

NONFERROUS METAL REGULATORY ACT

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House Bill 6181 (Substitute H-2)

Sponsor: Rep. Andy Meisner

Committee: Commerce

Complete to 6-11-08

A SUMMARY OF HOUSE BILL 6181 AS REPORTED FROM COMMITTEE 6-3-08

The bill would create the Nonferrous Metal Regulatory Act, which would apply to purchasers of nonferrous metals, such as scrap metal recyclers, scrap processors, 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 upon reasonable suspicion of a violation. 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.

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 reviewed every two years 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.

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. 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.)

Criminal Penalties. A person who knowingly bought or sold nonferrous metal articles knowing they were stolen would be guilty of a felony punishable, for a first offense, by imprisonment for not more than five years and/or a fine of up to \$5,000 and punishable for a second or subsequent offense by imprisonment for not more than five years and/or a fine of up to \$10,000.

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:

The fiscal impact of this bill is indeterminate. To the extent that the bill creates new causes of action, the judiciary would realize increased costs in the administration and disposition of the increased caseload. Any fines imposed in relation to the new legislation are civil infraction fines and would be applied to the support of public libraries and county law libraries as provided in the State Constitution of 1963 (Article 8, Section 9).

The bill's fiscal impact on state and local correctional systems from criminal penalties would depend on the severity of sentences imposed for commerce in stolen scrap metal. If offenders were sentenced to terms of probation or imprisonment in a state prison, the state could incur additional costs. If offenders were more likely to be given a jail term, affected counties could incur additional costs. Any increase in the collection of penal

fine revenues could benefit local libraries, who are the constitutionally-designated recipients of those revenues.

BACKGROUND INFORMATION:

House Bill 6181 is one of three bills reported from the House Commerce Committee aimed at addressing the serious and growing problem of the theft of materials and objects made of valuable metals, such as copper. Industry and law enforcement representatives say that the prices of these commodities have been rising, leading to an increase in thefts and illegal sales. The other two bills reported by the Commerce Committee are House Bill 5694 and House Bill 6003.

House Bill 5694 would impose new record-keeping requirements on second hand dealers and junk dealers and impose increased criminal penalties on a dealer who buys or sells scrap metal knowing that it was stolen.

The other bill, *House Bill 6003*, would require the Department of Labor and Economic Growth to create a model ordinance for the licensure of second hand dealers and junk dealers. The model ordinance would be designed for use by a county, city, or village that had not adopted or enacted an ordinance of its own. The ordinance would be applicable and have the force of law in a county, city, or village, unless the unit had adopted a substantially equivalent ordinance at least as strict.

POSITIONS:

The Department of Labor and Economic Growth (DLEG) has indicated support for House Bills 6181, 5694, and 6003. (6-3-08)

The Michigan Association of Broadcasters has indicated support for House Bills 6181, 5694, and 6003.

Verizon, Sprint, and AT&T all have indicated support for House Bills 6181, 5694, and 6003.

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