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## BILL ANALYSIS



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Senate Bill 941 (as enacted)

**PUBLIC ACT 543 of 2014**

Sponsor: Senator Mike Kowall

Senate Committee: Natural Resources, Environment and Great Lakes

House Committee: Natural Resources

Date Completed: 7-22-15

**CONTENT**

**The bill amended Part 169 (Scrap Tires) of the Natural Resources and Environmental Protection Act to do the following:**

- Require a person to obtain the consent of the owner or operator of a site authorized to receive scrap tires in order to deliver tires to the site.
- Exclude from the definition of "collection site" a community site owned by a local unit of government or nonprofit organization that has received a grant for scrap tire cleanup.
- Allow a written agreement between the owner and operator of a scrap tire collection site to require the operator, rather than the owner, to maintain a bond required by the Department of Environmental Quality (DEQ).
- Exempt a collection site operator from the bond requirement based on the criteria that apply to a site owner.
- Expand the purposes for which the DEQ may use a collection site bond.
- Specify that a collection site owner or operator who violates requirements to limit mosquito breeding is responsible for a State civil infraction, and may be ordered to pay costs in addition to a fine.
- Allow the owner or operator of a collection site that is also a portable shredding operation to submit a single registration application covering both.
- Provide that scrap tires managed in compliance with Part 169 are exempt from regulation as solid waste under Part 115 (Solid Waste Management) of the Act.
- Require a scrap tire hauler to maintain a \$10,000 bond in favor of the DEQ, unless the hauler is owned and operated by a scrap tire processor.
- Establish provisions regarding the payment of interest on a bond to a scrap tire hauler.
- Prescribe the purposes for which the DEQ may use a bond paid by a scrap tire hauler.
- Require a person who arranges for the removal of scrap tires from his or her property to notify the DEQ of any missing record of information from a scrap tire hauler.
- Require a retailer to obtain the signature of a consumer who purchases replacement tires and retains the tires being replaced, unless the consumer refuses.
- Eliminate a \$500,000 annual cap on certain scrap tire cleanup grants from the Scrap Tire Regulatory Fund.
- Allow the Fund to be used for enforcement of Part 169.
- Prohibit a person from intentionally engaging in the open burning of a scrap tire.
- Make it a misdemeanor to make a false statement or entry in a registration application, scrap tire transportation record, or grant application.

- **Provide that the driver of a vehicle used to transport scrap tires in violation of Part 169 will be presumed responsible for the violation.**
- **Authorize the DEQ or a law enforcement officer to search a vehicle without a warrant, if there is probable cause to believe that a person is violating Part 169.**
- **Provide that a vehicle used in a criminal violation of Part 169 is subject to seizure and forfeiture.**
- **Refer to a law enforcement officer rather than a peace officer in a number of provisions.**

The bill took effect on January 15, 2015.

#### Authorized Scrap Tire Site

A person may deliver a scrap tire only to one of the following that is in compliance with Part 169:

- A registered collection site.
- A location that has legally accumulated scrap tires below the regulatory threshold for qualifying as a collection site.
- A disposal area licensed under Part 115.
- An end-user.
- A scrap tire processor.
- A retailer.

Under the bill, a person may deliver a scrap tire to any of those sites or people only with the consent of the owner or operator.

("Scrap tire processor" means either of the following:

- A person who is authorized by Part 169 to accumulate scrap tires and who is engaged in the business of buying or otherwise acquiring scrap tires and reducing their volume by shredding or otherwise facilitating recycling or resource recovery techniques for scrap tires.
- A portable shredding operation (i.e., a person who operates scrap tire shredding equipment that produces a commodity or tire shreds and that can be moved from site to site).

"End-user" means any of the following:

- A person who possesses a permit to burn tires under Part 55 (Air Pollution Control).
- The owner or operator of a landfill that is authorized under its operating license to use scrap tires.
- A person who uses a commodity to make a product that is sold in the market.
- A person who is authorized by Part 169 to accumulate scrap tires, who acquires them and converts them into a product that is sold in the market or reused in an authorized manner.

