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BILL



ANALYSIS

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House Bill 4593 (Substitute H-2 as passed by the House)  
House Bill 4595 (Substitute H-1 as passed by the House)  
Sponsor: Representative Paul Muxlow (H.B. 4593)  
Representative Jim Ananich (H.B. 4595)  
House Committee: Regulatory Reform  
Senate Committee: Economic Development

Date Completed: 11-13-13

### **CONTENT**

**House Bill 4593 (H-2)** would amend the Nonferrous Metal Regulatory Act to do the following:

- Expand the scope of the Act to include ferrous metal, in addition to nonferrous metal.
- Allow a dealer to pay for scrap metal purchased from a seller only by check or money order, or by electronic payment card or encrypted receipt convertible to cash only at an ATM on the dealer's premises.
- Prohibit a scrap metal dealer from paying a seller until three business days after the date of certain transactions.
- Require a scrap metal dealer to ensure that its scale operators, purchasers, and supervisors were trained in the requirements of the Act.
- Prohibit a person who had been convicted of a violation involving the theft, conversion, or sale of scrap metal from entering into a scrap metal purchase transaction.
- Require a photograph or digital, electronic, or video image of purchased scrap metal, and otherwise revise record maintenance requirements.
- Prohibit a person from selling or attempting to sell particular types of metal articles to a scrap metal dealer without documentation of ownership or authorization by the owner to sell the property.
- Revise database registration or subscription requirements by requiring a scrap metal dealer to use the database in conducting business, and ensure that theft alerts and similar notices were available to and reviewed by the dealer's employees.
- Revise provisions pertaining to violations of the Act and criminal and civil penalties.

The bill also would repeal Section 9 of the Act, which concerns tag and hold requirements for certain nonferrous metal articles.

**House Bill 5495 (H-1)** would amend the Michigan Penal Code to refer to scrap metal, rather than nonferrous metal, in a provision prescribing penalties for larceny of certain types of property.

The bills are tie-barred.

## **House Bill 4593 (H-2)**

### **Scope of the Act**

The bill would rename the Act the "Scrap Metal Regulatory Act" and would refer to "scrap metal" rather than "nonferrous metal" throughout the Act.

The Act defines "nonferrous metal" as 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. "Ferrous metal" means a metal that contains significant quantities of iron or steel.

The bill would define "scrap metal" as 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's Responsibilities**

The Act requires a dealer to do all of the following:

- Produce and maintain required records.
- Participate in a database meeting requirements outlined in the Act.
- Tag and hold any nonferrous metal, as required in the Act.
- Pay a seller by a method capable of being traced from the dealer to the seller.

Payment by cash or currency of more than \$50, barter, or trade is not considered a payment that complies with the traceable payment requirement. Payment of cash in any amount in a transaction involving predominantly copper articles is a violation of the traceable payment requirement.

The bill would delete those provisions and apply the following, instead, to scrap metal dealers.

Beginning 120 days after the bill's effective date, a scrap metal dealer could pay a seller only with a check or money order or an electronic payment card or encrypted receipt that could be converted to cash only in an ATM that was located on the scrap metal dealer's premises, was used for the sole purpose of dispensing cash in connection with purchase transactions, and provided a digital or electronic image of the dispensing of the cash to the seller. If paying by check or money order, a scrap metal 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 or individual acting on behalf of the seller.

In a purchase transaction of certain items, a scrap metal dealer could not pay the seller until three business days after the date of the transaction, and would have to pay the seller by making a direct deposit or electronic transfer to the seller's account at a financial institution; by mailing a check, money order, payment card, or receipt redeemable for cash at an ATM on the dealer's premises; or by delivering to the seller at the dealer's premises a check, money order, payment card, or receipt redeemable for cash at an ATM on the dealer's premises. This requirement would apply to a transaction involving the following:

- Catalytic converters, unless the seller were an automotive recycler, a manufacturer or wholesaler of catalytic converters, or a muffler shop, tire store, or other retail business that sold converters separately or as part of an exhaust system.
- Air conditioners, air conditioner evaporate coils or condensers, or parts of those coils and condensers.
- Copper wire, including copper wire that was burned in whole or in part to remove the insulation.

