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BILL ANALYSIS

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Senate Bill 720 (Substitute S-2 as passed by the Senate)
Senate Bill 1114 (Substitute S-1 as passed by the Senate)
Senate Bill 1358 (Substitute S-3 as passed by the Senate)

Sponsor: Senator Buzz Thomas (S.B. 720)
Senator Cameron S. Brown (S.B. 1114)
Senator Alan Sanborn (S.B. 1358)

Committee: Economic Development and Regulatory Reform

Date Completed: 8-12-08

RATIONALE

Recently, thefts of various types of metal have been on the increase both in Michigan and nationwide. Most often, this trend has involved the theft of copper tubing from construction sites or copper wiring from telephone or utility lines or other facilities. As metal prices continue to rise, the theft of more types of metal, even in small amounts, also is on the rise. Increasingly, metals such as bronze, zinc, nickel, and aluminum are targeted by thieves for resale as scrap. In addition to construction sites and utility facilities, metal products are stolen from schools, churches, cemeteries, parks, farms, automobiles, and both abandoned and occupied houses. The situation has been fueled by a surge in scrap metal prices over the last four years or so and increased worldwide demand for recycled metal. In order to combat this problem in Michigan, some people believe that a comprehensive approach addressing both the demand and the supply side of the scrap metal market is needed. It has been suggested that scrap metal transactions should be subject to enhanced regulation, including stringent record-keeping and identification requirements, and that the theft of certain metals should carry the same penalties as the theft of money and other valuables.

CONTENT

Senate Bill 1358 (S-3) 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 purchase 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.**
- **Require a dealer to register with or subscribe to an internet-based database regarding 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 of the Act.**

Senate Bill 720 (S-2) would amend Public Act 350 of 1917, which regulates and provides for the licensure of

secondhand goods and junk dealers, to do both of the following:

- Specify that the Act's local licensure requirements would not exempt a person purchasing or selling articles of nonferrous metals from compliance with the proposed Nonferrous Metal Regulatory Act.**
- Delete a provision under which a local license may not be issued to conduct a junk business in a residential community upon property owners' petition.**

Senate Bill 1114 (S-1) would amend the Michigan Penal Code to subject a person who committed larceny by stealing nonferrous metal to the graduated penalties that apply to stealing such things as money, a bank note, and a deed.

Senate Bills 1114 (S-1) and 1358 (S-3) would define "nonferrous metal" as a metal that does not contain significant quantities of ferrous metal but contains copper, brass, platinum-based metals, aluminum, bronze, lead, zinc, nickel, or alloys of those metals. Under Senate Bill 1358 (S-3), "ferrous metal" would mean a metal that contains significant quantities of iron or steel.

Senate Bills 720 (S-2) and 1114 (S-1) are tie-barred to Senate Bill 1358. Senate Bill 1358 (S-3) is tie-barred to Senate Bill 720. Senate Bill 1114 (S-1) would take effect 90 days after its enactment.

Senate Bill 1358 (S-3)

Definitions

The bill would define "dealer" as any person who purchases nonferrous metals from any seller that is not a first purchaser. The term would include a person that 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. "Dealer" would not include an automotive recycler regulated by and complying with Section 217 of the Michigan Vehicle Code, Section 18 of the Motor Vehicle Service and Repair Act, or Section 2 of Public Act 119 of 1986 (which regulates the business of buying or receiving used motor vehicle parts), when engaging in

activities that meet the definition of automotive recycler in Section 2a of the Michigan Vehicle Code (i.e., a person who engages in business primarily for the purpose of selling at retail salvage vehicle parts and secondarily for the purpose of selling at retail salvage motor vehicles or manufacturing or selling a product of gradable scrap metal). (Section 217 of the Michigan Vehicle Code requires motor vehicle dealers to apply for new certificates of title. Section 18 of the Motor Vehicle Service and Repair Act contains record-keeping requirements for motor vehicle repair facilities. Section 2 of Public Act 119 of 1986 contains record-keeping requirements for used vehicle parts dealers.)

"Seller" would mean any individual or person that 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. "First purchaser" would mean the first buyer of a manufactured product containing nonferrous metal in a retail or business-to-business transaction in compliance with the proposed Act.

