

One of the driving forces behind proposed metal theft legislation has been the ruin of vacant real estate by metal thieves. Unauthorized removal of plumbing and electrical systems has effectively rendered vacant homes and commercial properties valueless, particularly in urban centers which have experienced significant foreclosure activity and price declines. Senate Bill 679 seems well written and should provide law enforcement officers with an useful tool enabling them to arrest and prosecute individuals stripping vacant houses and businesses. I, for one, was not aware that the rebuttable presumption established in Senate Bill 0679 did not already exist. Maybe the police will charge metal thieves caught in the act with a more serious charge than trespassing - the current norm in Detroit.

House Bills 4593 and 4595, on the other hand, are confusing and don't really address the issue of metal theft in Michigan. First, some technical issues with the House legislation:

Scrap metal dealers distinguish between ferrous and nonferrous metal along these lines:

Ferrous Metal

"Iron and metal alloys containing 90 percent or more iron on a nominal basis"

Nonferrous Metal

"Pure metals and metal alloys containing less than 90 percent iron on a nominal basis"

These definitions can be dressed up with legalese, but they are the functional essence of the scrap dealers' distinction. Metallurgists and physicists have more exacting definitions of these terms, but the foregoing definitions are applicable to the legislation under consideration. The nominal basis reference is required because alloys ["physical mixtures of different elemental metals"] have allowable ranges of composition which can come close to the defined 90% threshold. These definitions also account for plated articles, where nonferrous metals like zinc, chromium, and nickel are plated onto steel substrates.

These definitions capture practice in the scrap metal industry, but you won't find them enshrined in a standard or text anywhere. They explain scrap industry practices and have met the test of time. Ferrous metals are almost always magnetic (ferrimagnetic, to be precise) and nonferrous metals are usually nonmagnetic (paramagnetic, to be precise). However, there are quite a few nonferrous metals and alloys with a range of magnetic responses, so magnetism is not a good distinction for legal or commercial purposes.

The scrap metal industry makes this distinction to reflect the markedly different values of the scrap metals which fall into each category. Ferrous metal is usually purchased and sold by the gross ton [2,240 pounds, the imperial long ton] and nonferrous metal is usually purchased and sold by the pound. The difference in price is also reflected in how these categories of metal are secured by dealers: ferrous metal is yarded up outside while nonferrous metal is usually secured inside or in locked impoundments. In the past this distinction in price also reflected the likelihood of theft, but today ferrous metals are stolen frequently when thieves cannot find nonferrous metals to steal. There is a lot more legitimate ferrous metal available to the public for redemption, but you would simplify legislation by ignoring this distinction altogether. Metal theft is metal theft, regardless of the type of metal stolen.

These definitions capture gold, silver, and the platinum group [note: not base, or based] metals. Platinum group metals are the value in automobile catalytic convertors which the House legislation clearly intends to regulate. You should cover gold and silver as well; there is a lively trade in these precious metals as scrap and precious metal thefts are just as damaging to precious metal owners as base metal thefts. Most precious metal scrap is purchased by pawnshops and jewelers, but there are also specialist firms who only trade in them and they escape regulation under the House legislation. Some scrap yards also deal in precious metal scrap, particularly industrial items like electrical contacts and platinum crucibles.

The terminology "first purchaser" in the House legislation is confusing, although it appears to be an attempt to distinguish buyers of mill products and castings which will be incorporated into products from metal items purchased exclusively for their scrap metal value. The intended exemption for manufacturers and users of prime metals will be more easily understood if you substitute "purchasers of metal mill products and prime metal castings" for "first purchaser".

Throughout the House Bills, particularly HB 4595, the objects of metal thefts are referred to as "scrap metal". Many of the thefts occurring are of perfectly good metal items which are certainly not scrap at the time when they are stolen. The House legislation, literally interpreted, applies only to thefts of metal already designated by someone as scrap. The House legislation would not apply to thefts of utility lines, installed household items, and a host of other items which are perfectly satisfactory at the time when they are stolen.

It would be best to refer to the items subject to this legislation as "articles containing (ferrous / nonferrous) metal", or just "metal". The items purchased by scrap yards are anywhere from 100 percent metal to very small fractions of one percent metal (catalytic convertors are a good example of the lowest metal content items purchased, they often contain less than 0.05% platinum group metals by weight). The legislation can distinguish between items purchased for reuse, such as used auto parts or jewelry, and items purchased for scrap by using the terms "articles purchased for their utility" and "articles purchased exclusively for their scrap metal value".

Now I would like to present some of the logical problems with the House legislation:

The check payment provisions of House Bill 4593 expose scrap metal dealers to identity theft and check fraud without providing any tangible benefit to the citizens of Michigan. Every valid check has the Federal Reserve Bank Routing Number and the checking account number of the issuer on its face in the lower left hand corner of the instrument. These two numbers, along with digital printing techniques, are routinely used to create bogus checks 'drawn' on the account of companies. Just one unscrupulous person can steal thousands of dollars from a business when they have the face information on a valid check by creating dozens of bogus checks; and the business will not even know that the thefts are taking place until their bank account is drained or they get a statement from their bank.

Forcing scrap metal dealers to mail checks to street addresses, three days after a transaction, exposes scrap metal dealers and scrap suppliers to massive losses. Many urban residents use U.S. Post Office boxes to receive their important mail because of the prevalence of mail theft in their neighborhoods.

