

## NONFERROUS METAL REGULATORY ACT

### Act 429 of 2008

AN ACT to regulate the purchase and sale of certain nonferrous metals; to provide for disclosures by certain persons regarding certain transactions; to require the creation of records for certain purposes and for the use of certain databases by certain persons; and to provide for penalties and remedies.

**History:** 2008, Act 429, Eff. Apr. 1, 2009.

*The People of the State of Michigan enact:*

#### **445.421 Short title.**

Sec. 1. This act shall be known and may be cited as the "nonferrous metal regulatory act".

**History:** 2008, Act 429, Eff. Apr. 1, 2009.

#### **445.423 Definitions.**

Sec. 3. As used in this act:

(a) "Dealer" means any person that is not a first purchaser who purchases nonferrous metals from any seller. Dealer includes, but is not limited to, a person, whether or not licensed under state law or local ordinance, 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 1-time basis. Dealer does not include an automotive recycler regulated by and complying with section 217 of the Michigan vehicle code, 1949 PA 300, MCL 257.217; section 18 of the motor vehicle service and repair act, 1974 PA 300, MCL 257.1318; or section 2 of 1986 PA 119, MCL 257.1352, when engaging in activities that meet the definition of automotive recycler as defined in section 2a of the Michigan vehicle code, 1949 PA 300, MCL 257.2a.

(b) "Documentation" means a signed statement that indicates where the person obtained the article, that the person is authorized to sell the article, or other evidence that reasonably demonstrates ownership of the article and the source of the article.

(c) "Ferrous metal" means a metal that contains significant quantities of iron or steel.

(d) "First purchaser" means the first buyer of a manufactured product containing nonferrous metal in a retail or business-to-business transaction. Persons purchasing nonferrous metal in violation of this act, automotive recyclers, pawnshops, scrap metal recyclers, and scrap processors are not considered first purchasers.

(e) "Industrial or commercial account" means any person, operating from a fixed location, that is a seller of ferrous or nonferrous metal to a scrap metal recycler pursuant to a written agreement.

(f) "Nonferrous metal" means 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.

(g) "Person" means an individual, partnership, corporation, limited liability company, joint venture, trust, association, or other legal entity.

(h) "Public fixtures" means articles containing nonferrous metal that are used or located in areas open to the public and include, but are not limited to, utility access covers; street light poles and fixtures; road and bridge guard rails; highway or street signs; water meter covers; traffic directional and control signs; traffic light signals; telecommunications cable; utility-related articles; and historical markers.

(i) "Record" means a paper, electronic, or other generally accepted method of storing information in a retrievable form.

(j) "Scrap metal recycler" means a person that purchases nonferrous metal that is intended for recycling or reuse, whether regarded as a scrap processor, core buyer, or other similar business operation.

(k) "Scrap processor" means that term as defined in section 3 of 1917 PA 350, MCL 445.403.

(l) "Seller" means any individual or person that either regularly, sporadically, or on a 1-time basis receives consideration from any other person from the purchase by a dealer of nonferrous metal offered by that seller.

**History:** 2008, Act 429, Eff. Apr. 1, 2009.

#### **445.425 Dealers; sellers; duties.**

Sec. 5. (1) A dealer shall do all of the following:

(a) Produce and maintain records as required under section 7(2).

(b) Participate in a database meeting the requirements of section 11.

(c) Tag and hold any nonferrous metal as provided for in section 9.

(d) Pay a seller by a method capable of being traced from the dealer to the seller. Payment by cash or currency of more than \$50.00, barter, or trade is not considered a payment that complies with the requirement

of this subdivision. Payment of cash in any amount in a transaction involving predominantly copper articles is considered a violation of this subdivision.

(e) In the case of a transaction involving nonferrous metal, verify that the seller is at least 16 years of age.

(2) A seller shall do all of the following:

(a) Present to the dealer an operator's or chauffeur's license, military identification card, Michigan identification card, passport, or other government-issued identification containing a photograph and allow the dealer to make a photocopy or electronic copy of the identification.

(b) 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.

(c) Execute a signed statement indicating that the seller is the owner of, or is otherwise authorized to sell, the nonferrous metal offered for purchase to the dealer.

(d) Attest to the lack of any criminal convictions involving the theft, conversion, or sale of nonferrous metals.

**History:** 2008, Act 429, Eff. Apr. 1, 2009.

#### **445.427 Record of purchase transaction; maintenance; duration; location; contents of record of purchase transaction regarding nonferrous metal; exception.**

Sec. 7. (1) Except as otherwise provided in this subsection, a dealer shall produce and maintain an accurate and legible record of each purchase transaction. The dealer shall maintain the records produced under this section for at least 1 year, shall keep the records in a location that is readily accessible to a local, state, or federal law enforcement agency for inspection during normal business hours, and shall make the records, or copies of those records, available to any local, state, or federal law enforcement agency upon reasonable suspicion of violation of this act.

(2) The record of a purchase transaction regarding nonferrous metal shall contain all of the following:

(a) The name, address, and identifying number from the seller's operator's or chauffeur's license, military identification card, Michigan identification card, passport, or other government-issued identification containing a photograph. A legible scan or photocopy of the identification is considered satisfactory in fulfilling the requirement of this subdivision. In the case of a repeat seller, a copy of the information may be kept on file with the dealer and be used for future transactions.

(b) The license plate number of the vehicle delivering the nonferrous metal.