"Commodity" means crumb rubber, tire chips, a ring or slab cut from a tire for use as a weight, or a product die-cut or punched from a tire, or any other product that is not likely to result in an accumulation, at the site of production or use, that poses a threat to public health or the environment.

"Retailer" means a person who sells or offers for sale new, retreaded, or remanufactured tires to consumers in Michigan.)

## Collection Site

Definition. "Collection site" means a site consisting of a parcel or adjacent parcels of real property where any of the following are accumulated:

- At least 500 scrap tires, except as otherwise provided.
- At least 1,500 scrap tires, if the property is owned or leased by and associated with the operations of a retailer that is not also an automotive recycler.
- At least 2,500 scrap tires, if the property is owned or leased by and associated with the operations of an automotive recycler.

A licensed disposal area, a racecourse, and a feed storage location are not considered collection sites. The bill also excludes a community cleanup site. The bill defines "community cleanup site" as a site owned by a local unit of government or nonprofit organization that has received a scrap tire cleanup grant from the Scrap Tire Regulatory Fund and uses the site for the purpose of collecting scrap tires from residents as part of a community cleanup day or resident drop off.

"Racecourse" means a commercially operated track for go-carts, off-road recreational vehicles, motorcycles, or other vehicles that uses not more than 3,000 scrap tires for bumpers along the track for safety purposes or, under the bill, that is operated on a temporary basis and stores the scrap tires at a bonded and registered collection site between races.

Bond. Subject to certain exceptions, Part 169 requires a person who owns a collection site to maintain a bond in favor of the DEQ. The amount of the bond must be not less than the sum of \$25,000 per quarter acre of outdoor tire storage area, and \$2 per square foot of tire storage area in a building. For collection sites with fewer than 2,500 tires, the bond may not exceed \$2,500.

Under the bill, if a collection site registration application includes a written agreement between the owner and the operator of the collection site that requires the operator to maintain the bond, and the DEQ approves that requirement, the operator must maintain the bond. If the operator is required to maintain the bond but fails to do so, both the owner and the operator will be responsible for the violation.

The DEQ may use a bond for the costs of any of the following:

- Removing scrap tires from a collection site.
- Cleanup at the collection site.
- Fire suppression or otherwise responding to a fire or an emergency at a collection site, including, under the bill, reimbursement to any local unit of government that incurred those costs.

The bill also allows the DEQ to use a bond for the costs of bringing the collection site into compliance with Part 169.

Further, as amended by the bill, Part 169 authorizes the DEQ to draw on a bond if any of the following apply:

- There is an emergency or a fire at the site.
- The site owner becomes insolvent.
- The owner or operator violates Part 169 and does not have the tires removed as ordered by the DEQ or a court.

Additionally, the bill allows the DEQ to draw on a bond if the collection site's owner or operator fails to extend or renew the bond under its terms or to establish alternate financial assurance

at least 30 days before the expiration or cancellation date of the bond, unless the owner or operator is exempt from the requirement to obtain a bond (as described below).

The bill requires the DEQ, at least seven days before drawing on the bond in the case of an owner's insolvency or a violation of Part 169, to issue a notice or order alleging the insolvency or violation and to provide an opportunity for an informal hearing. This requirement does not apply if the bond is drawn upon as a result of failure to cause the removal of scrap tires as ordered by a court.

Part 169 exempts the owner of a collection site from the bond requirement if all of the following conditions are met:

- The owner is a scrap tire processor.
- At least 75% of the scrap tires, by weight or volume, that are stored at the site each year are recycled or used for resource recovery during that year.
- The collection site has been in compliance with the storage requirements for at least one year.
- The owner annually certifies compliance with the exemption conditions.

The bill also exempts the operator of a collection site under these conditions.

Under Part 169, if the DEQ determines that the collection site owner is not in compliance with the requirements for a bond exemption, the DEQ must give the owner a notice of noncompliance. If the owner does not bring the site into compliance within 60 days after receiving the notice, the owner must obtain the required bond. Once an owner is required to obtain a bond, it must be maintained unless the owner brings the site into compliance with the conditions for the exemption.

