



2011 ASSEMBLY BILL 363

November 9, 2011 – Introduced by Representatives ENDSLEY, A. OTT, BALLWEG, HONADEL, KAUFERT, JACQUE, KESTELL, LEMAHIEU, RIPP and SPANBAUER, cosponsored by Senators WANGGAARD, ERPENBACH, HOLPERIN and OLSEN. Referred to Committee on Natural Resources.

1 **AN ACT to amend** 134.405 (title), 134.405 (1) (a), 134.405 (1) (b), 134.405 (3) (a)
2 (intro.), 134.405 (3) (a) 1., 134.405 (3) (a) 2. (intro.), 134.405 (3) (a) 2. b., 134.405
3 (3) (a) 4., 134.405 (3) (a) 5. a., 134.405 (3) (a) 5. b., 134.405 (3) (b) (intro.), 134.405
4 (3) (b) 3., 134.405 (3) (b) 4., 134.405 (3) (b) 5., 134.405 (3) (c), 134.405 (4) (a),
5 134.405 (4) (b), 134.405 (4) (c), 134.405 (5) (a) 1., 134.405 (5) (a) 2., 134.405 (5)
6 (a) 3., 134.405 (5) (b), 134.405 (6) (a), 134.405 (6) (b), 895.09 (title) and 943.20
7 (2) (d); and **to create** 134.405 (1) (em), 134.405 (1) (f) 8., 134.405 (1) (fm) and
8 134.405 (1) (j) of the statutes; **relating to:** regulating sales of plastic bulk
9 merchandise containers to scrap plastic dealers and providing penalties.

Analysis by the Legislative Reference Bureau

This bill regulates sales of plastic bulk merchandise containers to scrap plastic dealers in the same manner as scrap metal sales to scrap metal dealers are regulated under current law. The bill defines “plastic bulk merchandise container” as a plastic crate, pallet, or shell used by a product producer, distributor, or retailer for the bulk transport or storage of retail containers of bottled beverages.

Current law allows a “scrap metal dealer,” which current law defines as a person engaged in the business of buying or selling certain types of scrap metal, to

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purchase such scrap metal only if the seller is over the age of 18 and the scrap metal dealer does all of the following: 1) obtains photographic identification from the seller or deliverer; and 2) records the seller's or deliverer's identifying information, the license plate number of the seller's or deliverer's vehicle, and certain descriptive information about the scrap metal. Also, depending on the type of scrap metal, the scrap metal dealer must establish that seller has the right to sell the scrap metal by doing one of the following: 1) obtaining the seller's signed declaration that the seller is the owner of the items being sold; 2) obtaining documentation establishing that the seller lawfully possesses the scrap metal; or 3) documenting that the dealer has made a diligent inquiry into the seller's right to sell the scrap metal and submitting a report describing the scrap metal to a local law enforcement department. Current law requires a scrap metal dealer to maintain records necessary to comply with the foregoing requirements for at least two years. Current law creates an exception from all of the foregoing requirements for a scrap metal dealer's purchases made from commercial accounts with which the dealer maintains an ongoing and documented business relationship. For the exception to apply, the scrap metal dealer must comply with certain record-keeping requirements. In addition, the scrap metal dealer must maintain records required for the exception for at least two years after the dealer's most recent transaction with a commercial account.

This bill imposes the foregoing requirements on the sale of a plastic bulk merchandise container to a "scrap plastic dealer," which the bill defines as a person engaged in the business of buying and selling plastic to be processed for reuse in a mill or other manufacturing facility. With respect to establishing a seller's right to sell such a container, the bill requires a scrap plastic dealer to either: 1) obtain documentation establishing that the seller lawfully possesses the container; or 2) document that the dealer has made a diligent inquiry into the seller's right to sell the container and submit a report describing the container to a local law enforcement department. In addition, the exception for commercial accounts applies to a scrap plastic dealer.