The three-day waiting period required for a purchase involving catalytic converters, air conditioner or air conditioner parts, or copper wire would not apply to the purchase of any of those items by an industrial or commercial customer.

In a purchase transaction involving an industrial or commercial customer, the scrap metal dealer could pay using any of the following forms of payment, as agreed to by the dealer and the customer:

- Check, money order, or payment card or receipt redeemable for cash at an ATM on the dealer's premises.
- Bank wire transfer or other electronic delivery to the customer's account.

A scrap metal dealer could accept barter or a trade or exchange of scrap metal or other property in a purchase transaction as all or part of the consideration for that transaction.

A scrap metal dealer in a purchase transaction would have to examine the ID presented under the Act by the seller or individual acting on behalf of the seller, and if the ID displayed the person's date of birth, the dealer would have to confirm that he or she was at least 16 years old.

A scrap metal dealer would have to ensure that it trained each scale operator, purchaser, and supervisor it employed concerning the legal requirements of the Act and the responsibilities of the scrap metal dealer under the Act.

The Act defines "dealer" as any person that is not a first purchaser who purchases nonferrous metals from any seller. The term includes a person that operates a business as a scrap metal recycler, scrap processor, secondhand and junk dealer, or other person who purchases any amount of nonferrous metal on a regular, sporadic, or one-time basis. The term does not include an automotive recycler. The bill would delete that definition.

The bill would define "scrap metal dealer" as a person or governmental unit that buys scrap metal and is not a first purchaser. The term includes a person 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.

The bill would define "purchase transaction" as a purchase of scrap metal or the purchase of other metal items that the bill would not prohibit. The term would not include the purchase of any of the following:

- One or more used or secondhand, distressed, or salvage vehicles or vehicle parts purchased by a licensed used or secondhand vehicle dealer or vehicle parts dealer acting within the scope of that dealer's license.
- One or more used or secondhand, distressed, or salvage vehicles, vehicle parts or vehicle scrap purchased by a licensed vehicle scrap metal processor, vehicle salvage pool operator, or foreign salvage vehicle dealer acting within the scope of that dealer's license.

- One or more used or secondhand, distressed, or salvage vehicles, vehicle parts, or vehicle scrap purchased by a licensed automotive recycler, if the transaction is authorized by law.
- Scrap metal purchased 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.
- Scrap metal purchased from a governmental unit.

### Seller's Responsibilities

The Act requires a seller to do all of the following:

- Present to the dealer a driver license, military ID card, Michigan ID card, passport, or other government-issued ID containing a photograph, and allow the dealer to make a photocopy or electronic copy of the ID.
- Allow the dealer to make a thumbprint, to be used only for ID purposes by the dealer, and for investigation purposes by a law enforcement agency.
- Execute a signed statement indicating that the seller is the owner of, or is otherwise authorized to sell, the nonferrous metal offered for purchase to the dealer.
- Attest to the lack of any criminal convictions involving the theft, conversion, or sale of nonferrous metal.

Under the bill, the first three requirements above would apply to a seller of scrap metal in a purchase transaction, if the seller were an individual, or to an individual acting as an agent or representative of the seller. The bill also would refer to a "scrap metal dealer".

The bill would prohibit an individual from entering into a purchase transaction if he or she had been convicted of a crime involving the theft, conversion, or sale of scrap metal. As part of a purchase transaction, the person would have to certify that he or she had not been convicted of such a crime.

### Maintenance of Records

The Act requires a dealer to produce and maintain an accurate and legible record of each purchase transaction. The bill would require a scrap metal dealer to prepare and maintain a separate, accurate, and legible record of each purchase transaction. The records must be maintained for at least one year and be kept in a location that is readily accessible to a local, State, or Federal law enforcement agency for inspection during normal business hours.

