

# Legislative Analysis



## SCRAP METAL DEALERS AMENDMENTS

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**House Bill 4593 (reported as Substitute H-2)**  
**Sponsor: Rep. Paul Muxlow**

**House Bill 4595 (reported as Substitute H-1)**  
**Sponsor: Rep. Jim Ananich**

**Committee: Regulatory Reform**  
**Complete to 10-24-13**

## A SUMMARY OF HOUSE BILLS 4593 (H-2) & 4595 (H-1) AS REPORTED FROM COMMITTEE

### ***BRIEF SUMMARY:***

The bills would 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.
- Provide for a three-day delayed payment for the sale of catalytic converters, air conditioners, air conditioner evaporator coils, and air conditioner condensers.
- Modify the information that is 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 are tie-barred to each other, meaning neither can take effect unless both are signed into law. 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.]

### Acceptable forms of payment

Except for the transactions subject to the three day-hold transactions involving industrial or commercial customers, beginning 120 days after the bill takes effect, scrap metal dealers would only be permitted to pay a seller with one of the following in a purchase transaction:

- Check or money order. A dealer would have to make and retain a photograph or digital or electronic image of the delivery of the check or money order to the seller.
- Electronic payment card or encrypted receipt that can only be redeemed for 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.

### Three day delayed payment

Dealers would be required to withhold payment for three business days after the date of a transaction that involved any of the following items:

- 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 an air conditioner and its condenser or evaporator coils.
- Copper wire, including wire that is burned to remove the insulation.

Payments for the above items would have to be made through a direct deposit or electronic transfer to the seller's account; by mailing a check, money order, payment card, or encrypted receipt; or by delivering a check, money order, payment card, or encrypted receipt to the seller. [The bill is unclear on which party would determine the method of payment to be used. For transactions involving industrial or commercial customers (described below), payments can be made in a form as agreed to by both parties; however, this provision does not apply to transactions subject to the three day delayed payment.]

For transactions subject to the three day delayed payment, if the seller requests the dealer deliver the payment for the sold items at the dealer's premises, the seller and scrap metal dealer could agree in writing that the seller would pick up the payment from the dealer within 30 days. Under the bill, if the seller violates the agreement and does not return within 30 days, the dealer would be able to keep the amount owed to the seller as liquidated damages and would have no further obligation to pay the seller for the items.

### Examination of identification

Dealers in a purchase transaction would have to 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.

#### 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.

The three day delayed payment for transactions involving catalytic converters, copper wire, or air conditioners would not apply to a transaction involving an industrial or commercial customer, thus allowing the seller to immediately receive payment.

#### Barter or trade

Scrap metal dealers would be able to accept barter, or a trade or exchange of scrap metal or other property, in a purchase transaction as full or partial payment for the transaction.

#### Purchase transaction record

Section 7 of the act requires scrap metal dealers to maintain accurate and legible records of each purchase transaction. The bill would require the following information to be included in that record, in addition to the information that is currently required:

- The name and address of the seller and the person delivering the scrap metal (if different from the seller). Dealers would be permitted to retain a copy of the individual's information and use it in future transactions if the individual is the seller in more than one transaction.
- 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.

Scrap metal dealers would 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 would be allowed to 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.

#### Prohibited personal property

Under the bill, individuals would be prohibited from knowingly selling or attempting to sell, and dealers would be prohibited from knowingly buying or attempting to buy, any of the following types of personal property:

- 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 article, 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.

#### Notice to employees

A scrap metal dealer would have 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 the employees review any recent alerts that have not been previously reviewed on a daily basis.

#### Purchase or sale of prohibited personal property

The bill would make 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. Also, it 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, the act makes it a felony for a person to buy or sell nonferrous metal articles knowing or having reason to know they are stolen. Felonies under the act are punishable by imprisonment for up to 5

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.

#### Violation as a result of electronic malfunction

If a dealer is found in violation of the record keeping requirements of Section 7, 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.

#### Private cause of action

The bill would clarify 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.

#### Enacting section 1

The bill would repeal Section 9 of the act, which requires dealers to tag and hold purchased articles containing nonferrous metal for seven days under certain conditions

**House Bill 4595** would amend the Penal Code to change references to the theft of "nonferrous metal" to now refer to the theft of "scrap metal."

### **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 \$35,500 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 \$3,000 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.

## **POSITIONS:**

Michigan State Police support the bills. (10-24-13)

Michigan Bankers Association supports the bills in concept. (6-4-13)

DTE Energy supports the bills. (10-1-13)

ITC supports the bills. (10-1-13)

Michigan Association of Realtors supports the bills. (10-22-13)

Michigan Farm Bureau supports the bills. (10-1-13)

Michigan Chapter of the Institute of Scrap Recycling Industries (ISRI) is neutral on the bills. (10-1-13)

Michigan Historic Preservation Network supports the bills. (10-1-13)

Michigan Municipal League supports the bills. (10-23-13)

Michigan Railroads Association supports the bills. (10-1-13)

Property Casualty Insurers Association of America supports the bills. (10-1-13)

Prosecuting Attorneys Association of Michigan supports the bills. (10-1-13)

Responsible Recyclers Association opposes the bills. (10-23-13)

Wayne County Prosecutor's Office supports the bills. (10-1-13)

## **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 must maintain certain records related to each transaction and must tag and hold certain types of property for seven days. Additionally, dealers are prohibited from buying and sellers are 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 can have significant financial impacts on businesses and can pose severe safety threats to buildings and utility structures.

Supporters of the bill believe this package of bills will help combat the theft of scrap metal by requiring dealers to capture images of transactions, by creating a list of prohibited items that cannot be bought or sold, and by requiring payments for certain articles to be delayed for three days from the date of the transaction. 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.

Some people, however, believe the bills unnecessarily place additional regulations on scrap metal dealers that are operating in good faith and that those knowingly buying stolen scrap metal articles will continue to do so no matter what regulations are put in place. It has been suggested 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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