Under current law, a scrap metal dealer must make certain documentation about scrap metal purchases available to law enforcement officers. Current law also allows a law enforcement officer of a city, village, town, or county in which a scrap metal dealer conducts business to request all scrap metal dealers in the city, village, town, or county to report all scrap metal purchases to the law enforcement officer, and requires scrap metal dealers to comply with such a request. Except for disclosures in documentation and reports to law enforcement, current law prohibits a scrap metal dealer from disclosing personally identifiable information to any person other than a successor in interest. This bill imposes all of the foregoing requirements and prohibition on scrap plastic dealers who purchase plastic bulk merchandise containers.

Under current law, a scrap metal dealer who knowingly violates current law is subject to a fine of up to \$1,000, imprisonment for up to 90 days, or both, except that if the dealer knowingly committed one previous violation, the maximum fine is increased to \$10,000 and the maximum imprisonment is increased to nine months. If a scrap metal dealer knowingly committed more than one previous violation, the

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dealer is subject to a fine of up to \$10,000, imprisonment for up to three and one-half years, or both. This bill subjects a scrap plastic dealer who purchases plastic bulk merchandise containers to the same penalties. Current law also imposes different criminal penalties for theft of property that depend on the value of the stolen property. This bill provides that, if the stolen property is a plastic bulk merchandise container, the value includes any costs that would be incurred in repairing or replacing any property damaged in the theft or removal of the container. Current law includes a similar provision for the theft of certain scrap metal.

The bill creates a civil action allowing the owner of a stolen plastic bulk merchandise container to recover from the thief the cost of replacing the container. 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. The civil action created by the bill is similar to a civil action under current law for certain stolen scrap metal.

The bill also allows a county, town, city, or village to enact an ordinance governing the sale of plastic bulk merchandise containers to scrap plastic dealers if the ordinance is not more stringent than the bill's requirements, except that a first class city may enact an ordinance that is more stringent than the bill's requirements. Current law has similar provisions for ordinances regarding 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 *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 (title) of the statutes is amended to read:

2 **134.405 (title) Purchase and sale of certain scrap metal material.**

3 **SECTION 2.** 134.405 (1) (a) of the statutes is amended to read:

4 134.405 (1) (a) "Commercial account" means a commercial enterprise with
5 which a scrap metal dealer maintains an ongoing and documented business
6 relationship.

7 **SECTION 3.** 134.405 (1) (b) of the statutes is amended to read:

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1 134.405 (1) (b) “Commercial enterprise” means a corporation, partnership,
2 limited liability company, business operated by an individual, association, state
3 agency, political subdivision, or other government or business entity, including a
4 scrap metal dealer.

5 **SECTION 4.** 134.405 (1) (em) of the statutes is created to read:

6 134.405 (1) (em) “Plastic bulk merchandise container” means a plastic crate,
7 pallet, or shell used by a product producer, distributor, or retailer for the bulk
8 transport or storage of retail containers of bottled beverages.

9 **SECTION 5.** 134.405 (1) (f) 8. of the statutes is created to read:

10 134.405 (1) (f) 8. A plastic bulk merchandise container.

11 **SECTION 6.** 134.405 (1) (fm) of the statutes is created to read:

12 134.405 (1) (fm) “Scrap dealer” means a scrap plastic dealer or scrap metal
13 dealer.

14 **SECTION 7.** 134.405 (1) (j) of the statutes is created to read:

15 134.405 (1) (j) “Scrap plastic dealer” means a person in engaged in the business
16 of buying or selling plastic to be processed for reuse in a mill or other manufacturing
17 facility.

18 **SECTION 8.** 134.405 (3) (a) (intro.) of the statutes is amended to read:

19 134.405 (3) (a) (intro.) Subject to par. (b), a scrap metal dealer may purchase
20 nonferrous scrap, metal articles, or proprietary articles from any person who is over
21 the age of 18 if all of the following apply:

22 **SECTION 9.** 134.405 (3) (a) 1. of the statutes is amended to read:

23 134.405 (3) (a) 1. If the seller of nonferrous scrap, metal articles, or proprietary
24 articles is an individual, at the time of the sale, the seller provides to the scrap metal
25 dealer the seller’s motor vehicle operator’s license or other government-issued,