The bill extends these provisions to the operator of the collection site.

In addition, if a scrap tire processor maintains its collection site in compliance with the bond exemption conditions for five years, the bill allows the processor to move its operation to a new collection site location and remain exempt from the bond requirement as long as the processor continues to comply.

Mosquito Breeding Prevention. Part 169 requires a collection site owner or operator to ensure that the tires are maintained in a manner that limits the potential of mosquito breeding, by doing one or more of the following:

- Covering the tires with plastic sheets or other impermeable barriers to prevent the accumulation of precipitation.
- Chemically treating the tires to eliminate mosquito breeding.
- Baling, shredding, or chipping the tires into pieces not larger than four inches by six inches and storing them in piles that allow complete water drainage.

Under the bill, a person who violates these requirements is responsible for a State civil infraction and may be ordered to pay a maximum fine of \$400 (as previously provided), plus costs.

Registration. Part 169 requires a collection site or portable shredding operation to submit to the DEQ on an annual basis an application for registration and a \$200 registration fee, which the Department must submit to the State Treasury to be credited to the Scrap Tire Regulatory Fund. Under the bill, if a person who owns or operates a collection site also is a portable shredding operation, the person may submit a single application covering both.

The bill requires the application to include the signature of the applicant and, if the applicant is not the owner of the real property, the signature of the owner.

### Transport of Scrap Tires

Part 169 prohibits a person from arranging for the removal of scrap tires except with one of the following:

- A scrap tire hauler that is registered with the DEQ and that is obliged to deliver the tires to an authorized destination identified in a record maintained by the hauler.
- If the scrap tires are a commodity, a person hauling only a commodity.
- If the scrap tires are tire casings, a retreader hauling only tire casings.
- A solid waste hauler.

The bill provides that the driver of a vehicle used to transport scrap tires will be presumed to be responsible for any scrap tires transported, discarded, or disposed of from the vehicle in violation of these provisions. In a proceeding for a violation committed using a vehicle, it will be presumed that the vehicle's registered owner at the time of the violation or, if the registered owner is not an individual, the registered owner's agent, was the driver at the time of the violation. If the vehicle was leased at the time of the violation, it will be presumed that the lessee or, if the lessee is not an individual, the lessee's agent was the driver at that time.

### Solid Waste Regulation

The bill provides that scrap tires managed in compliance with Part 169 are exempt from regulation as solid waste under Part 115 (Solid Waste Management). Scrap tires that are not managed in compliance with Part 169 will be regulated as solid waste under Part 115, in addition to being regulated under Part 169.

### Scrap Tire Hauler

Annual Registration. Part 169 requires a scrap tire hauler to submit to the DEQ an annual application for registration. Under the bill, the application must include documentation that the scrap tire hauler is bonded for the registration period (as described below).

Part 169 requires a scrap tire hauler, when transporting scrap tires, to have in his or her possession a copy of the current unexpired registration. Under the bill, the hauler must present it upon demand of the DEQ or a law enforcement officer (rather than a peace officer, as previously required).

Part 169 requires the registration number issued by the DEQ to be visibly displayed on a motor vehicle transporting scrap tires. The bill specifies that this requirement applies whether the tires are transported in or on the motor vehicle or a trailer.

Bond. The bill requires a scrap tire hauler to maintain a \$10,000 bond in favor of the DEQ, unless the hauler is owned and operated by a scrap tire processor in compliance with Part 169.

A person who elects to use a certificate of deposit as a bond must receive any accrued interest on it. If cash is posted as a bond, interest must accrue on the bond quarterly, at the annual rate of 6%, except that the interest rate payable to the hauler may not exceed the rate of interest accrued on the State Common Cash Fund for the quarter in which accrual is determined. Interest must be paid to the scrap tire hauler upon the DEQ's release of the bond. Any interest greater than 6% must be deposited into the Scrap Tire Regulatory Fund.

