

Legislative Analysis



SCRAP METAL DEALERS AMENDMENTS

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House Bill 4593

Sponsor: Rep. Paul Muxlow

House Bill 4594

Sponsor: Rep. Rashida Tlaib

House Bill 4595

Sponsor: Rep. Jim Ananich

Committee: Regulatory Reform

Complete to 6-3-13

A SUMMARY OF HOUSE BILLS 4593 - 4595 AS INTRODUCED 4-18-13

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:

- 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.

House Bills 4593 - 4595 are all tie-barred to each other, meaning none can take effect unless all of them 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 do the following:

- Add to Section 7 to require the following information be included in purchase transaction records, in addition to the information currently required by the act:
 - 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 image of the purchased scrap metal. An overhead image of the delivery vehicle and the scrap metal in the vehicle as it is being weighed, or an image of the scrap metal on the scale would be sufficient to meet this requirement.

(A violation of Section 7 is a misdemeanor punishable by a fine of not more than \$500 and/or imprisonment for not more than 93 days.)

- Allow the dealer to retain a copy of the seller's identification if the seller is involved in more than one transaction.
- Clarify that dealers are exempt from having to obtain information as required for purchase transaction records if the transaction is with an industrial or commercial customer that meets all of the following:
 - Payment is made directly to the industrial or commercial customer.
 - Personal and business identifying information is on file with the dealer.
 - The information on file with the dealer is reviewed every two years and validated as current or updated by the dealer.
- Allow a dealer to use an electronic record-keeping system to maintain purchase transaction records as long as the system allows for immediate access to each seller's activities, documents, and images.
- Prohibit, in Section 10, individuals from selling or attempting to sell to a dealer, and prohibit a dealer from knowingly buying or attempting to buy any of the following types of personal property:
 - Public fixtures.
 - New metal articles or materials, such as those used in a manufacturing or construction process.
 - Equipment or tools used by contractors.
 - Metal articles or materials that are clearly marked as property belonging to a person other than the seller.
 - Commemorative, decorative, or other cemetery-related or ceremonial articles.
 - Metal articles or materials that are removed from property owned by a railroad company or from a railroad right-of-way.
- Make it a felony for a scrap metal dealer to purchase scrap metal or an item of personal property described above if the dealer knows or has reason to know it was stolen. Also, it would be a felony for a person that sells scrap metal or an item of personal property described above to a scrap metal dealer and knows or

has reason to know it was stolen. Currently, the act makes it a felony 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.

- Require dealers to ensure that they make available to each of their employees who purchase or weigh scrap metal sold or offered for sale to the dealer, each theft alert or similar notice of scrap metal theft, and that the employees review the alerts on a daily basis.
- Clarify individuals can bring private causes of action against sellers or dealers for monetary damages suffered from violations of the act. Additionally, the court could award costs and reasonable attorney fees in an action brought against a seller or dealer.
- 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 4594 would amend the Nonferrous Metal Regulatory Act to do the following:

- Rename the act the Scrap Metal Regulatory Act.
- Provide that a scrap metal dealer can only pay a seller with one of the following:
 - A check or money order. The dealer would have to maintain a photograph or electronic image of the delivery of the check or money order to the seller.
 - An electronic payment card that could only be converted to cash in an ATM that is on the seller's premises, is used only used to dispense cash in connection with purchase transactions, and provides a digital image of the dispensing of the cash to the seller.

[In a purchase transaction with a business or industrial customer, the dealer would be able to make the payment in either of the forms mentioned above.]

- In purchase transactions of the following items, require dealers to wait three business days before paying the seller, and require the payment be made through (1) direct deposit or electronic transfer to the seller's financial institution or (2) a check or money order made payable to the seller and sent only to the seller's street address: [Checks or money orders could not be sent to Post Office boxes.]
 - Catalytic converters, unless the seller is an automotive recycler.
 - Air conditioners, air conditioner evaporator coils or condensers, or parts.

- Copper wire, including wire that is wholly or partly burned to remove the insulation.
- Prohibit a dealer from accepting barter, trade, or exchange of scrap metal or other personal property unless the transaction is with an industrial or commercial customer.
- Require a dealer to examine the identification presented by the seller at the time of purchase and verify the seller is at least 16 years old, as long as the identification provided includes a date of birth.
- Prohibit dealers from purchasing scrap metal that is delivered in a vehicle that is not licensed and titled for use on public highways.
- Require dealers to ensure scale operators, purchasers, and supervisors employed by the dealer are trained concerning the legal requirements and responsibilities of a dealer under the act.
- Clarify all of the following concerning the responsibilities of an individual seller in a purchase transaction:
 - He or she must present a form of identification as contained in the act.
 - He or she must allow the dealer to take a thumbprint to be used for identification purposes by the dealer or for investigatory purposes by law enforcement.
 - He or she must provide the dealer with a signed statement certifying that he or she is the owner or is otherwise authorized to sell the scrap metal.
 - Require the seller to certify he or she has not been convicted of a crime that would result in the disqualification of selling scrap metal. Individuals who have been previously convicted of a crime involving theft, conversion, or sale of scrap metal would be prohibited from entering into a purchase transaction.

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 bills would have no direct fiscal impact.

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