

Legislative Analysis



NONFERROUS METAL REGULATORY ACT

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House Bill 6181

Sponsor: Rep. Andy Meisner

Committee: Commerce

Complete to 5-23-08

A SUMMARY OF HOUSE BILL 6181 AS INTRODUCED 5-22-08

The bill would create the Nonferrous Metal Regulatory Act, which would apply to purchasers of nonferrous metals, such as scrap metal recyclers, scrap processors, auto recyclers, and secondhand and junk dealers.

"Ferrous metals" are defined as metals containing significant quantities of iron or steel. "Nonferrous metals" are other metals, such as those containing copper, brass, aluminum, bronze, lead, zinc, nickel, or alloys of those metals. The bill would apply to purchasers and sellers of these metals.

The bill would, generally speaking, require record-keeping for each transaction; specify acceptable methods of payment; prescribe the tagging and holding of certain items by dealers; and require the participation by dealers in an Internet-based database. The bill also would prohibit the sale of certain items unless the seller had specific written authorization to sell them. The bill is summarized in more detail below.

Records of Purchases. A dealer would have to produce and maintain an accurate and legible record of each purchase transaction. Records would have to be maintained for at least one year in a location readily accessible to a local, state, or federal law enforcement agency for inspection during normal business hours. The records, or copies of the records, would have to be made available to law enforcement agencies engaged in investigating a transaction. A violation of this requirement would be a misdemeanor punishable by a fine of up to \$500 and/or imprisonment for up to 93 days.

The record of a purchase transaction would have to contain:

- (1) the name, address, and identifying number from the seller's driver's license, military identification card, Michigan identification card, passport, or other government-issued I.D. with a photograph. A legible scan or photocopy of the I.D. would be satisfactory. For repeat customers, a copy of the information could be kept and used for future transactions.
- (2) The license plate number of the vehicle delivering the nonferrous metal.
- (3) The date and time of the transaction.

(4) A description of the predominant types of metal purchases, "made in accordance with the custom of the trade."

(5) The weight, quantity, or volume of metal.

(6) The consideration paid and the method of payment.

(7) A signed statement from the seller that the seller is the owner of the metal or is otherwise authorized to sell the metal.

(8) A thumbprint of the seller, which could be kept on file for up to one year for repeat sellers.

Related Requirements on Sellers. Sellers would be required to present the required identification and thumbprint and execute a signed statement indicating the seller is the owner of, or is otherwise authorized to sell, the nonferrous metal offered for sale. Also, the seller would have to attest to lack of any criminal convictions involving the theft, conversion, or sale of nonferrous metals.

Record-Keeping Exception for Industrial and Commercial Accounts. Sellers that represent industrial or commercial accounts would not have to produce the records listed above so long as the personal and business identifying information of the seller is on file with the dealer and conforms to a written description of the type of nonferrous metal or articles customarily purchased by the dealer from that seller, and the information is periodically reviewed and validated as current or updated by the dealer. This exception would apply to a person operating from a fixed location that is a seller of ferrous or nonferrous metal to a scrap metal recycler under a written agreement.

Payment Methods. Dealers would have to pay sellers by check, electronic transfer, or ATM card, or some other method capable of being traced from the dealer to the seller. Payment by cash or currency of more than \$150 would not be considered in compliance.

Tag and Hold Certain Articles. A dealer would have to tag and hold for at least seven calendar days any article containing nonferrous metal purchased from a seller (that is not a dealer) that meets the following criteria: (1) the article has altered or obliterated serial numbers and the person delivering the article does not have a written receipt or other documentation indicating where the article was obtained; (2) the article appears to the dealer to have been the property of a governmental entity and the person delivering the article does not have a written receipt; (3) the article appears to the dealer to be the property of a business and the person delivering the property does not have a written receipt; (4) the article is a commemorative, decorative, or other cemetery-related article and the person delivering the article does not have a written receipt; or (5) the article is subject to a theft alert report or bulletin from law enforcement or a member of the public. Other articles would not be subject to the tag and hold requirement.

Prohibited Transactions. Unless the seller has a specific written documentation that he or she is the owner, agent, or person with authority to possess and sell the article, a seller could not offer for sale and a dealer could not purchase any article containing nonferrous metal marked with any form of the name, initials, markings, or logo of a governmental entity, utility, cemetery, or railroad; any beer kegs; or any public fixture. The term "public fixture" would refer to articles used or located in areas open to the public, such as utility access covers, street light poles and fixtures, road and bridge guardrails, highway and street signs, water meter covers, traffic directional and control signs, traffic light signals, telecommunications cable, utility-related articles, and historical markers.

Internet Data Base. Dealers would be required to participate in an Internet-based database available to dealers, law enforcement, and the public that lists and tracks thefts of nonferrous metal and articles containing nonferrous metals. The existing database established by the Institute of Scrap Recycling Industries (the ISRI Theft Alert System) would be considered an appropriate database, but dealers could participate in another system providing substantially the same services.

Penalties and Remedies. A violation of the new act would be a state civil infraction subject to a civil fine of up to \$5,000. A person could bring a private cause of action for monetary damages suffered from a violation of the act by a seller or dealer, or both. The court would award treble damages for the value of the nonferrous metal article stolen; the court could also award costs. (The value of the article would refer to the greatest of the replacement cost of the article, the cost of repairing the damage caused by the larceny, or the total of replacement cost and cost of repairs.)

The remedies in the act would be considered cumulative and would not affect the right of any other person, local governmental unit, or state or federal unit to bring a civil, criminal, or regulatory action.

FISCAL IMPACT:

A fiscal analysis is in process.

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