The DEQ may use a scrap tire hauler bond for the costs of any of the following:

- Removing scrap tires accumulated by the hauler.
- Removing scrap tires deposited at an illegal location by the hauler.
- Bringing scrap tires accumulated or deposited by the hauler into compliance with Part 169.
- Cleanup of scrap tires accumulated or deposited by the hauler.
- Fire suppression or other costs associated with responding to a fire or other emergency involving the hauler or a site where scrap tires have been accumulated or deposited by the hauler, including reimbursement to any local unit of government that incurred those costs.

The DEQ also may draw on a bond if any of the following apply:

- There is a fire or other emergency involving the scrap tire hauler or a site where the hauler has accumulated or deposited scrap tires.
- The scrap tire hauler becomes insolvent.
- The owner or operator of the hauler violates Part 169 and does not have the tires removed as ordered by the DEQ or a court.
- The scrap tire hauler fails to extend or renew the bond under its terms or establish alternate financial assurance at least 30 days before the bond's expiration or cancellation date.

At least seven days before the DEQ draws on a bond due to the hauler's insolvency or a violation of Part 169, the Department must issue a notice or order alleging the insolvency or violation and provide an opportunity for an informal hearing. This requirement does not apply if the bond is drawn upon as a result of failure to have scrap tires removed as ordered by a court.

#### Removal of Scrap Tires

A person who arranges for the removal of scrap tires from property under his or her control, including an end-user, must comply with certain record-keeping requirements. The bill deleted an exception to this requirement for a property owner removing seven or fewer scrap tires from his or her property.

Previously, a person subject to this requirement had to maintain at the site of removal the record obtained from the scrap tire hauler and the record received from an owner, operator, or authorized agent of the location that accepted the tires. The person did not have an affirmative duty to obtain the records and was not liable for the failure to receive them.

Under the bill, instead, if a complete record is not obtained from the hauler or from an owner, operator, or authorized agent of the location that accepts the tires, a person who arranges for the removal of scrap tires from property under his or her control must promptly notify the DEQ of the missing record or information.

#### Receipt of Scrap Tires

A person who receives scrap tires, including an end-user, must maintain a record of all scrap tires received from a hauler. The bill deleted an exception to this requirement for a solid waste hauler or scrap tire hauler.

Upon acceptance of scrap tires by a scrap tire hauler at an authorized location, the owner, operator, or authorized agent of that location must sign the record, and provide a copy to the person delivering them. Previously, this was required upon delivery of scrap tires by a scrap tire hauler to an authorized location.

Within 30 days, the owner, operator, or authorized agent of the location must forward a copy of the signed record to the person who arranged for the removal of the tires being delivered. Under the bill, if the number of scrap tires received by an authorized location differs from the number indicated on the record maintained by a scrap tire hauler for each load he or she transports, the owner or operator of the receiving location must contact the person who arranged for the tires' removal and/or the scrap tire hauler, as necessary, and determine where any additional tires received by the location originated or where any missing tires not received by that location were taken.

### Retention of Replacement Tires

Under the bill, if a consumer purchases replacement tires at a retailer and retains the tires being replaced, the retailer must obtain the consumer's signature on an invoice, receipt, or other record acknowledging retention of the tires, unless the consumer refuses.

### Scrap Tire Regulatory Fund

Part 169 creates the Scrap Tire Regulatory Fund in the State Treasury. The bill specifies that the DEQ is the administrator of the Fund for auditing purposes.

The purposes for which Fund money may be used, upon appropriation, include the DEQ's administrative costs associated with Part 169, including implementation and enforcement. Fund money also may be used, upon appropriation, for the cleanup or collection of abandoned scrap tires and scrap tires at collection sites. This money may be spent for either or both of the following:

- Grants to reimburse the cost of purchasing scrap tires to support the development of increased markets for scrap tires.
- Grants of up to 50% of the cost of purchasing equipment, or research and development, to provide for a new or increased use for scrap tires.

The bill eliminated a \$500,000 annual cap on the first set of grants. The bill also allows Fund money to be spent on costs associated with enforcement of Part 169, including grants to local law enforcement agencies.