Dealer Requirements

Purchase Records. A dealer would have to produce and maintain an accurate and legible record of each purchase transaction. 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 include 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. 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 repeat seller, a copy of the seller's identification and thumbprint could be kept on file with the dealer and used for future transactions.

In the case of a seller that was an industrial or commercial account, the dealer would not have to produce the record described above as long as the industrial or commercial account seller's personal and business identifying information 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 periodically reviewed at least every two years and validated as current or updated by the dealer.

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 documentation.

- 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

notification or bulletin from any law enforcement agency that the dealer received before the purchase.

The tag-and-hold requirement would not apply to any article containing nonferrous metal that did not conform to the circumstances described above or to any article that had been the subject of tag and hold by one dealer if that article were resold to another dealer. Any article that was not initially subject to the tag and hold requirement would not later be subject to it if the article were resold to another dealer.

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.

("Documentation" would mean a signed statement that indicates where a person obtained an article or other evidence that reasonably demonstrates ownership of an article and its source. "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 register with or subscribe to, and maintain that registration or subscription with, 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 database could be reasonably limited in terms of time and geographical area.

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 under the proposed Act. A dealer could register with or

subscribe to 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 bar code, or other method capable of being traced from the dealer to the seller. Payment by cash or currency of more than \$50, barter, or trade would not be considered a payment that complied with this requirement. Payment of cash in any amount in a transaction involving predominantly copper articles would be considered a violation of these provisions.

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.

In the case of a repeat seller, a copy of the thumbprint could be kept on file with the dealer and used for future transactions.

Criminal Penalties, Civil Sanction, & Civil Remedy

A violation of the requirement for a dealer to keep and maintain accurate, legible records for at least one year 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. Buying or selling nonferrous metal articles, knowing that they were stolen, would be a felony punishable by up to five years' imprisonment and/or a maximum fine of \$5,000. 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.

Senate Bill 720 (S-2)

Public Act 350 of 1917 prohibits a person from carrying on the business of secondhand goods dealer or junk dealer in any county, city, or village of this State without first obtaining a license from the county, city, or village where the business is to be conducted. The bill specifies that this would not exempt a person purchasing or selling articles of nonferrous metals from compliance with the proposed Nonferrous Metal Regulatory Act.

The bill also would delete a provision under which a local license may not be issued to conduct a junk business in any residential community where 65% or more of the property owners within a radius of one city block of the contemplated junk business petition the issuing officer not to issue a license.

Senate Bill 1114 (S-1)

Under the bill, a person who committed larceny by stealing nonferrous metal would be subject to the graduated penalties that apply to stealing such things as money, a bank note, a book of accounts for money or

goods due, and a deed. Those penalties, which are based on the value of the property stolen and/or the offender's prior convictions, are shown in Table 1. The

maximum fine is the amount shown in the table or three times the value of the property stolen, whichever is greater.

Table 1

Value of Stolen Property	Offense Level	Maximum Imprisonment and/or Fine
\$20,000 or more; or \$1,000 or more but less than \$20,000 w/two or more priors.	Felony	10 years and/or \$15,000
\$1,000 or more but less than \$20,000; or \$200 or more but less than \$1,000 w/one or more priors.	Felony	5 years and/or \$10,000
\$200 or more but less than \$1,000; or less than \$200 w/one or more priors.	Misdemeanor	1 year and/or \$2,000
Less than \$200	Misdemeanor	93 days and/or \$500

For nonferrous metal, "the value of the property stolen" would mean the replacement cost of the stolen nonferrous metal, the cost of repairing the damage caused by the larceny, or the sum of both of those amounts, whichever was greatest.

addition, thieves reportedly stole copper plumbing from a newly renovated decorative fountain at Detroit's Belle Isle, as well as 200 lead bricks, with a total weight of about 5,000 pounds, from the University of Michigan.

