



Senate Fiscal Agency  
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**BILL ANALYSIS**

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Senate Bill 720 (as enacted)  
Senate Bill 1114 (as enacted)  
Senate Bill 1571 (as enacted)  
House Bills 5694 and 6181 (as enacted)  
Sponsor: Senator Buzz Thomas (S.B. 720)  
Senator Cameron S. Brown (S.B. 1114)  
Senator Alan Sanborn (S.B. 1571)  
Representative Terry Brown (H.B. 5694)  
Representative Any Meisner (H.B. 6181)  
Senate Committee: Economic Development and Regulatory Reform  
House Committee: Commerce

**PUBLIC ACT 432 of 2008**  
**PUBLIC ACT 431 of 2008**  
**PUBLIC ACT 430 of 2008**  
**PUBLIC ACTS 428 & 429 of 2008**

Date Completed: 7-6-09

### **RATIONALE**

In recent years, 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 was 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.

**establish requirements for dealers and sellers of nonferrous metals and prescribe penalties and remedies for violations. The bill does all of the following:**

- Requires a dealer to produce and maintain records of purchase of nonferrous metals, and make them available to law enforcement.
- Requires a dealer to tag and hold, for seven days, any article containing nonferrous metal purchased from a seller under certain circumstances.
- Requires a dealer to register with or subscribe to an internet-based database regarding the theft of nonferrous metal and articles containing nonferrous metal.
- Requires a seller to provide a dealer with photographic identification and a thumbprint.
- Requires a seller to sign a statement as to ownership of, or authority to sell, nonferrous metal offered to a dealer.
- Requires a seller to attest to the lack of certain criminal convictions.
- Prescribes criminal penalties and a civil fine for violations of the Act.
- Allows a private cause of action for monetary damages suffered from a violation of the Act.

### **CONTENT**

**House Bill 6181** created the "Nonferrous Metal Regulatory Act" to

**Senate Bill 720 and House Bill 5694** amended Public Act 350 of 1917, which

regulates and provides for the licensure of secondhand goods and junk dealers, to do all of the following:

- Specify that the Act's local licensure requirements do not exempt a person purchasing or selling articles of nonferrous metals from compliance with the Nonferrous Metal Regulatory Act.
- Require a dealer to make a copy of the driver license or State ID card of a person from whom the dealer purchased or received items, and include the copy in the dealer's weekly report to the police.
- Require a secondhand or junk dealer's payment for an item to be made either by check or electronically.
- Allow a dealer's book or record, and weekly report to police, to be either written or electronic.
- Revise felony penalties for knowingly buying or selling stolen scrap metal.
- Delete a provision under which a local license could not be issued to conduct a junk business in a residential community upon property owners' petition.

**Senate Bill 1114 amended the Michigan Penal Code to subject a person who commits larceny by stealing nonferrous metal to the graduated penalties that apply to stealing such things as money, a bank note, and a deed.**

**Senate Bill 1571 amended the Code of Criminal Procedure to revise the sentencing guidelines for buying or selling stolen scrap metal and add a new guidelines classification for knowingly buying or selling stolen nonferrous metal articles.**

House Bill 6181 and Senate Bill 1114 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 House Bill 6181, "ferrous metal" means a metal that contains significant quantities of iron or steel.

All of the bills were tie-barred and took effect on April 1, 2009.

## **House Bill 6181**

### Definitions

The Nonferrous Metal Regulatory Act defines "dealer" as any person that is not a first purchaser who purchases nonferrous metals from any seller. The term includes 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" does 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" means 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" means the first buyer of a manufactured product containing nonferrous metal in a retail or business-to-business transaction in compliance with the Nonferrous Metal Regulatory Act.

### Dealer Requirements

Purchase Records. A dealer must produce and maintain an accurate and legible record of each purchase transaction. The dealer must maintain the records for at least one year; keep them in a location that is 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 Act.

The record of a purchase transaction regarding nonferrous metal must 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 satisfies this requirement. The purchase record also must 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 is the owner of the metal or otherwise is authorized to sell it.
- A thumbprint of the seller.

In the case of a seller that is an industrial or commercial account where payment is made by a method capable of being traced from the dealer to the seller and payment is made directly to the business, the dealer does not have to produce the record described above as long as the industrial or commercial account seller's personal and business identifying information 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 periodically reviewed at least every two years and validated as current or updated by the dealer.