In addition, under the bill, if a grant is awarded for collecting scrap tires at a community cleanup site, the tires must be removed from the site by the time specified in the grant contract.

### Criminal Penalties

The bill prohibits a person from intentionally engaging in the open burning of a scrap tire. (The bill does not establish a penalty for a violation of this prohibition but Part 169 prescribes misdemeanor penalties, depending on the number of tires involved, for violations of the part.)

The bill also prohibits a person from knowingly making or causing to be made a false statement or entry in a registration application, scrap tire transportation record, or grant application. A violation is a misdemeanor punishable by imprisonment for up to one year or a fine of not less than \$2,500 or more than \$10,000, or both imprisonment and a fine.

### Search & Seizure

Part 169 authorizes the DEQ, at reasonable hours, to enter a tire retail establishment, vehicle owned or operated by a scrap tire hauler for the transport of scrap tires, or collection site or other place where scrap tires are or have been present, and to inspect the location for the

purposes of enforcement or administration. An investigation or inspection must comply with the U.S. Constitution and the State Constitution.

Also, under the bill, if the DEQ or a law enforcement officer has probable cause to believe that a person is violating Part 169, the Department or officer may search without a warrant a vehicle or other transportation-related equipment that the person possesses, uses, or operates.

The bill provides that a vehicle or other transportation-related equipment used in a criminal violation of Part 169 is subject to seizure by a law enforcement officer and forfeiture in the same manner as provided in the Revised Judicature Act.

The bill allows the court to award court costs and other expenses of litigation, including attorney fees, to a party who successfully brings an action for a violation of these provisions.

MCL 324.16901 et al.

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### **FISCAL IMPACT**

The bill will have a neutral fiscal impact on the Department of Environmental Quality and on local units of government. The bill makes various changes to the regulations regarding the handling of scrap tires. For the most part, these changes will not have a significant fiscal impact on the operations of the program by the DEQ, with a few exceptions as discussed below.

The bill also expands the allowable uses of the Scrap Tire Regulatory Fund to include grants to local law enforcement agencies for enforcement of scrap tire regulations. These are in addition to the following uses of the Fund: administrative costs for both the DEQ and Secretary of State as they relate to enforcement and implementation of scrap tire regulations, cleanup and collection of abandoned scrap tires, and grants for the purchase of scrap tires for the purpose of developing markets for them.

The bill creates a requirement for scrap tire haulers to maintain a \$10,000 bond in favor of the DEQ, which the DEQ will be allowed to use to cover the costs of remedying certain conditions that may result from a violation of scrap tire regulations. To the extent that the DEQ previously had to absorb these costs or seek a remedy in court, this change will have an indeterminate, but positive fiscal impact on the DEQ. A hauler who elects to use cash as a bond will be allowed to collect up to 6% interest on that bond, depending on the interest earned on State common cash in a given year. Interest in excess of 6% will be deposited in the Fund. It is unlikely that this change will generate revenue in the near future, as interest rates are low and returns on common cash have not come close to exceeding 6% in a number of years.

From the standpoint of local units of government, the bill allows the DEQ to issue grants for community cleanup sites, which will cover local costs related to operating programs for area residents to dispose of scrap tires. To the extent that local units already had this type of program, the bill will have a positive fiscal impact as related costs may be reimbursed through grants. On the other hand, if local units did not already have community cleanup sites, the bill will have a neutral fiscal impact as the grants will cover new program costs that the local units did not previously incur.

The bill also will have a minor fiscal impact on local government by creating a misdemeanor for making a false statement or entry in regard to a scrap tire transportation record, and prohibiting the intentional open burning of a scrap tire (which will be subject to the



misdemeanor penalties in Part 169). The cost, if any, will be in additional resources required by the court and jail systems.

In addition, the bill designates a collection site owner's or operator's failure to limit mosquito breeding as a State civil infraction.

Any fine revenue from the misdemeanors or the State civil infraction will be credited to 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.