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

8 **SECTION 10.** 134.405 (3) (a) 2. (intro.) of the statutes is amended to read:

9 134.405 (3) (a) 2. (intro.) The scrap ~~metal~~ dealer records and maintains at the
10 scrap ~~metal~~ dealer's place of business the seller's or deliverer's identification
11 information described in subd. 1., the time and date of the purchase, the number and
12 state of issuance of the license plate on the seller's or deliverer's vehicle, and a
13 description of the items received, including all of the following:

14 **SECTION 11.** 134.405 (3) (a) 2. b. of the statutes is amended to read:

15 134.405 (3) (a) 2. b. A description of the scrap or articles that is consistent with
16 guidelines promulgated by a national recycling industry trade organization. This
17 subd. 2. b. does not apply to plastic bulk merchandise containers.

18 **SECTION 12.** 134.405 (3) (a) 4. of the statutes is amended to read:

19 134.405 (3) (a) 4. With respect to a purchase of nonferrous scrap or a metal
20 article the scrap ~~metal~~ dealer obtains the seller's signed declaration that the seller
21 is the owner of the items being sold.

22 **SECTION 13.** 134.405 (3) (a) 5. a. of the statutes is amended to read:

23 134.405 (3) (a) 5. a. The scrap ~~metal~~ dealer receives from the seller
24 documentation, such as a bill of sale, receipt, letter of authorization, or similar
25 evidence, that establishes that the seller lawfully possesses the proprietary article.

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1 **SECTION 14.** 134.405 (3) (a) 5. b. of the statutes is amended to read:

2 134.405 (3) (a) 5. b. The scrap metal dealer documents that the scrap metal
3 dealer has made a diligent inquiry into whether the person selling the proprietary
4 article has a legal right to do so, and, not later than one business day after purchasing
5 the proprietary article, submits a report to a local law enforcement department
6 describing the proprietary article and submits a copy of the seller's or deliverer's
7 identifying information under subd. 1.

8 **SECTION 15.** 134.405 (3) (b) (intro.) of the statutes is amended to read:

9 134.405 (3) (b) (intro.) This subsection does not apply to purchases of
10 nonferrous scrap, metal articles, or proprietary articles by a scrap metal dealer from
11 a commercial account, if the scrap metal dealer creates and maintains a record of its
12 purchases from the commercial account that includes all of the following:

13 **SECTION 16.** 134.405 (3) (b) 3. of the statutes is amended to read:

14 134.405 (3) (b) 3. The name of a contact person at the commercial account who
15 is responsible for the sale of nonferrous scrap, metal articles, or proprietary articles
16 to the scrap metal dealer.

17 **SECTION 17.** 134.405 (3) (b) 4. of the statutes is amended to read:

18 134.405 (3) (b) 4. The time, date, and value of each of the scrap metal dealer's
19 purchases from the commercial account.

20 **SECTION 18.** 134.405 (3) (b) 5. of the statutes is amended to read:

21 134.405 (3) (b) 5. A description of the predominant types of nonferrous scrap,
22 metal articles, or proprietary articles the scrap metal dealer has purchased from the
23 commercial account.

24 **SECTION 19.** 134.405 (3) (c) of the statutes is amended to read:

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1 134.405 (3) (c) Except as provided under sub. (4), a scrap metal dealer may
2 disclose personally identifiable information recorded or maintained under this
3 subsection only to a successor in interest to the scrap metal dealer, including a
4 successor in interest that arises as a result of a merger, sale, assignment,
5 restructuring, or change of control.

6 **SECTION 20.** 134.405 (4) (a) of the statutes is amended to read:

7 134.405 (4) (a) A scrap metal dealer shall make the records required under sub.
8 (3) (a) 2. to 5. and (b) available to a law enforcement officer who presents the agent's
9 credentials at the scrap metal dealer's place of business during business hours.

10 **SECTION 21.** 134.405 (4) (b) of the statutes is amended to read:

11 134.405 (4) (b) A scrap metal dealer shall maintain the records required under
12 sub. (3) (a) 2., 4., and 5. and (b) 4. and 5. for not less than 2 years after recording it.
13 A scrap metal dealer shall maintain the records required under sub. (3) (b) 1. to 3.
14 regarding a commercial account for not less than 2 years after the dealer's most
15 recent transaction with the commercial account.

