



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 304 (as passed by the Senate)

(as enrolled)

Sponsor: Senator Mike Kowall

Committee: Economic Development and International Investment

Date Completed: 5-27-15

RATIONALE

Law enforcement agencies across the State are tasked with preventing the theft of metals such as copper, bronze, brass, and aluminum, as well as finding and prosecuting the offenders. According to the National Insurance Crime Bureau, Michigan ranked 10th among states with the most metal theft claims for the period 2009 to 2011. To make it more difficult for thieves to receive payment for stolen items, as well as to create a paper trail to assist law enforcement in apprehending offenders, an amendment to the Scrap Metal Regulatory Act was enacted in 2014 to require scrap metal dealers to mail payment for certain high-theft items to the seller, rather than paying the seller in person. When the requirement was added, catalytic converters, air conditioners, and copper wire were singled out as high-theft items. The Act requires the dealer to mail payment if the purchase transaction for the high-theft items is \$25 or more or if all transactions with the seller on a business day total \$25 or more.

After the Act was amended, there was some confusion or disagreement as to whether the mailing requirement applied only when multiple transactions with a seller in a day, totaling \$25 or more, involved high-theft items, or when transactions with a seller for *any* type of scrap metal totaled \$25 or more in a day. In March 2015, Michigan Attorney General Schuette issued an opinion that the mailing requirement applies to any purchase transaction with a seller with collective sales of \$25 or more in a business day, regardless of the type of scrap metal sold (Opinion No. 7281). In light of that opinion, some believe that the Act's mailing requirement should be limited to sales of the high-theft items specifically listed.

CONTENT

The bill would amend the Scrap Metal Regulatory Act to specify that only transactions involving catalytic converters, air conditioners and parts, and copper wire and pipe would be subject to the requirement that payment be mailed to the seller, if all of the seller's purchases of those items in a day totaled \$25 or more.

The Act requires a scrap metal dealer to pay a seller by direct deposit or electronic transfer, check or money order, or electronic payment card or encrypted receipt, in a purchase transaction for any of the following items:

- Catalytic converters, unless the seller is an automotive recycler, a manufacturer or wholesaler of catalytic converters, or a muffler shop, tire store, or other retail business that sells converters separately or as part of an exhaust system.
- Air conditioners, air conditioner evaporator coils or condensers, or parts of those coils or condensers.
- Copper wire, including copper wire that was burned in whole or in part to remove the insulation, copper pipe, or copper fittings.

If the purchase price in a transaction involving any of those items totals \$25 or more, unless the seller is an industrial or commercial customer, the dealer must pay the seller by mailing one of the following items to the seller at the address shown on the seller's identification, and is prohibited from paying the seller in person or using any other form of delivery:

- A check or money order.
- An electronic payment card or encrypted receipt.
- A nontransferable receipt that the seller may redeem at the scrap dealer's premises for either a check or money order or an electronic payment card or encrypted receipt.

This restriction also applies if the purchase price for all of a seller's purchase transactions in a business day is \$25 or more. Under the bill, the restriction would apply if all of a seller's transactions involving the items listed above, totaled \$25 or more in a business day.

In addition, in either case in which payment must be mailed, the requirement would apply only with respect to the catalytic converters, air conditioners and parts, and copper wire.

The bill would take effect 90 days after being signed into law.

MCL 445.426

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Attorney General's opinion was requested because police departments reportedly were not uniformly applying the mailing requirements in the Act. Evidently, police officers in the City of Detroit began to issue citations to scrap metal dealers that were not mailing payment when a person sold any type of scrap metal worth \$25 or more during a day. According to Senate Committee testimony, the payment requirement was written to prevent a seller with high-theft items from separating transactions to avoid triggering the mailing requirement that applies to a single transaction. Requiring payment to be mailed to a seller with transactions of any type of scrap metal totaling \$25 or more in a business day does not address problems associated with the theft of the restricted items. Regardless of the amount in question, those items cannot be paid for in cash, and it stands to reason that the mailing requirement also would apply only to the high-theft items listed in the Act. Since the Attorney General based his opinion on the language of the statute, the bill would amend that language to limit the mailing requirement involving multiple transactions in a day to high-theft items, as the Act clearly requires in the case of a single transaction with a purchase price of \$25 or more.

Supporting Argument

The bill would help ease the considerable burden that the law places on scrap metal dealers. Complying with the mailing requirement can be complex, especially when a seller brings in both high-theft items and other material that is not restricted. In these situations, the dealer may pay for some items in cash, must provide a voucher or other noncash form of payment for high-theft items, and, depending on their value, must mail the noncash payment. Even without the Attorney General's interpretation, this system consumes scrap metal dealers' time and resources. Furthermore, dealers already have made database changes to comply with the 2014 amendments based on the parties' understanding of the law. If the Attorney General's opinion is not reversed, additional changes will be required. The bill represents a simple solution that would allow dealers to continue to operate as they have since the law was amended.

Legislative Analyst: Ryan M. Bergan

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: John Maxwell

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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.