

2007 SENATE BILL 473

February 12, 2008 – Introduced by Senators PLALE, HANSEN, HARSDORF, COWLES, LASSA, LAZICH, LEHMAN, SCHULTZ, GROTHMAN, KAPANKE and A. LASEE, cosponsored by Representatives MONTGOMERY, HONADEL, ZEPNICK, HAHN, DAVIS, NERISON, SOLETSKI, STEINBRINK, J. OTT, A. OTT, GRONEMUS, LEMAHIEU, GOTTLIEB, M. WILLIAMS, PETROWSKI, SUDER, SHERIDAN, KERKMAN, GUNDERSON, KLEEFISCH, VAN ROY, BIES, RHOADES, ALBERS, VOS, KESTELL, HINES, HRAYCHUCK and NELSON. Referred to Committee on Commerce, Utilities and Rail.

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

Analysis by the Legislative Reference Bureau

This bill creates requirements that apply to transactions in certain metals for scrap.

Under the bill, “scrap metal” generally means a manufactured item that contains metal; metal obtained by disassembling a building or manufactured item; or other metal that can be processed for reuse. The bill defines four kinds of scrap metal. “Ferrous scrap” means scrap metal consisting primarily of iron and steel, but does not include nonferrous scrap, metal articles, or proprietary articles. “Nonferrous scrap” means scrap metal consisting primarily of metal other than iron or steel, but excludes aluminum cans and certain other items. “Metal article” means a manufactured metal item that is usable for its originally intended purpose. “Proprietary article” includes certain articles marked as the property of certain types of entities, certain aluminum or copper articles, metal beer kegs, manhole covers, and certain cemetery and railroad articles.

Under the bill, a scrap metal dealer (dealer) may purchase scrap metal other than nonferrous scrap, a metal article, or a proprietary article from any person over

SENATE BILL 473

age 18. A dealer may purchase nonferrous scrap, a metal article, or a proprietary article from any person over age 18 if the dealer does all of the following: 1) obtains photographic identification from the seller or deliverer; 2) records the seller's or dealer's identifying information, the license plate number of the seller's or deliverer's vehicle, and certain descriptive information about the scrap or article; 3) obtains photographic or video images showing the seller's or deliverer's vehicle and the vehicle's license plate; and 4) for a purchase of nonferrous scrap or a metal article, obtains the seller's signed declaration that the seller is the owner of the items being sold. For a purchase of a proprietary article, a dealer must additionally do one of the following: 1) obtain documentation establishing that the seller lawfully possesses the article; or 2) document that the dealer has made a diligent inquiry into the seller's right to sell the article and submit a report describing the article to a local law enforcement department. Under the bill, less stringent recordkeeping requirements apply to transactions with certain sellers that are business or governmental entities.

The bill requires a dealer to make the record available to a law enforcement officer or security agent and to maintain the record for at least two years after recording it. Under the bill, a local law enforcement officer may request that all dealers in the jurisdiction report all purchases of nonferrous scrap, metal articles, and proprietary articles.

A dealer who violates the provisions of the bill is subject to a fine of up to \$1,000, imprisonment for up to 90 days, or both. If the dealer has committed one previous violation, the dealer is subject to a fine of up to \$10,000, imprisonment for up to nine months, or both. If the dealer has committed more than one previous violation, the dealer is subject to a fine of up to \$10,000, imprisonment for up to three and one-half years, or both. Under the bill, a county, town, city, or village may enact an ordinance governing the sale and purchase of scrap metal if it is at least as stringent as the provisions in the bill.

The bill also creates a civil action that allows the owner of a stolen proprietary article, such as a manhole cover, of nonferrous scrap, or of a metal article, to recover from the thief the cost of replacing the item stolen. The amount that may be recovered in the civil action is reduced by the amount that is collected as restitution or recompense in any criminal or municipal court action related to the same act or by the amount paid to the plaintiff under a deferred prosecution related to the same act.

Under current law, the penalty classification for theft of property varies depending on the value of the property. If the property value is no more than \$2,500, the crime is a misdemeanor, and the convicted person is subject to a fine of up to \$10,000, imprisonment for up to nine months, or both; if the property value is more than \$2,500, the crime is a felony. If the property value is more than \$2,500 but no more than \$5,000, the person is subject to a fine of up to \$10,000, imprisonment for up to three years and six months, or both. If the property value is more than \$5,000 but no more than \$10,000, the person is subject to a fine of up to \$10,000, imprisonment for up to six years, or both. If the property value is more than \$10,000, the person is subject to a fine of up to \$25,000, imprisonment for up to ten years, or both. For purposes of determining property value, "value" is generally defined as the

SENATE BILL 473

lesser of the market value of the property at the time of the theft or the cost to the victim of replacing the property within a reasonable time after the theft. Under this bill, if the property stolen is scrap metal, value includes any costs that would be incurred in repairing or replacing any property damaged in the theft or removal of the scrap metal.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 134.405 of the statutes is created to read:

2 **134.405 Purchase and sale of scrap metal. (1) DEFINITIONS.** In this section:

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

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

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

12 (d) “Metal article” means a manufactured item that consists of metal and is
13 usable for its originally intended purpose without processing, repair, or alteration.

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

16 1. Aluminum beverage cans.

