

State of Wisconsin



2007 Senate Bill 473

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2007 WISCONSIN ACT 64

AN ACT *to amend* 943.20 (2) (d); and *to create* 134.405 and 895.09 of the statutes; **relating to:** regulating the purchase and sale of scrap metal and other metal items, the determination of property value of scrap metal for a theft conviction, creating a civil cause of action regarding scrap metal, and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 134.405 of the statutes is created to read:
134.405 Purchase and sale of scrap metal. (1)

DEFINITIONS. In this section:

(a) "Commercial account" means a commercial enterprise with which a scrap metal dealer maintains an ongoing and documented business relationship.

(b) "Commercial enterprise" means a corporation, partnership, limited liability company, business operated by an individual, association, state agency, political subdivision, or other government or business entity, including a scrap metal dealer.

(c) "Ferrous scrap" means scrap metal, other than scrap metal described in pars. (d) to (f), consisting primarily of iron or steel, including large manufactured articles that may contain other substances to be removed and sorted during normal operations of scrap metal dealers.

(d) "Metal article" means a manufactured item that consists of metal, is usable for its original intended purpose without processing, repair, or alteration, and is offered for sale for the value of the metal it contains, except that "metal article" does not include antique or collectible articles, including jewelry, coins, silverware, and watches.

(e) "Nonferrous scrap" means scrap metal consisting primarily of metal other than iron or steel, but does not include any of the following:

1. Aluminum beverage cans.
2. Used household items.
3. Items removed from a structure during renovation or demolition.
4. Small quantities of nonferrous metals contained in large manufactured items.

(f) "Proprietary article" means any of the following:

1. A metal article stamped, engraved, stenciled, or otherwise marked to identify the article as the property of a governmental entity, telecommunications provider, public utility, cable operator, as defined in s. 66.0419 (2) (b), or an entity that produces, transmits, delivers, or furnishes electricity, or transportation, shipbuilding, ship repair, mining, or manufacturing company.
2. A copper conductor, bus bar, cable, or wire, whether stranded or solid.
3. An aluminum conductor, cable, or wire, whether stranded or solid.
4. A metal beer keg.
5. A manhole cover.
6. A metal grave marker, sculpture, plaque, or vase, if the item's appearance suggests the item has been obtained from a cemetery.

* Section 991.11, WISCONSIN STATUTES 2005-06 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

7. A rail, switch component, spike, angle bar, tie plate, or bolt used to construct railroad track.

(g) "Scrap metal" means a metal article; metal removed from or obtained by cutting, demolishing, or disassembling a building, structure, or manufactured item; or other metal that is no longer used for its original intended purpose and that can be processed for reuse in a mill, foundry, or other manufacturing facility.

(h) "Scrap metal dealer" means a person engaged in the business of buying or selling scrap metal.

(2) PURCHASES OF FERROUS SCRAP. A scrap metal dealer may purchase scrap metal other than nonferrous scrap, a metal article, or a proprietary article from any person over the age of 18.

(3) PURCHASES OF NONFERROUS SCRAP, METAL ARTICLES, PROPRIETARY ARTICLES. (a) Subject to par. (b), a scrap metal dealer may purchase nonferrous scrap, metal articles, or proprietary articles from any person who is over the age of 18 if all of the following apply:

1. If the seller of nonferrous scrap, metal articles, or proprietary articles is an individual, at the time of the sale, the seller provides to the scrap metal dealer the seller's motor vehicle operator's license or other government-issued, current photographic identification that includes the seller's full name, current address, date of birth, and recognized identification number. If the seller is not an individual, at the time of the sale, the individual who delivers the seller's nonferrous scrap, metal articles, or property articles provides to the dealer the deliverer's motor vehicle operator's license or other government-issued, current photographic identification that includes the deliverer's full name, current address, date of birth, and recognized identification number.

2. The scrap metal dealer records and maintains at the scrap metal dealer's place of business the seller's or deliverer's identification information described in subd. 1., the time and date of the purchase, the number and state of issuance of the license plate on the seller's or deliverer's vehicle, and a description of the items received, including all of the following:

a. The weight of the scrap or articles.

b. A description of the scrap or articles that is consistent with guidelines promulgated by a national recycling industry trade organization.

4. With respect to a purchase of nonferrous scrap or a metal article the scrap metal dealer obtains the seller's signed declaration that the seller is the owner of the items being sold.

5. With respect to a purchase of a proprietary article, one of the following applies:

a. The scrap metal dealer receives from the seller documentation, such as a bill of sale, receipt, letter of authorization, or similar evidence, that establishes that the seller lawfully possesses the proprietary article.

b. The scrap metal dealer documents that the scrap metal dealer has made a diligent inquiry into whether the

person selling the proprietary article has a legal right to do so, and, not later than one business day after purchasing the proprietary article, submits a report to a local law enforcement department describing the proprietary article and submits a copy of the seller's or deliverer's identifying information under subd. 1.