The Act requires a dealer to make the records or copies of them available to any local, State, or Federal law enforcement agency upon reasonable suspicion of a violation of the Act. The bill instead would require a dealer to make the records or copies available upon the request of any local, State, or Federal law enforcement agency.

The Act lists information that must be contained in the record of a purchase transaction. The bill would include in that list the name and address of the seller and the name and address of the individual who was delivering the scrap metal, if he or she were not the seller. In an individual were a seller or a representative of a seller in more than one purchase transaction, the scrap metal dealer could retain a copy of his or her information or document in a separate file and use that information in future purchase transactions.

The Act requires the purchase transaction record to include the weight, quantity, or volume of metal. The bill also would require the record to include the name of the scale operator who weighed and inspected the property, and the name of the scrap metal dealer's

employee who purchased or authorized the purchase of the scrap metal on the dealer's behalf, if the purchaser were not the scale operator.

The record also would have to include a photograph or digital, electronic, or video image of the scrap metal purchased. An image that met one of the following would be sufficient for purposes of this requirement, even if each item of scrap metal were not shown in the image:

- An overhead photograph or image of the vehicle and the scrap metal in it on the scale, if the scrap metal and the vehicle in which it was delivered were weighed.
- A photograph or image of the scrap metal on the scale, if only the scrap metal were weighed.

The bill specifies that a scrap metal dealer could use an electronic record-keeping system for purposes of maintaining a record of purchase transactions if the system allowed for immediate access to each seller's purchase transaction activities, documents, and images, including electronic copies of the required records, the payment information contained in a card or receipt, and the required image of the seller.

#### Prohibited Sales

The bill would prohibit a person from knowingly selling or attempting to sell to a scrap metal dealer, and would prohibit a scrap metal dealer from knowingly purchasing or offering to purchase, any of the following types of property:

- Public fixtures.
- Metal articles or materials that were clearly marked as property belonging to a person other than the seller.
- A commemorative, decorative, or other cemetery-related or apparently ceremonial article.
- Metal articles or materials removed from property owned by a railroad company or from a railroad right-of-way.

The prohibition against selling public fixtures would not apply if the seller were a governmental unit or had written authorization to sell the property from the governmental unit that owned the property. The prohibition against selling articles clearly marked as someone else's property would not apply if the seller had authorization to sell the property from that other person.

The prohibition against selling cemetery-related or ceremonial articles would not apply if the seller were the owner of the article; if the seller were authorized by the owner to sell the article; or if the seller of a cemetery-related article were the cemetery in which the article was located.

The prohibition against selling material removed from railroad property would not apply if the seller were the owner or manufacturer of the metal or a contractor engaged in repairing railroad equipment, or had written authorization from the owner, manufacturer, or contractor to sell the metal.

#### Database Registration or Subscription

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. The bill would require a dealer to use the database in the conduct of its business and would refer to scrap metal rather than nonferrous metal.

The bill also would require a scrap metal dealer to ensure that it made each theft alert or similar notice received from the database service available to each of its employees engaged in purchasing or weighing scrap metal sold or offered for sale to the dealer. The dealer also would have to ensure that those employees reviewed any recent alerts or similar notices on a daily basis.

### Violations & Penalties

A violation of the Act's purchase transaction record requirements, or its tag and hold requirements, is a misdemeanor punishable by a maximum fine of \$500 and/or up to 93 days' imprisonment. The bill would delete the reference to the tag and hold requirement, which it would repeal. Under the bill, if a violation involving a purchase transaction record resulted from a malfunction of an electronic record-keeping system, in an action against the scrap metal dealer that used that system it would be an affirmative defense that the dealer diligently pursued repair of the electronic system after the malfunction occurred, and implemented and maintained a manual record-keeping system for purchase transactions that occurred while the electronic system was malfunctioning.

