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Senate Bill 470 (as introduced 9-10-13)
Sponsor: Senator Virgil Smith
Committee: Economic Development

Date Completed: 10-17-13

CONTENT

The bill would amend the Nonferrous Metal Regulatory Act to do the following:

- **Apply the Act to ferrous and scrap metal, as well as nonferrous metal.**
- **Require the Michigan Department of State Police (MSP) to create a publicly available Scrap Metal Offenders Registry.**
- **Require a person who was convicted of a scrap metal offense, or entered into a plea agreement involving a scrap metal offense, to register annually with a law enforcement agency.**
- **Require a registrant to pay a \$50 fee, and provide for the distribution of fee revenue.**
- **Allow a 90-day waiver of the registration fee for an indigent person who was required to register.**
- **Create the "Scrap Metal Offenders Registration Fund" to receive registration fee revenue, and limit its use to MSP training regarding the proposed registry and maintenance of the registry.**
- **Require a dealer to check the proposed registry to determine whether a seller was a registered offender.**
- **Delete a requirement that a dealer register with or subscribe to a database listing and tracking nonferrous metal thefts.**
- **Limit to transactions of more than \$200 a requirement that a dealer pay by a method capable of being traced from the dealer to the seller.**
- **Require a dealer to collect a \$1 regulatory fee for each transaction regulated under the Act, and provide for the revenue from the fee to be split between the proposed Scrap Metal Offenders Registration Fund and local law enforcement.**
- **Expand tag and hold requirements regarding certain transactions.**
- **Revise penalties for certain violations of the Act.**
- **Establish a criminal penalty for failure to register as the bill would require.**
- **Require the revocation of probation, parole, or youthful trainee status if a person willfully violated registration requirements.**

The bill also would change the name of the Act to the "Ferrous Metal and Nonferrous Metal Regulation and Scrap Metal Offenders Registration Act".

Ferrous, Nonferrous, & Scrap Metal

The bill generally would revise the Act to apply it to the buying and selling of ferrous, nonferrous, and scrap metal, rather than just transactions involving nonferrous metal.

The Act defines "ferrous metal" as metal that contains significant quantities of iron or steel. "Nonferrous metal" means metal that does not contain significant quantities of ferrous metal but contains copper, brass, platinum-based metals, aluminum, bronze, lead, zinc, nickel, or alloys of those metals.

Under the bill, "scrap metal" would mean either or both of the following:

- Nonferrous metal in an amount weighing not less than five pounds.
- Ferrous metal in an amount weighing not less than 100 pounds.

Scrap Metal Offenders Registry

The bill would require the MSP to create and maintain a public internet website to be known as the Scrap Metal Offenders Registry and make the website available to dealers, law enforcement agencies, and the general public. The registry would have to contain all of the following information for each registered individual:

- The person's legal name and any aliases, nicknames, ethnic or tribal names, or other names by which he or she was or had been known.
- The person's date of birth.
- The address where he or she lived.
- A brief summary of the person's convictions for scrap metal offenses, regardless of when the convictions occurred.
- A complete physical description of the person.
- A photograph of the person.
- An image of the person's fingerprints.
- The text of the provision of law the person was convicted of committing.
- The value of the stolen property involved in each scrap metal offense.
- The details of any plea agreement entered into involving a scrap metal offense.

If the registered individual did not have a residential address, the registry would have to contain information identifying the village, city, or township he or she used in lieu of an address or where he or she spent the majority of time if he or she were homeless.

A person who was convicted of a scrap metal offense or who entered into a plea agreement involving a scrap metal offense would have to register with the sheriff's department, local law enforcement agency, or MSP post with jurisdiction in the local governmental unit in which the registrant lived, or not more than 30 days after sentencing, changing address, or being released from imprisonment, whichever occurred earliest, by paying a \$50 fee and providing all of the information required for the registry. The person would have to register within one year after initial registration and then annually.

Of the money collected by a local law enforcement agency, sheriff's department, or MSP post, \$30 would have to be forwarded to the MSP, which would have to deposit the money in the proposed Scrap Metal Offenders Registration Fund, and \$20 would have to be retained by the agency, department, or post.

The bill would define "scrap metal offense" as any crime involving the theft of scrap metal.

Scrap Metal Offenders Registration Fund

The Scrap Metal Offenders Registration Fund would be created as a separate fund in the Department of Treasury. The State Treasurer would have to credit money received from the payment of registration fees to the proposed Fund. Money credited to the Fund could be used only by the MSP for training concerning, and the maintenance and automation of, the law enforcement database, Scrap Metal Offenders Registry, and information required for

the registry. Money in the Fund at the close of the fiscal year would have to remain in the Fund and would not lapse to the General Fund.

If a person required to pay a registration fee under the bill were indigent, the fee would have to be waived for 90 days. The burden would be on the person claiming indigence to prove it to the satisfaction of the local law enforcement agency, sheriff's department, or MSP post where the individual reported.

Payment of the registration fee would have to be made in the form and by means prescribed by the MSP. Upon payment of the fee, the officer or employee would have to forward verification of the payment to the MSP in the manner it prescribed. The MSP would have to revise the Scrap Metal Offenders Registry as necessary and would have to indicate verification of payment in the law enforcement database.

Dealer Responsibilities

The Act requires a dealer to register with or subscribe to, and maintain that registration or subscription with, an internet-based database available to dealers, law enforcement agencies, and the general public that lists and tracks thefts of nonferrous metal and articles containing nonferrous metal. The bill would delete this requirement.

