that owned the property. [Public fixtures are defined as items containing ferrous or nonferrous metal and owned or under the exclusive control of a governmental unit, including street light poles or fixtures, road or bridge guardrails, traffic signs, traffic light signals, and historical markers.]
- Metal articles or materials clearly marked as property belonging to someone else, unless the seller has authorization from the owner.
- Commemorative, decorative, or other cemetery-related or ceremonial articles, unless the seller is the owner of the article, is authorized by the owner to sell the article, or if the seller of a cemetery-related article is the cemetery in which the article was located.
- Metal articles removed from property owned by a railroad company or from a railroad right-of-way, unless the seller is the owner of the material, is the manufacturer of the metal articles, is a contractor engaged in repairing railroad equipment, or has written authorization from the owner.
- A silver alloy telecommunications battery with a threaded insert terminal connection, unless the seller is a provider of telecommunication service or if the seller has written authorization from the provider that owns or owned the battery. This restriction does not include a battery used in auto or mobile equipment.

Purchase or sale of prohibited personal property

The bill makes it a felony for a scrap metal dealer to purchase a prohibited type of personal property if the dealer knows or has reason to know it was stolen. It also would be a felony for a person that sells a prohibited type of personal property to a scrap metal dealer and knows or has reason to know it was stolen. Currently, it is a felony for a person to buy or sell nonferrous metal articles knowing, or having reason to know, they were stolen. Felonies under the act are punishable by imprisonment for up to five years and/or a fine of not more than \$5,000 for a first offense; for a second or subsequent offense, the fine cannot exceed \$10,000.

Private cause of action

The bill clarifies that individuals could bring private causes of action against a seller or scrap metal dealer for monetary damages suffered as a result of a violation of the act. If a court finds that a violation of the act included the purchase or sale of stolen property and that the purchaser in an action against the purchaser, or the seller in an action against the seller, knew or should have known the property was stolen, the court would have to award treble damages for the value of the stolen property. Additionally, the court would be able to award costs and reasonable attorney fees in an action brought as a result of a violation of the act.

House Bill 4595 would amend the Penal Code to change references to the theft of "nonferrous metal" so that the code would now refer to the theft of "scrap metal." It would also replace the definition of "nonferrous metal" with "scrap metal," as defined in House Bill 4593.

FISCAL IMPACT:

Information is not available on the number of persons that might be found in violation and convicted of the expansion of misdemeanor or felony offenses found in House Bill 4593. Therefore, the bill would have an indeterminate fiscal impact on state and local governments.

Costs to state and local correctional systems would be increased, based on the number of additional convictions and incarcerations. New felony convictions would result in increased costs related to state prisons, county jails, and/or state probation supervision. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision.

The average cost of prison incarceration in a state facility is roughly \$35,600 per prisoner per year, a figure that includes various fixed administrative and operational costs. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. State costs for parole and felony probation supervision average about \$3,600 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues. Also, the bill would have an indeterminate fiscal impact on the judiciary.

The fiscal impact would be the result of an increase in court costs due to an increase in the caseload. The other bill would have no direct fiscal impact.

BACKGROUND INFORMATION AND DISCUSSION:

The Nonferrous Metal Regulatory Act took effect in 2009 to regulate the purchase and sale of certain nonferrous metals. Under the act, scrap metal dealers were required to maintain certain records related to each transaction and must tag and hold certain types of property for seven days. Additionally, dealers were prohibited from buying and sellers were prohibited from selling certain types of nonferrous articles without documentation that the seller is the owner of the article (including articles marked with the name or logo of a government entity, utility, cemetery, railroad, and public fixtures). According to testimony, the theft of copper and other valuable metals has been on the rise. Metal theft poses severe safety threats to buildings and utility structures, and can have significant financial impacts on businesses.

Supporters of this package of bills argue it will help combat scrap metal theft by expanding the kinds of metal covered under the act, requiring dealers to capture images of transactions, by creating a list of prohibited items that cannot be bought or sold, and by prohibiting payment for scrap metals in cash. The current law makes it difficult for law enforcement to pursue those engaging in scrap metal theft because of insufficient record-keeping standards. Additionally, scrap metal theft occurs in all areas of the state and it is difficult for law enforcement to catch an individual in the act. The intent of the bill is to provide law enforcement with tools to pursue scrap metal thieves by bolstering the records that have to be maintained by dealers.

During discussions of the bills, however, critics questioned how much impact the legislation will have on those dealers who knowingly buy stolen scrap metal articles, arguing that they will continue to do so no matter what regulations are put in place, while scrap metal dealers operating in good faith will have to shoulder the cost of additional regulations. There were also recommendations that more be done to address the theft of scrap metal at the time the theft occurs and that additional law enforcement efforts be made to prevent the thefts from taking place.

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