In the case of a transaction involving nonferrous metal, a dealer must verify that the seller is at least 16 year old.

**Tag & Hold.** A dealer must 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 apply and the person delivering the

article does not have a written receipt or documentation.

- The article has 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 is, or was, the property of a governmental entity.
- Due to the identification on the article, the dealer reasonably would be considered to know that it is, or was, the property of a business.
- The article is a commemorative, decorative, or other cemetery-related or apparently ceremonial article.
- The article is copper wiring, whether burned or with sheathing.

The tag-and-hold requirement also applies if the article is subject to a notification or bulletin from any law enforcement agency that the dealer receives before the purchase.

The tag-and-hold requirement does not apply to any article containing nonferrous metal that does not conform to the circumstances described above or to any article that has been the subject of tag and hold by one dealer if that article is resold directly to another dealer. Any article that is not initially subject to the tag-and-hold requirement does not later become subject to it if the article is resold to another dealer.

Except in the case of a seller that has specific written documentation that the seller is the owner, agent, or person with authority to possess and sell certain articles, a seller may not sell or offer for sale, and a dealer may not purchase, any article containing nonferrous metal that is 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" means a signed statement that indicates where a person obtained an article, that the person is authorized to sell the article, or other evidence that reasonably demonstrates ownership of an article and its source. "Public fixtures" means 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 must 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 lists and tracks, at a minimum, thefts of nonferrous metal and articles containing nonferrous metals. The database may 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", is considered an appropriate internet-based database under the Act. A dealer may register with or subscribe to any other database that provides substantially the same services.

Method of Payment. A dealer must pay a seller by a method capable of being traced from the dealer to the seller. Payment by cash or currency of more than \$50, barter, or trade is not considered a payment that complies with this requirement. Payment of cash in any amount in a transaction involving predominantly copper articles is considered a violation of these provisions.

#### Seller Requirements

A seller must 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 is the owner of, or otherwise is 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 accurate, legible records for at least one year and make them available to law enforcement, or the tag-and-hold requirements, is a misdemeanor punishable by a maximum fine of \$500 and/or up to 93 days' imprisonment. Buying or selling nonferrous metal articles, knowing or having reason to know that they are stolen, is a felony punishable by up to five years' imprisonment and/or a maximum fine of \$5,000 for a first offense. A second or subsequent offense is punishable by up to five years' imprisonment and/or a maximum fine of \$10,000. A person who otherwise violates the Act, knowing or having reason to know that he or she is violating it, is responsible for a State civil infraction and may be ordered to pay a civil fine of up to \$5,000.

A person may 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 must award treble damages for the value of the nonferrous metal article stolen, and may award costs regarding any aspect of an action. ("Value of the nonferrous metal article" means 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 Act are cumulative and do 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 is not otherwise prohibited by law. The Act does 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**

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 does not exempt a person purchasing or selling

articles of nonferrous metals from compliance with the Nonferrous Metal Regulatory Act.

The bill also deleted a provision under which a local license previously could 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 petitioned the issuing officer not to issue a license.

### **House Bill 5694**

#### **Record & Payment**

Public Act 350 of 1917 had required a secondhand or junk dealer to keep a separate book or other record that was written in English and open to inspection by a local law enforcement agency. The bill requires a dealer to make and maintain a separate book or other written or electronic record, numbered consecutively, written in English, and open to inspection by a local law enforcement agency and the Michigan State Police.

Under the Act, at the time an article is purchased or exchanged, the dealer must write or enter in the book or record, a description of the article. The record also must include the name, description, fingerprint, operator's or chauffeur's license or State identification number, registration plate number, and address of the person from whom the article was purchased or received. The bill also requires the dealer to make a copy of the person's operator's license, chauffeur's license, or State ID card as part of the book or record.

The bill requires payment for an item to be made only by check or electronic payment system. The secondhand or junk dealer's record must indicate the method of payment.