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. The penalty is up to five years' imprisonment and/or a maximum fine of \$10,000 for a second or subsequent offense. Under the bill, those penalties would apply to the following:

- A scrap metal dealer that purchased scrap metal, or a public fixture, a metal article clearly marked as belonging to another person, a cemetery-related or ceremonial article, or metal removed from railroad property, and knew or should have known that it was stolen.
- A person who sold scrap metal, or a public fixture, a metal article clearly marked as belonging to another person, a cemetery-related or ceremonial article, or metal removed from railroad property, to a scrap metal dealer and knew or should have known that it was stolen.

The Act authorizes a person to bring a private cause of action for monetary damages suffered from a violation of the Act by a seller or a dealer, or both. The bill specifies that the action could be brought against a seller or a scrap metal dealer.

The Act requires the court to award treble damages for the value of stolen nonferrous metal. Under the bill, the court would have to award treble damages for the value of the stolen property, if it found that the violation included the purchase or sale of stolen property and that the purchaser or seller knew or should have known that the property was stolen.

### Repeal of Tag & Hold Requirement

Section 9 of 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.

In addition, Section 9 prohibits a seller from selling or offering for sale (and a dealer from purchasing) any article containing nonferrous metal that is marked with any form of the name, initials, markings, or logo of a governmental entity, utility, cemetery, or railroad, any beer keg, or any public fixtures. The prohibition does not apply in the case of a seller who has specific written documentation that he or she is the owner, agent, or person with authority to possess and sell the article.

The bill would repeal Section 9.

## **House Bill 4595 (H-1)**

Under the Michigan Penal Code, a person who commits larceny by stealing nonferrous metal is subject to the graduated penalties that apply to stealing such things as money, a bank note, a book of accounts for money or goods due, and a deed. Those penalties, which are based on the value of the property stolen and/or the offender's prior convictions, are shown in Table 1. The maximum fine is the amount shown or three times the value of the property stolen, whichever is greater.

Table 1

| Value of Stolen Property  | Offense Level | Maximum Imprisonment and/or Fine |
|---|---------------|----------------------------------|
| \$20,000 or more; or \$1,000 or more but less than \$20,000 w/two or more priors                    | Felony        | 10 years and/or \$15,000         |
| \$1,000 or more but less than \$20,000; or \$200 or more but less than \$1,000 w/one or more priors | Felony        | 5 years and/or \$10,000          |
| \$200 or more but less than \$1,000; or less than \$200 w/one or more priors                        | Misdemeanor   | 1 year and/or \$2,000            |
| Less than \$200   | Misdemeanor   | 93 days and/or \$500             |

Under the bill, those penalties would apply to a person who committed larceny by stealing scrap metal, rather than nonferrous metal.

The Code defines "nonferrous metal" as a 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. The bill would delete that definition. Instead, it would define "scrap metal" as that term would be defined in the "Scrap Metal Regulatory Act", as proposed by House Bill 4593 (H-2).

MCL 445.421 et al. (H.B. 4593)  
750.356 (H.B. 4595)

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bills would expand the regulations applicable to scrap metal transactions and would apply those regulations to all scrap metal, not only nonferrous metal, and thereby would expand the felonies and misdemeanors associated with the violations of those regulations. The bills also would expand record-keeping requirements, which could increase the number of individuals charged with and convicted of scrap metal-associated offenses. There are no data to indicate how many additional offenders would be convicted, but to the extent that additional convictions occurred, costs of incarceration and/or community supervision would increase accordingly.

In 2012, there were 19 felony dispositions for the offense of selling stolen nonferrous metals. Of those 19 dispositions, two resulted in time in State prison, while the remaining 17 offenders served time in jail, on probation, or both. Also in 2012, there were four felony dispositions for dealers who bought stolen scrap metal; two served time in State prison and two were placed on probation.

Fiscal Analyst: Dan O'Connor

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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.