Most urban residents have no bank accounts and will cash any check received at the nearest party store, using the exact same identification used for the underlying scrap metal transaction. There simply is no benefit whatsoever in forcing the issuance of checks. I can only presume that this provision is deliberately intended to expose scrap metal dealers to identity thefts, regardless of whether they have been involved in purchasing stolen metal or not. Such thefts would ruin our business within weeks of HB 4593's implementation.

While HB 4593 offers scrap metal dealers the option of using pseudo ATMs to pay their customers, these machines are very expensive and temperamental. The check payment requirement is fraught with identity theft problems, so the House legislation clearly favors large, high volume scrap metal dealers who can afford to have one or more of the pseudo ATMs on their premises. Yet small, low volume scrap metal dealers play a constructive role in preventing metal thefts because they actually have the time to really examine metal items being purchased from the public.

Positive seller identification does appear to be a major goal of the House legislation. Legislation should be clear that consular documents such as the matricula consular - which are indeed government issued - are not acceptable ID because many are faked (duplication is the most common type of fraud here) and most scrap metal dealers just don't know how to spot a fake. You need a familiarity with the Spanish language to read and understand these documents, a skill lacking in the scrap industry front office.

Passports and out of state IDs/driver's licenses are always legal identification which must be honored under Federal law, but have no Michigan residence address. Sellers providing passports or out of state IDs should be required to provide secondary evidence of their address, such as a utility bill in their name.

What would benefit law enforcement are good, 3 megapixel or better digital portraits of metal sellers. This would help identify sellers using fake identification documents, which are rife in some areas of Detroit. Digital portraits can be easily attached to the purchase file, regardless of whether it is kept on paper or digital media. I submit that a photo of the seller is actually far more useful than a photo of the metal sold, because in most cases the metal will still be in the scrap dealer's inventory when the police or victims are looking for an item. The seller, however, will be long gone.

Also, since 'tag and hold' provisions have been deleted from the House legislation, it is unclear how a photograph of scrap metal could satisfy the evidence and chain of custody requirements needed to prosecute metal thieves.

Recording license plate numbers of scrap sellers' vehicles and requiring sellers to deliver scrap in a licensed vehicle is not a completely effective enhancement to identification, but worthwhile. You will frequently see individuals loitering outside scrap yards with small quantities of scrap where licensed vehicle delivery is required. These individuals pay a portion of their proceeds to someone with a vehicle to gain access to the scrap yard. And the latest trend in Detroit is to splice two stolen license plates into one which does not register as stolen. A digital photo of a metal seller isn't DNA level identification, but police departments can circulate it among parole and probation officers to get a good ID on most metal thieves.

The barter provisions of HB 4593 is nonsensical. If it is a misstatement of the anti-barter provisions of HB 4594, it will end Dix Scrap's current support for sculpture education across the metro Detroit area. We currently provide scrap metal items free of charge to art students, asking only for examples of their work in return. Getting examples of their work confirms that we are dealing with legitimate students and brightens our premises. This program would quickly spin out of control if we were not to receive examples of the students' work.

'Scale operator' as used in HB 4593 is an attempt to codify scrap metal dealer parlance which fails legally. The reference should be to an 'agent authorized to purchase metal'. Particularly in the case of ferrous metal purchases, the responsibility detailed in HB 4593 is currently divided amongst two or more individuals. You want to force metal purchasers to consolidate this responsibility in a single individual, who may or may not actually operate a scale. And some items, such as catalytic convertors, never see a scale.

The Senate Bill 470 metal thief identity registry had real promise, but has apparently been abandoned. It would take some time for a registry to be populated and become effective, but it offers the best opportunity for scrap metal dealers to take action against metal theft. Scrap metal dealers are not psychics and cannot know who is involved in metal thefts without information from law enforcement. It appears that some people value the privacy of metal thieves over the public good.

The real issue here is how to prevent metal thefts. Metal thefts have burgeoned because metal prices have risen dramatically and many police departments do not enforce even the existing statutes. On average, I receive less than one scrap metal theft alert a day from the ISRI Theft Alert system. The only police department in the area which seriously uses this system is the Lorain, Ohio Police Department. I have never received an ISRI Theft Alert regarding any of the metal thefts reported by the Detroit area newspapers and other news outlets. The Detroit Police Department has even disbanded their 'Copper Theft Task Force'. Clearly the Detroit Police Department is not serious about metal thefts. No statute prohibiting metal theft will improve the current situation if it is not genuinely enforced by concerted police action.

The enhanced penalties incorporated in HB 4593 will reduce metal thefts, but only if police departments actually start arresting thieves. Somehow, I suspect that these penalties will only be enforced against scrap metal dealers, not the thieves who are the actual root of the problem. Such biased enforcement will not impede metal theft, stolen metal will just be sold in other locales and the thefts will continue apace. We at Dix Scrap have gone to great lengths to ferret out stolen items and we have always assisted the area police departments in prosecuting criminals. However, if the State of Michigan puts us out of business by exposing us to identity theft, we will no longer be of any use to the authorities.

Please understand that scrap metal dealers have suffered far more metal thefts than the general public; we have to hold a lot of scrap metal in inventory until we can accumulate shippable lots of each category. Thus we are painfully aware of the cost of this crime as well as the police indifference to such thefts. My yard, Dix Scrap, has experienced over 500 burglaries since 2005 and the Detroit Police Department doesn't even allow us to file a report on these crimes any more. These thefts and the associated damage to our facilities and equipment have cost us over \$ 500,000 during that 9 year period; it is our third largest expense after taxes and wages.

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