(b) This subsection does not apply to purchases of nonferrous scrap, metal articles, or proprietary articles by a scrap metal dealer from a commercial account, if the scrap metal dealer creates and maintains a record of its purchases from the commercial account that includes all of the following:

1. The full name of the commercial account.

2. The business address and telephone number of the commercial account.

3. The name of a contact person at the commercial account who is responsible for the sale of nonferrous scrap, metal articles, or proprietary articles to the scrap metal dealer.

4. The time, date, and value of each of the scrap metal dealer's purchases from the commercial account.

5. A description of the predominant types of nonferrous scrap, metal articles, or proprietary articles the scrap metal dealer has purchased from the commercial account.

(c) Except as provided under sub. (4), a scrap metal dealer may disclose personally identifiable information recorded or maintained under this subsection only to a successor in interest to the scrap metal dealer, including a successor in interest that arises as a result of a merger, sale, assignment, restructuring, or change of control.

(4) OTHER PROVISIONS. (a) A scrap metal dealer shall make the records required under sub. (3) (a) 2. to 5. and (b) available to a law enforcement officer who presents the agent's credentials at the scrap metal dealer's place of business during business hours.

(b) A scrap metal dealer shall maintain the records required under sub. (3) (a) 2., 4., and 5. and (b) 4. and 5. for not less than 2 years after recording it. A scrap metal dealer shall maintain the records required under sub. (3) (b) 1. to 3. regarding a commercial account for not less than 2 years after the dealer's most recent transaction with the commercial account.

(c) A law enforcement officer of a city, village, town, or county in which a scrap metal dealer conducts business may request that all scrap metal dealers in the city, village, town, or county furnish reports of all purchases of nonferrous scrap, metal articles, and proprietary articles. A scrap metal dealer shall comply with a request under this paragraph by submitting to the requesting law enforcement officer a report of each purchase of nonferrous scrap, metal articles, and proprietary articles not later than the business day following the purchase, including each seller's or deliverer's name, date of birth, identification number, and address, and the number and

state of issuance of the license plate on each seller's or deliverer's vehicle.

(d) Notwithstanding s. 19.35 (1), a law enforcement officer or agency that receives a record under par. (a) or a report under par. (c) may disclose it only to another law enforcement officer or agency.

(5) PENALTIES. (a) 1. A scrap metal dealer who knowingly violates this section and who has not knowingly committed a previous violation of this section is subject to a fine not to exceed \$1,000 or imprisonment not to exceed 90 days, or both.

2. A scrap metal dealer who knowingly violates this section and who has knowingly committed one previous violation of this section is subject to a fine not to exceed \$10,000 or imprisonment not to exceed 9 months, or both.

3. A scrap metal dealer who knowingly violates this section and who has knowingly committed more than one previous violation of this section is guilty of a Class I felony.

(b) Each day on which a scrap metal dealer knowingly violates this section constitutes a separate violation.

(6) ORDINANCE. (a) A county, town, city, or village may enact an ordinance governing the sale and purchase of scrap metal if the ordinance is not more stringent than this section, except that a 1st class city may enact an ordinance that is more stringent than this section.

(b) Notwithstanding par. (a), a city, village, town, or county may enact an ordinance that requires scrap metal dealers to submit reports to a law enforcement officer under sub. (4) (c) in an electronic format.

SECTION 2. 895.09 of the statutes is created to read:

895.09 Scrap metal theft; civil liability. (1) Any owner of nonferrous scrap, a metal article, or a proprietary article, as those terms are defined in s. 134.405 (1), who incurs injury or loss as a result of a violation of s. 134.405 or s. 943.20 may bring a civil action against the person who committed the violation.

(2) If the person who incurs the loss prevails against a person who committed the violation, the court shall grant the prevailing party all of the following:

(a) Actual damages.

(b) Any lost profits that are attributable to the violation and that were not taken into account in determining the amount of actual damages under par. (a).

(c) Notwithstanding the limitations under s. 799.25 or 814.04, costs, disbursements, and reasonable attorney fees.

(3) If the court finds that the violation was committed for the purpose of commercial advantage, the court may award punitive damages to the person who incurs the loss.

(4) Any awards provided under sub. (2) (a) or (b) shall be reduced by the amount of any restitution collected for the same act under s. 800.093 or 973.20.

(5) The person who incurs the loss has the burden of proving by the preponderance of the evidence that a violation of s. 134.405 or 943.20 occurred.

SECTION 3. 943.20 (2) (d) of the statutes is amended to read:

943.20 (2) (d) “Value” Except as otherwise provided in this paragraph, “value” means the market value at the time of the theft or the cost to the victim of replacing the property within a reasonable time after the theft, whichever is less, but if, if the property stolen is a document evidencing a chose in action or other intangible right, value “value” means either the market value of the chose in action or other right or the intrinsic value of the document, whichever is greater. If the property stolen is scrap metal, as defined in s. 134.405 (1) (f), “value” also includes any costs that would be incurred in repairing or replacing any property damaged in the theft or removal of the scrap metal. If the thief gave consideration for, or had a legal interest in, the stolen property, the amount of such consideration or value of such interest shall be deducted from the total value of the property.