

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 6181**

A bill to regulate the purchase and sale of certain nonferrous metals; to provide for disclosures by certain persons regarding certain transactions; to require the creation of records for certain purposes and for the use of certain databases by certain persons; and to provide for penalties and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "nonferrous metal regulatory act".

3 Sec. 3. As used in this act:

4 (a) "Dealer" means any person that is not a first purchaser
5 who purchases nonferrous metals from any seller. Dealer includes,
6 but is not limited to, a person, whether or not licensed under
7 state law or local ordinance, that operates a business as a scrap
8 metal recycler, scrap processor, secondhand and junk dealer, or

1 other person who purchases any amount of nonferrous metal on a
2 regular, sporadic, or 1-time basis. Dealer does not include an
3 automotive recycler regulated by and complying with section 217 of
4 the Michigan vehicle code, 1949 PA 300, MCL 257.217; section 18 of
5 the motor vehicle service and repair act, 1974 PA 300, MCL
6 257.1318; or section 2 of 1986 PA 119, MCL 257.1352, when engaging
7 in activities that meet the definition of automotive recycler as
8 defined in section 2a of the Michigan vehicle code, 1949 PA 300,
9 MCL 257.2a.

10 (b) "Documentation" means a signed statement that indicates
11 where the person obtained the article, that the person is
12 authorized to sell the article, or other evidence that reasonably
13 demonstrates ownership of the article and the source of the
14 article.

15 (c) "Ferrous metal" means a metal that contains significant
16 quantities of iron or steel.

17 (d) "First purchaser" means the first buyer of a manufactured
18 product containing nonferrous metal in a retail or business-to-
19 business transaction. Persons purchasing nonferrous metal in
20 violation of this act, automotive recyclers, pawnshops, scrap metal
21 recyclers, and scrap processors are not considered first
22 purchasers.

23 (e) "Industrial or commercial account" means any person,
24 operating from a fixed location, that is a seller of ferrous or
25 nonferrous metal to a scrap metal recycler pursuant to a written
26 agreement.

27 (f) "Nonferrous metal" means a metal that does not contain

1 significant quantities of ferrous metal but contains copper, brass,
2 platinum-based metals, aluminum, bronze, lead, zinc, nickel, or
3 alloys of those metals.

4 (g) "Person" means an individual, partnership, corporation,
5 limited liability company, joint venture, trust, association, or
6 other legal entity.

7 (h) "Public fixtures" means articles containing nonferrous
8 metal that are used or located in areas open to the public and
9 include, but are not limited to, utility access covers; street
10 light poles and fixtures; road and bridge guard rails; highway or
11 street signs; water meter covers; traffic directional and control
12 signs; traffic light signals; telecommunications cable; utility-
13 related articles; and historical markers.

14 (i) "Record" means a paper, electronic, or other generally
15 accepted method of storing information in a retrievable form.

16 (j) "Scrap metal recycler" means a person that purchases
17 nonferrous metal that is intended for recycling or reuse, whether
18 regarded as a scrap processor, core buyer, or other similar
19 business operation.

20 (k) "Scrap processor" means that term as defined in section 3
21 of 1917 PA 350, MCL 445.403.

22 (l) "Seller" means any individual or person that either
23 regularly, sporadically, or on a 1-time basis receives
24 consideration from any other person from the purchase by a dealer
25 of nonferrous metal offered by that seller.

26 Sec. 5. (1) A dealer shall do all of the following:

27 (a) Produce and maintain records as required under section

1 7(2).

2 (b) Participate in a database meeting the requirements of
3 section 11.

4 (c) Tag and hold any nonferrous metal as provided for in
5 section 9.

6 (d) Pay a seller by a method capable of being traced from the
7 dealer to the seller. Payment by cash or currency of more than
8 \$50.00, barter, or trade is not considered a payment that complies
9 with the requirement of this subdivision. Payment of cash in any
10 amount in a transaction involving predominantly copper articles is
11 considered a violation of this subdivision.

12 (e) In the case of a transaction involving nonferrous metal,
13 verify that the seller is at least 16 years of age.