The bill would require a dealer to check the proposed Scrap Metal Offenders Registry to determine whether the seller was a registered offender listed on that website.

The Act requires a dealer to pay a seller by a method capable of being traced from the dealer to the seller. Under the bill, that would apply if the amount of the transaction were more than \$200. Currently, payment by cash or currency of more than \$50, barter, or trade is not considered a payment that complies with the tracing requirement. Under the bill, payment by cash or currency of more than \$200, barter, or trade would not be considered in compliance.

Currently, a dealer must verify that the seller is at least 16 years old, in the case of a transaction involving nonferrous metal. Under the bill, a dealer instead would have to verify that a seller was at least 18 in a transaction involving ferrous or nonferrous metal.

The bill also would require a dealer to collect a \$1 regulatory fee for each transaction regulated under the Act. Beginning June 30, 2014, and semiannually after that, a dealer would have to remit 50% of the collected regulatory fees to the Scrap Metal Offenders Registration Fund and pay 50% to the local law enforcement agency, sheriff's department, or MSP post. Payment of the regulatory fee would have to be made in the form and by means prescribed by the MSP.

Tag & Hold Requirement

The Act requires a dealer to tag and hold, for seven calendar days, any article containing nonferrous metal purchased from a seller that is offered for purchase under certain circumstances. Under the bill, the tag and hold provision would apply to nonferrous metal, scrap metal, or both.

The tag and hold requirement applies when, due to the identification on the article or due to the type of article, the dealer would reasonably be considered to know that it is, or was, the property of a governmental entity and the person delivering the article does not have a written receipt or documentation. The bill would refer to the readily observable identification on the article or the type of article, which would include but not be limited to public fixtures.

The tag and hold requirement also applies to an article that is subject to a notification or bulletin from any law enforcement agency that the dealer receives before the purchase of the article. Under the bill, the requirement would apply if the dealer and his or her representative who was purchasing the article had actually received the notification or bulletin.

Violations & Penalties

Under the Act, a person who buys or sells nonferrous metal, knowing or having reason to know that it is stolen, is guilty of a felony punishable by up to five years' imprisonment and/or a maximum fine of \$5,000 for a first offense and up to five years and/or \$10,000 for a second or subsequent offense. Under the bill, those penalties would apply to a person who bought or sold ferrous or nonferrous metal, knowing it was stolen. A person who bought or sold nonferrous metal or scrap metal, or both, from an individual who was registered on the proposed Scrap Metal Offender Registry would be presumed to know that the metal was stolen.

A person who was required to register under the bill, and who failed to do so (except by failing to pay the required fee) would be guilty of a misdemeanor punishable by up to two years' imprisonment and/or a maximum fine of \$2,000.

A person who willfully refused or failed to pay the scrap metal offenders registration fee within 90 days of the date he or she reported, would be guilty of a misdemeanor punishable by up to 90 days' imprisonment.

The court would have to revoke the probation of an individual placed on probation who willfully violated scrap metal offender registration requirements. The court also would have to revoke a person's youthful trainee status if the person willfully violated registration requirements. The parole board would have to rescind the parole of a parolee who willfully violated registration requirements.

An individual's failure to register as required could be prosecuted in the judicial district of his or her last registered address or residence, his or her actual address or residence, or where he or she was arrested for the violation.

A person violating the Act, knowing or having reason to know that he or she is violating the Act, is responsible for a State civil infraction and may be ordered to pay a civil fine of up to \$5,000. Under the bill, that provision would apply to violations of the Act other than criminal prohibitions.

MCL 445.421 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the Department of State Police but could result in significant costs to it. The bill would require the Department to create and maintain a Scrap Metal Offenders Registry, a public internet website. According to the Department, the initial estimate given to it by the Department of Technology, Management, and Budget as to the cost of establishing such a website is a minimum of \$300,000, not including registry administrative maintenance costs.

The bill would provide for the creation of a Scrap Metal Offenders Registration Fund, from which the MSP could use money only for matters pertaining to the maintenance and automation of the Scrap Metal Offenders Registry and training concerning the registry. The bill also would provide for sources of income for the Fund. One source would be the establishment of a \$1 fee on all sales transactions under the Act, with the bill requiring 50%

of those fees to go to the Fund and the other 50% to the local law enforcement agency. The bill also would require an individual who was convicted of or entered into a plea agreement involving a scrap metal offense to register with local law enforcement and pay a fee of \$50, with \$20 of that fee to be retained by that local agency and \$30 to be deposited in the Scrap Metal Offenders Registration Fund. The number of sales transactions that take place in the course of a year and the number of offenders who would be required to pay the \$50 registration fee are not known; therefore, the total amount of fee support to offset the \$300,000-plus cost of creating the registry cannot be determined at this time.

In addition, the bill would extend an existing misdemeanor penalty to people who knowingly violated (or had reason to know their action would violate) the regulations associated with the Scrap Metal Offenders Registry. The bill also would create new misdemeanors for failing to register and for failing to pay the associated registration fees. Further, under the bill, any person who bought scrap metal from or sold scrap metal to an individual listed on the registry would be presumed to know that the metal was stolen, and could be convicted of a felony punishable by up to five years' imprisonment and/or a maximum fine of \$5,000 to \$10,000. These expanded and proposed misdemeanors and felonies could result in indeterminate increased costs of incarceration and community supervision for State and local government. Any additional criminal 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.