MCL 445.401 & 445.402 (S.B. 720)
750.356 (S.B. 1114)

These crimes have a broad detrimental effect not only on the direct victims, but on society as a whole. The replacement cost of the items stolen is far more than the value of the metal that thieves take, apparently intending to sell it to scrap dealers. Among other things, this drives up the cost of construction and energy. Also, the deflated real estate market and increase in home foreclosures create vulnerable targets for the theft of copper pipes, air conditioning unit components, hot water heaters, sinks, appliances, and other metal articles from vacant homes, making them less marketable, reducing property values, and contributing to neighborhood blight. Damaged utility facilities, caused by the removal of components from electrical transformers or copper wires from telephone lines and switches, result in diminished or lost service. In addition to causing power blackouts, this can mean that individuals are unable to reach 9-1-1 emergency services and businesses lose access to credit card, debit, and State lottery transactions. According to military and law enforcement personnel, deficiencies in the power grid and telecommunications systems raise homeland security concerns. Missing manhole covers can pose a hazard to both pedestrians and motorists. Thefts from schools, places of worship, and cemeteries not only result in

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

Scrap metal theft has become a major problem throughout Michigan. It affects both urban and rural areas, and has implications for economic development, financial recovery, public safety, and even homeland security, in addition to increased street crime. Construction sites, schools and churches, abandoned and occupied homes, graveyards, and public utilities have been targeted by thieves. The problem has hit rural areas with the theft of farm irrigation equipment and dairy production and retail equipment. According to reports from across the State, offenders have removed automobiles' catalytic converters (emissions control devices that contain small amounts of precious metal, usually platinum), severed metal components from utility facilities, removed manhole covers, and stolen decorative items and memorials from cemeteries and memorial gardens. In

high replacement costs, but take a noneconomic toll on the community as well. The Belle Isle fountain incurred about \$100,000 worth of damage and the theft of its plumbing has denied park visitors the enjoyment of the fountain. The lead brick theft from the University of Michigan has safety implications for researchers and workers, as the bricks were used as barriers to contain radiation in scientific experiments.

By increasing record-keeping and reporting requirements for scrap dealers, implementing identification requirements for sellers of scrap metal, and imposing strict criminal penalties and civil remedies, the bills would combat the widespread problem of scrap metal theft. This approach would address both the demand and the supply sides of the scrap metal market, and could help to contain the rapid growth in scrap metal theft that has occurred over the last several years. Further, addressing the problem in this multifaceted manner would go far beyond deterring simple street-level larcenies. It also could help to improve public safety, contain price increases in various market sectors, make Michigan a more attractive location for economic development, and assist law enforcement and military officials in maintaining homeland security.

Response: The legislation would apply only to nonferrous metal but, according to testimony before the Senate Economic Development and Regulatory Reform Committee, all types of metal have been targeted. Homeowners, for instance, have lost such items as stainless steel sinks to scrap metal thieves.

Opposing Argument

Penalties for stealing scrap metal, and for buying and selling stolen scrap, should be based on replacement costs, not just on the value of the stolen property. While the value of individual components stolen and sold for scrap might be relatively minor, the costs of replacement (which may require trouble-shooting, environmental cleanup, labor, and other expenses) usually are much greater.

Response: Senate Bill 1114 (S-1) specifies that, if the property stolen were

nonferrous metal, the value of the property stolen would include replacement and repair costs.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bill 720 (S-2)

The bill would likely have no impact on State revenue or expenditure. The bill potentially could change the distribution of revenue across local units by affecting the location of businesses regulated by Public Act 350 of 1917, because junk businesses could no longer be prohibited from locating in an area by the petition of local property owners.

Senate Bill 1114 S-1)

The bill would have an indeterminate fiscal impact on State and local government. In 2005, 371 offenders were convicted of felony larceny as their controlling offense for sentencing purposes. There are no data indicating how many offenders were convicted of misdemeanor larceny. Depending on how much value the cost of repairing the damage caused by the larceny of nonferrous metal would add, the bill could change the category of larceny under which offenders are charged. To the extent that the bill would result in increased incarceration time or increased sentences to jail, local governments would incur increased costs of incarceration in local facilities, which vary by county. To the extent that the bill would result in increased incarceration time or sentences to prison, the State would incur increased costs of incarceration in a State facility at an average annual cost of \$33,000. Additional penal fine revenue would benefit public libraries.

Senate Bill 1358 (S-3)

The bill would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many dealers would be convicted of violations relating to producing and

maintaining records of purchase transactions as described in the bill, or how many people would be convicted of knowingly buying or selling stolen nonferrous metal articles. 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 \$33,000. Additional State civil infraction and penal fine revenue would benefit public libraries.

Fiscal Analyst: Lindsay Hollander
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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.