14 (2) A seller shall do all of the following:

15 (a) Present to the dealer an operator's or chauffeur's
16 license, military identification card, Michigan identification
17 card, passport, or other government-issued identification
18 containing a photograph and allow the dealer to make a photocopy or
19 electronic copy of the identification.

20 (b) Allow the dealer to make a thumbprint, to be used only for
21 identification purposes by the dealer and for investigation
22 purposes by a law enforcement agency.

23 (c) Execute a signed statement indicating that the seller is
24 the owner of, or is otherwise authorized to sell, the nonferrous
25 metal offered for purchase to the dealer.

26 (d) Attest to the lack of any criminal convictions involving
27 the theft, conversion, or sale of nonferrous metals.

1 Sec. 7. (1) Except as otherwise provided in this subsection, a
2 dealer shall produce and maintain an accurate and legible record of
3 each purchase transaction. The dealer shall maintain the records
4 produced under this section for at least 1 year, shall keep the
5 records in a location that is readily accessible to a local, state,
6 or federal law enforcement agency for inspection during normal
7 business hours, and shall make the records, or copies of those
8 records, available to any local, state, or federal law enforcement
9 agency upon reasonable suspicion of violation of this act.

10 (2) The record of a purchase transaction regarding nonferrous
11 metal shall contain all of the following:

12 (a) The name, address, and identifying number from the
13 seller's operator's or chauffeur's license, military identification
14 card, Michigan identification card, passport, or other government-
15 issued identification containing a photograph. A legible scan or
16 photocopy of the identification is considered satisfactory in
17 fulfilling the requirement of this subdivision. In the case of a
18 repeat seller, a copy of the information may be kept on file with
19 the dealer and be used for future transactions.

20 (b) The license plate number of the vehicle delivering the
21 nonferrous metal.

22 (c) The date and time of the transaction.

23 (d) A description of the predominant types of metal purchases,
24 made in accordance with the custom of the trade.

25 (e) The weight, quantity, or volume of metal, made in
26 accordance with the custom of the trade.

27 (f) The consideration paid and the method of payment.

1 (g) A signed statement from the seller that the seller is the
2 owner of the metal or is otherwise authorized to sell the metal
3 subject to the transaction.

4 (h) A thumbprint of the seller.

5 (3) In the case of a seller that is an industrial or
6 commercial account where payment is made by a method capable of
7 being traced from the dealer to the seller and payment is made
8 directly to the business, the dealer is not required to produce the
9 record described in subsection (2) so long as the personal and
10 business identifying information of the industrial or commercial
11 account seller is on file with the dealer and conforms to a written
12 description of the type of nonferrous metal or articles customarily
13 purchased by the dealer from that seller, and the information is
14 periodically reviewed at least every 2 years and validated as
15 current or updated by the dealer.

16 Sec. 9. (1) A dealer shall tag and hold, for 7 calendar days,
17 any article containing nonferrous metal purchased from a seller and
18 that is offered for purchase under any of the following
19 circumstances:

20 (a) The article has altered or obliterated serial numbers, and
21 the person delivering the article does not have a written receipt
22 or documentation.

23 (b) Where, due to the identification on the article or due to
24 the type of article, the dealer would reasonably be considered to
25 have knowledge that the article is, or was, the property of a
26 governmental entity, and the person delivering the article does not
27 have a written receipt or documentation.

1 (c) Where, due to the identification on the article, the
2 dealer would reasonably be considered to have knowledge that the
3 article is, or was, the property of a business, and the person
4 delivering the article does not have a written receipt or
5 documentation.

6 (d) The article is a commemorative, decorative, or other
7 cemetery-related or apparently ceremonial article, and the person
8 delivering the article does not have a written receipt or
9 documentation.

10 (e) The article is subject to a notification or bulletin from
11 any law enforcement agency that is received by the dealer prior to
12 the purchase of the article.

13 (f) Where the article is copper wiring, whether burned or with
14 sheathing, and the person delivering the article does not have a
15 written receipt or documentation.