SENATE BILL 473

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

5 (f) “Proprietary article” means any of the following:

- 6 1. A metal article stamped, engraved, stenciled, or otherwise marked to
- 7 identify the article as the property of a governmental entity, telecommunications
- 8 provider, public utility, cable operator, as defined in s. 66.0419 (2) (b), or an entity that
- 9 produces, transmits, delivers, or furnishes electricity, or transportation,
- 10 shipbuilding, ship repair, mining, or manufacturing company.
- 11 2. A copper conductor, bus bar, cable, or wire, whether stranded or solid.
- 12 3. An aluminum conductor, cable, or wire, whether stranded or solid.
- 13 4. A metal beer keg.
- 14 5. A manhole cover.
- 15 6. A metal grave marker, sculpture, plaque, or vase, if the item’s appearance
- 16 suggests the item has been obtained from a cemetery.
- 17 7. A rail, switch component, spike, angle bar, tie plate, or bolt used to construct
- 18 railroad track.

19 (g) “Scrap metal” means a manufactured item that consists of or contains

20 metal; metal removed from or obtained by cutting, demolishing, or disassembling a

21 building, structure, or manufactured item; or other metal that is no longer used for

22 its original purpose and that can be processed for reuse in a mill, foundry, or other

23 manufacturing facility.

24 (h) “Scrap metal dealer” means a person engaged in the business of buying or

25 selling scrap metal.

SENATE BILL 473

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

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

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

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

23 a. The weight of the scrap or articles.

24 b. Whether the scrap or articles consist of bars, cable, ingots, rods, tubing, wire,
25 wire scraps, clamps, connectors, pipes, or other appurtenances, or some combination

SENATE BILL 473

1 of bars, cable, ingots, rods, tubing, wire, wire scraps, clamps, connectors, pipes, or
2 other appurtenances.

3 c. A description of any numbers, letters, or other identifying symbols stamped,
4 engraved, stenciled or otherwise marked on the scrap or articles.

5 d. Whether the scrap or articles consist of a rail, switch component, spike, angle
6 bar, tie plate, or bolt used to construct railroad track.

7 3. The scrap metal dealer obtains photographic or video images showing the
8 vehicle's license plate and a view of the vehicle sufficient to identify the vehicle.

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

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

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

17 b. The scrap metal dealer documents that the scrap metal dealer has made a
18 diligent inquiry into whether the person selling the proprietary article has a legal
19 right to do so, and, not later than one business day after purchasing the proprietary
20 article, submits a report to a local law enforcement department describing the
21 proprietary article and submits a copy of the seller's or deliverer's identifying
22 information under subd. 1.

23 (b) This subsection does not apply to purchases of nonferrous scrap, metal
24 articles, or proprietary articles by a scrap metal dealer from a commercial account,

SENATE BILL 473

1 if the scrap metal dealer creates and maintains a record of its purchases from the
2 commercial account that includes all of the following:

3 1. The full name of the commercial account.

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

5 3. The full names of persons employed by the commercial account who are
6 authorized to deliver nonferrous scrap, metal articles, or proprietary articles to the
7 scrap metal dealer.

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

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

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

17 (b) A scrap metal dealer shall maintain the records required under sub. (3) (a)
18 2., 4., and 5. and (b) 3. to 5. for not less than 2 years after recording it. A scrap metal
19 dealer shall maintain an image required under sub. (3) (a) 3. for not less than 3
20 months after obtaining the image. A scrap metal dealer shall maintain the records
21 required under sub. (3) (b) 1. and 2. regarding a commercial account for not less than
22 2 years after the dealer's most recent transaction with the commercial account.

23 (c) A law enforcement officer of a city, village, town, or county in which a scrap
24 metal dealer conducts business may request that all scrap metal dealers in the city,
25 village, town, or county furnish reports of all purchases of nonferrous scrap, metal

SENATE BILL 473

1 articles, and proprietary articles. A scrap metal dealer shall comply with a request
2 under this paragraph by submitting to the requesting law enforcement officer a
3 report of each purchase of nonferrous scrap, metal articles, and proprietary articles
4 not later than the business day following the purchase, including each seller's or
5 deliverer's name, date of birth, identification number, and address, and the number
6 and state of issuance of the license plate on each seller's or deliverer's vehicle.

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

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

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

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

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

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

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

SENATE BILL 473

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

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

7 (a) Actual damages.

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

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

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

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

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

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

20 943.20 **(2)** (d) “Value” Except as otherwise provided in this paragraph, “value”
21 means the market value at the time of the theft or the cost to the victim of replacing
22 the property within a reasonable time after the theft, whichever is less, ~~but if.~~ If the
23 property stolen is a document evidencing a chose in action or other intangible right,
24 ~~value~~ “value” means either the market value of the chose in action or other right or
25 the intrinsic value of the document, whichever is greater. If the property stolen is

SENATE BILL 473

1 scrap metal, as defined in s. 134.405 (1) (f), “value” also includes any costs that would
2 be incurred in repairing or replacing any property damaged in the theft or removal
3 of the scrap metal. If the thief gave consideration for, or had a legal interest in, the
4 stolen property, the amount of such consideration or value of such interest shall be
5 deducted from the total value of the property.

6 (END)