16 **SECTION 22.** 134.405 (4) (c) of the statutes is amended to read:

17 134.405 (4) (c) A law enforcement officer of a city, village, town, or county in
18 which a scrap metal dealer conducts business may request that all scrap metal
19 dealers in the city, village, town, or county furnish reports of all purchases of
20 nonferrous scrap, metal articles, and proprietary articles. A scrap metal dealer shall
21 comply with a request under this paragraph by submitting to the requesting law
22 enforcement officer a report of each purchase of nonferrous scrap, metal articles, and
23 proprietary articles not later than the business day following the purchase, including
24 each seller's or deliverer's name, date of birth, identification number, and address,

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1 and the number and state of issuance of the license plate on each seller's or
2 deliverer's vehicle.

3 **SECTION 23.** 134.405 (5) (a) 1. of the statutes is amended to read:

4 134.405 (5) (a) 1. A scrap metal dealer who knowingly violates this section and
5 who has not knowingly committed a previous violation of this section is subject to a
6 fine not to exceed \$1,000 or imprisonment not to exceed 90 days, or both.

7 **SECTION 24.** 134.405 (5) (a) 2. of the statutes is amended to read:

8 134.405 (5) (a) 2. A scrap metal dealer who knowingly violates this section and
9 who has knowingly committed one previous violation of this section is subject to a
10 fine not to exceed \$10,000 or imprisonment not to exceed 9 months, or both.

11 **SECTION 25.** 134.405 (5) (a) 3. of the statutes is amended to read:

12 134.405 (5) (a) 3. A scrap metal dealer who knowingly violates this section and
13 who has knowingly committed more than one previous violation of this section is
14 guilty of a Class I felony.

15 **SECTION 26.** 134.405 (5) (b) of the statutes is amended to read:

16 134.405 (5) (b) Each day on which a scrap metal dealer knowingly violates this
17 section constitutes a separate violation.

18 **SECTION 27.** 134.405 (6) (a) of the statutes is amended to read:

19 134.405 (6) (a) A county, town, city, or village may enact an ordinance governing
20 the sale and purchase of scrap metal or the sale of bulk plastic merchandise
21 containers to scrap plastic dealers if the ordinance is not more stringent than this
22 section, except that a 1st class city may enact an ordinance that is more stringent
23 than this section.

24 **SECTION 28.** 134.405 (6) (b) of the statutes is amended to read:

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1 134.405 (6) (b) Notwithstanding par. (a), a city, village, town, or county may
2 enact an ordinance that requires scrap metal dealers to submit reports to a law
3 enforcement officer under sub. (4) (c) in an electronic format.

4 **SECTION 29.** 895.09 (title) of the statutes is amended to read:

5 **895.09 (title) Scrap metal or plastic bulk merchandise container theft;**
6 **civil liability.**

7 **SECTION 30.** 943.20 (2) (d) of the statutes is amended to read:

8 943.20 (2) (d) Except as otherwise provided in this paragraph, “value” means
9 the market value at the time of the theft or the cost to the victim of replacing the
10 property within a reasonable time after the theft, whichever is less. If the property
11 stolen is a document evidencing a chose in action or other intangible right, “value”
12 means either the market value of the chose in action or other right or the intrinsic
13 value of the document, whichever is greater. If the property stolen is scrap metal,
14 as defined in s. 134.405 (1) (f), or “plastic bulk merchandise container” as defined in
15 s. 134.405 (1) (em), “value” also includes any costs that would be incurred in repairing
16 or replacing any property damaged in the theft or removal of the scrap metal or
17 plastic bulk merchandise container. If the thief gave consideration for, or had a legal
18 interest in, the stolen property, the amount of such consideration or value of such
19 interest shall be deducted from the total value of the property.

20 **SECTION 31. Effective date.**

21 (1) This act takes effect on the first day of the 4th month beginning after
22 publication.

23 **(END)**