16 (2) The tag and hold requirements of this section require the
17 dealer to also create and maintain the records required under
18 section 7 regarding those articles.

19 (3) The tag and hold requirements of subsection (1) do not
20 apply to any of the following:

21 (a) Any article containing nonferrous metal that does not
22 conform to the circumstances described in subsection (1).

23 (b) Any article that has been the subject of tag and hold by 1
24 dealer in compliance with this section if that article is resold
25 directly to another dealer. In addition, any article that was not
26 initially subject to the tag and hold provisions of this section is
27 not thereafter subject to the tag and hold provisions if that

1 article is resold to another dealer.

2 (4) Except in the case where the seller has specific written
3 documentation that the seller is the owner, agent, or person with
4 authority to possess and sell certain articles, a seller shall not
5 sell or offer for sale, and a dealer shall not purchase, any
6 article containing nonferrous metal that is marked with any form of
7 the name, initials, markings, or logo of a governmental entity,
8 utility, cemetery, or railroad; any beer kegs; or any public
9 fixtures. Any sale is subject to the provisions of this act.

10 Sec. 11. (1) A dealer shall register with or subscribe to, and
11 maintain that registration or subscription with, an internet-based
12 database available to dealers, law enforcement agencies, and the
13 general public that lists and tracks, at a minimum, thefts of
14 nonferrous metal and articles containing nonferrous metals. The
15 database may be reasonably limited in terms of time and
16 geographical area.

17 (2) The existing database established by the institute of
18 scrap recycling industries, inc., referred to as the ISRI theft
19 alert system, is considered an appropriate internet-based database.
20 A dealer may register with or subscribe to any other database that
21 provides substantially the same services as the database described
22 in subsection (1).

23 Sec. 13. (1) A person who violates section 7(1) or section 9
24 knowing or having reason to know that he or she is violating those
25 sections is guilty of a misdemeanor punishable by a fine of not
26 more than \$500.00 or imprisonment for not more than 93 days, or
27 both.

1 (2) A person who buys or sells nonferrous metal articles
2 knowing or having reason to know that they are stolen is guilty of
3 a felony punishable by imprisonment for not more than 5 years or a
4 fine of not more than \$5,000.00, or both, for a first offense and
5 is guilty of a felony punishable by imprisonment for not more than
6 5 years or a fine of not more than \$10,000.00, or both, for a
7 second or subsequent offense.

8 Sec. 15. A person violating this act knowing or having reason
9 to know that he or she is violating this act is responsible for a
10 state civil infraction and may be ordered to pay a civil fine of
11 not more than \$5,000.00.

12 Sec. 17. (1) A person may bring a private cause of action, in
13 a court of competent jurisdiction, for monetary damages suffered
14 from violation of this act by a seller or a dealer, or both.

15 (2) The court shall award treble damages for the value of the
16 nonferrous metal article stolen. The court may award costs
17 regarding any aspect of an action brought under subsection (1). As
18 used in this subsection, "value of the nonferrous metal article
19 stolen" means the greatest of the following:

20 (a) The replacement cost of the stolen article.

21 (b) The cost of repairing the damage caused by the larceny of
22 that article.

23 (c) The total of subdivisions (a) and (b).

24 Sec. 19. (1) The remedies under this act are cumulative and do
25 not affect the ability or right of any other person, local
26 governmental unit, or state or federal governing unit to bring any
27 action under this or any other civil, criminal, or regulatory act

1 or ordinance that is otherwise not prohibited by law.

2 (2) This act does not exempt or release any person from the
3 following:

4 (a) Obtaining and maintaining a license under any other act or
5 ordinance.

6 (b) Complying with any strictures contained in any other act
7 or ordinance.

8 Sec. 21. This act takes effect April 1, 2009.

9 Sec. 23. This act does not take effect unless all of the
10 following bills of the 94th Legislature are enacted into law:

11 (a) Senate Bill No. 720.

12 (b) Senate Bill No. 1114.

13 (c) Senate Bill No. 1571.

14 (d) House Bill No. 5694.