(c) The date and time of the transaction.

(d) A description of the predominant types of metal purchases, made in accordance with the custom of the trade.

(e) The weight, quantity, or volume of metal, made in accordance with the custom of the trade.

(f) The consideration paid and the method of payment.

(g) A signed statement from the seller that the seller is the owner of the metal or is otherwise authorized to sell the metal subject to the transaction.

(h) A thumbprint of the seller.

(3) 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 is not required to produce the record described in subsection (2) so long as the personal and business identifying information of the industrial or commercial account seller 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 2 years and validated as current or updated by the dealer.

**History:** 2008, Act 429, Eff. Apr. 1, 2009.

#### **445.429 Article containing nonferrous metal; tagging and holding by dealer required; circumstances; creation and maintenance of records; certain sales prohibited.**

Sec. 9. (1) A dealer shall tag and hold, for 7 calendar days, any article containing nonferrous metal purchased from a seller and that is offered for purchase under any of the following circumstances:

(a) The article has altered or obliterated serial numbers, and the person delivering the article does not have a written receipt or documentation.

(b) Where, due to the identification on the article or due to the type of article, the dealer would reasonably be considered to have knowledge that the article is, or was, the property of a governmental entity, and the person delivering the article does not have a written receipt or documentation.

(c) Where, due to the identification on the article, the dealer would reasonably be considered to have knowledge that the article is, or was, the property of a business, and the person delivering the article does not

have a written receipt or documentation.

(d) The article is a commemorative, decorative, or other cemetery-related or apparently ceremonial article, and the person delivering the article does not have a written receipt or documentation.

(e) The article is subject to a notification or bulletin from any law enforcement agency that is received by the dealer prior to the purchase of the article.

(f) Where the article is copper wiring, whether burned or with sheathing, and the person delivering the article does not have a written receipt or documentation.

(2) The tag and hold requirements of this section require the dealer to also create and maintain the records required under section 7 regarding those articles.

(3) The tag and hold requirements of subsection (1) do not apply to any of the following:

(a) Any article containing nonferrous metal that does not conform to the circumstances described in subsection (1).

(b) Any article that has been the subject of tag and hold by 1 dealer in compliance with this section if that article is resold directly to another dealer. In addition, any article that was not initially subject to the tag and hold provisions of this section is not thereafter subject to the tag and hold provisions if that article is resold to another dealer.

(4) Except in the case where the seller has specific written documentation that the seller is the owner, agent, or person with authority to possess and sell certain articles, a seller shall not sell or offer for sale, and a dealer shall 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. Any sale is subject to the provisions of this act.

**History:** 2008, Act 429, Eff. Apr. 1, 2009.

#### **445.431 Database; registration with or subscription to required.**

Sec. 11. (1) A dealer shall 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.

(2) 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. A dealer may register with or subscribe to any other database that provides substantially the same services as the database described in subsection (1).

**History:** 2008, Act 429, Eff. Apr. 1, 2009.

#### **445.433 Violation of MCL 445.427(1) or 445.429 as misdemeanor; buying or selling stolen nonferrous metal articles as felony; penalties.**

Sec. 13. (1) A person who violates section 7(1) or section 9 knowing or having reason to know that he or she is violating those sections is guilty of a misdemeanor punishable by a fine of not more than \$500.00 or imprisonment for not more than 93 days, or both.

(2) A person who buys or sells nonferrous metal articles knowing or having reason to know that they are stolen is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$5,000.00, or both, for a first offense and is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00, or both, for a second or subsequent offense.

**History:** 2008, Act 429, Eff. Apr. 1, 2009.

#### **445.435 Violation of act as state civil infraction; fine.**

Sec. 15. A person violating this act knowing or having reason to know that he or she is violating this act is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$5,000.00.

**History:** 2008, Act 429, Eff. Apr. 1, 2009.

#### **445.437 Private cause of action; damages; "value of the nonferrous metal article stolen" defined.**

Sec. 17. (1) A person may bring a private cause of action, in a court of competent jurisdiction, for monetary damages suffered from violation of this act by a seller or a dealer, or both.

(2) The court shall award treble damages for the value of the nonferrous metal article stolen. The court may award costs regarding any aspect of an action brought under subsection (1). As used in this subsection, "value of the nonferrous metal article stolen" means the greatest of the following:

(a) The replacement cost of the stolen article.

- (b) The cost of repairing the damage caused by the larceny of that article.
- (c) The total of subdivisions (a) and (b).

**History:** 2008, Act 429, Eff. Apr. 1, 2009.

#### **445.439 Remedies.**

Sec. 19. (1) The remedies under this 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 this or any other civil, criminal, or regulatory act or ordinance that is otherwise not prohibited by law.

(2) This act does not exempt or release any person from the following:

- (a) Obtaining and maintaining a license under any other act or ordinance.
- (b) Complying with any strictures contained in any other act or ordinance.

**History:** 2008, Act 429, Eff. Apr. 1, 2009.

#### **445.441 Effective date.**

Sec. 21. This act takes effect April 1, 2009.

**History:** 2008, Act 429, Eff. Apr. 1, 2009.

#### **445.443 Conditional effective date.**

Sec. 23. This act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

- (a) Senate Bill No. 720.
- (b) Senate Bill No. 1114.
- (c) Senate Bill No. 1571.
- (d) House Bill No. 5694.

**History:** 2008, Act 429, Eff. Apr. 1, 2009.

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