



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

House Bill 6181 (Substitute H-2 as passed by the House)  
Sponsor: Representative Andy Meisner  
House Committee: Commerce  
Senate Committee: Economic Development and Regulatory Reform

Date Completed: 11-12-08

**CONTENT**

**The bill would create the "Nonferrous Metal Regulatory Act" to establish requirements for dealers and sellers of nonferrous metals, and prescribe penalties and remedies for violations. The bill would do all of the following:**

- Require a dealer to produce and maintain records of purchases of nonferrous metals, and make them available to law enforcement.**
- Require a dealer to tag and hold, for seven days, any article containing nonferrous metal purchased from a seller under certain circumstances.**
- Prohibit the sale or purchase of specific articles, including public fixtures, unless the seller were the owner or agent or had authorization to sell them.**
- Require a dealer to participate in an internet-based database that tracked the theft of nonferrous metal and articles containing nonferrous metal.**
- Require a seller to provide a dealer with photographic identification and a thumbprint.**
- Require a seller to sign a statement as to ownership of, or authority to sell, nonferrous metal offered to a dealer.**
- Require a seller to attest to the lack of certain criminal convictions.**
- Prescribe criminal penalties and a civil fine for violations of the proposed Act.**
- Allow a private cause of action for monetary damages suffered from a violation.**

Definitions

"Nonferrous metal" would mean a metal that does not contain significant quantities of ferrous metal but contains copper, brass, aluminum, bronze, lead, zinc, nickel, platinum, or alloys of those metals. "Ferrous metal" would mean a metal that contains significant quantities of iron or steel.

"Dealer" would mean any person who purchases nonferrous metals from any seller. The term would include a person who 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.

"Seller" would mean any individual or person who regularly, sporadically, or on a one-time basis receives consideration from any other person from the purchase by a dealer of nonferrous metal offered by that seller.

## Dealer Requirements

Purchase Records. A dealer would have to produce and maintain an accurate and legible record of each purchase transaction. ("Record" would mean a paper, electronic, or other generally accepted method of storing information in a retrievable form.)

The dealer would have to maintain the records for at least one year; keep them in a location that was readily accessible to a local, State, or Federal law enforcement agency for inspection during normal business hours; and make the records, or copies of them, available to any local, State, or Federal law enforcement agency upon reasonable suspicion of violation of the proposed Act.

The record of a purchase transaction regarding nonferrous metal would have to contain the name, address, and identifying number from the seller's driver license, military ID card, Michigan ID card, passport, or other government-issued ID containing a photograph. A legible scan or photocopy of the ID would satisfy this requirement. In the case of a repeat seller, a copy of this information could be kept on file with the dealer and used for future transactions.

The purchase record also would have to contain all of the following:

- The license plate number of the vehicle delivering the nonferrous metal.
- The date and time of the transaction.
- A description of the predominant types of metal purchased, made in accordance with the custom of the trade.
- The weight, quantity, or volume of metal, made in accordance with the custom of the trade.
- The consideration paid and the method of payment.
- A signed statement from the seller that the seller was the owner of the metal or otherwise was authorized to sell it.
- A thumbprint of the seller.

In the case of a seller that was an industrial or commercial account in which payment was made by check or electronic transfer made payable directly to the business, the dealer would not have to produce the record described above as long as the personal and business identifying information of the industrial or commercial account seller was on file with the dealer and conformed to a written description of the type of nonferrous metal or articles customarily purchased by the dealer from that seller, and the information was reviewed at least every two years and validated as current or updated by the dealer.

("Industrial or commercial account" would mean any person operating from a fixed location, that is a seller of ferrous or nonferrous metal to a scrap metal recycler under a written agreement.)

Tag & Hold. A dealer would have to tag and hold, for seven calendar days, any article containing nonferrous metal purchased from a seller and offered for purchase if any of the following applied and the person delivering the article did not have a written receipt or other documentation indicating where the person obtained the article:

- The article had altered or obliterated serial numbers.
- Due to the identification on the article or due to the type of article, the dealer reasonably would be considered to know that the article was, or had been, the property of a governmental entity.
- Due to the identification on the article, the dealer reasonably would be considered to know that it was, or had been, the property of a business.

- The article was a commemorative, decorative, or other cemetery-related or apparently ceremonial article.
- The article was copper wiring, whether burned or with sheathing.

The tag-and-hold requirement also would apply if the article were subject to a theft alert report or bulletin the dealer received from any law enforcement agency.

The tag-and-hold requirement would not apply to any article containing nonferrous metal that did not conform to the circumstances described above.

Specific Articles. Except in the case of a seller that had specific written documentation that the seller was the owner, agent, or person with authority to possess and sell certain articles, a seller could not sell or offer for sale, and a dealer could not purchase, any article containing nonferrous metal that was 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 fixtures.

("Public fixtures" would mean articles containing nonferrous metal that are used or located in areas open to the public, including utility access covers; water meter covers; street light poles and fixtures; road and bridge guard rails; highway or street signs; traffic directional and control signs; traffic light signals; telecommunications cable; utility-related articles; and historical markers.)

Database. A dealer would have to participate in, and maintain participation in, an internet-based database available to dealers, law enforcement agencies, and the general public that listed and tracked, at a minimum, thefts of nonferrous metal and articles containing nonferrous metals.

The existing database established by the Institute of Scrap Recycling Industries, Inc., referred to as the "ISRI Theft Alert System", would be considered an appropriate internet-based database. A dealer could participate in any other database that provided substantially the same services.

Method of Payment. A dealer would have to pay a seller by check, electronic transfer, ATM card, or other method capable of being traced from the dealer to the seller. Payment by cash or currency, barter, or trade would not be considered a payment that complied with this requirement.

### Seller Requirements

A seller would have to do all of the following:

- Present to the dealer an operator's or chauffeur's 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 identification purposes by the dealer and for investigation purposes by a law enforcement agency.
- Execute a signed statement indicating that the seller was the owner of, or otherwise was 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 metals.

## Criminal Penalties, Civil Sanction, & Civil Remedy

A violation of the requirement for a dealer to keep and maintain records of purchase transactions and make them available to law enforcement would be a misdemeanor punishable by a maximum fine of \$500 and/or up to 93 days' imprisonment.

It would be a felony for a person to buy or sell nonferrous metal articles that he or she had reason to believe were stolen. A first offense would be punishable by up to five years' imprisonment and/or a maximum fine of \$5,000. A second or subsequent offense would be punishable by up to five years' imprisonment and/or a maximum fine of \$10,000.

A person who otherwise violated the proposed Act would be responsible for a State civil infraction and could be ordered to pay 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, a dealer, or both. The court would have to award treble damages for the value of the nonferrous metal article stolen, and could award costs regarding any aspect of an action. ("Value of the nonferrous metal article" would mean the greatest of: the replacement cost of the stolen article, the cost of repairing the damage caused by the larceny of the article, or the total of both.)

The remedies under the proposed Act would be cumulative and would not affect the ability or right of any other person, local governmental unit, or State or Federal governing unit to bring any action under any civil, criminal, or regulatory act or ordinance that was not otherwise prohibited by law.

The Act would not exempt or release any person from obtaining and maintaining a license under any other act or ordinance or complying with any strictures contained in any other act or ordinance.

Legislative Analyst: Suzanne Lowe

## **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed offenses. To the extent that the bill increased convictions or incarceration time, local governments would incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$32,000. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Lindsay Hollander

S0708\6181sa

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.