By noon each Monday, a dealer licensed under the Act must prepare and deliver to the chief of police or chief law enforcement officer of the local unit, a legible and correct copy, written in English, from the book or other record, describing each article purchased or received during the preceding week. The report must include the hour and day when the purchase was made and a description of the person from whom the article was purchased. Under the bill, the

weekly report must be a paper or electronic copy from the dealer's written or electronic record, and include a copy of the documentation required to be in the dealer's record regarding the person from whom the article was purchased. The person previously had to verify the weekly statement by subscribing his or her name to it. The bill requires instead that the statement be verified in a manner acceptable to the chief of police or chief law enforcement officer.

#### **Penalties**

Except as provided below, a violation of the Act is a misdemeanor punishable by imprisonment for up to six months and a fine of at least \$500 but not more than \$1,000.

A secondhand or junk dealer who buys or sells scrap metal, knowing that it is stolen, is guilty of a felony. Previously, the offense was punishable by up to three years' imprisonment, a maximum fine of \$2,000, or both. The bill increased the maximum prison term to five years and the maximum fine to \$5,000, and applies this penalty to a first violation.

Previously, a secondhand or junk dealer who bought or sold stolen scrap metal that he or she had reason to believe was unlawfully removed from a utility pole, telecommunication company property, government property, or utility property or jobsite was guilty of a felony punishable by up to five years' imprisonment and/or a maximum fine of \$10,000. Under the bill, that penalty applies instead to a second or subsequent offense of a secondhand or junk dealer's buying or selling any stolen scrap metal, knowing that it is stolen.

### **Senate Bill 1114**

Under the bill, a person who commits larceny by stealing nonferrous metal is 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

If the property stolen is nonferrous metal, the bill defines "the value of the property stolen" as 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 is greatest.

**Senate Bill 1571**

Previously, buying or selling stolen scrap metal was a Class F felony, with a statutory maximum penalty of three years' imprisonment. Under the bill, it is a Class E felony with a statutory maximum sentence of five years' imprisonment.

Previously, buying or selling stolen scrap metal removed from a utility pole, telecommunications company property, government property, or utility property or jobsite was a Class E felony with a statutory maximum penalty of five years' imprisonment. Under the bill, that sentencing guidelines classification applies to any second or subsequent offense of buying or selling stolen scrap metal.

The bill also added to the sentencing guidelines knowingly buying or selling stolen nonferrous metal articles. That offense is a Class E felony with a statutory maximum sentence of five years' imprisonment.

- MCL 445.401 & 445.402 (S.B. 720)
- 750.356 (S.B. 1114)
- 777.14h (S.B. 1571)
- 445.405 et al. (H.B. 5694)
- 445.421-445.443 (H.B. 6181)

**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 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.

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 pedestrians, cyclists, and motorists. Thefts from schools, places of worship, and cemeteries not only result 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 denied park visitors the enjoyment of the fountain. The lead brick theft from the University of Michigan had 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 help to combat the widespread problem of scrap metal theft. This approach addresses both the demand and the supply sides of the scrap metal market, and may 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 goes far beyond deterring simple street-level larcenies. It also may 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.

Legislative Analyst: Patrick Affholter

## **FISCAL IMPACT**

### **Senate Bill 720**

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

### **Senate Bill 1114**

The bill will have an indeterminate fiscal impact on State and local government. In 2006, 407 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 adds, the bill might change the category of larceny under which offenders are charged. To the extent that the bill results in increased incarceration time or increased sentences to jail, local governments will incur increased costs of incarceration in local facilities, which vary by county. To the extent that the bill results in increased incarceration time or sentences to prison, the State will incur increased costs of incarceration in a State facility at an average annual cost of \$32,000. Additional penal fine revenue will benefit public libraries.

### **Senate Bill 1571 & House Bill 6181**

The bills will have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders will be convicted of knowingly buying or selling stolen nonferrous metal articles. An offender convicted of the Class E offense under the bills will receive a sentencing guidelines minimum sentence range of 0-3 months to 24-38 months. To the extent that the bills increase convictions or incarceration time, local governments will incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. The State will 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 will benefit public libraries.

## **House Bill 5694**

The bill will have an indeterminate fiscal impact on State and local government. There are no data to indicate how many dealers will be convicted of violations relating to producing and maintaining records of purchase transactions as described in the bill, or how many people will be convicted of knowingly buying or selling stolen nonferrous metal articles. Local governments will incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. The State will 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 State civil infraction and penal fine revenue will benefit public libraries.

Fiscal Analyst: Lindsay Hollander  
David Zin

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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.