



Legislative Briefs

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SCRAP METAL SALES REGULATIONS

2007 Wisconsin Act 64, passed by the legislature and signed by Governor Jim Doyle on March 11, 2008, requires scrap metal dealers to ask for identification and proof of ownership before purchasing scrap and certain other metal items. The law does not apply to sales of items such as gold or silver coins or jewelry. Dealers must maintain sales records and make the records available to law enforcement officers investigating thefts of stolen property. It also allows the owners of certain metal items to file civil suits to recover theft-related costs.

Act 64 was introduced as 2007 Senate Bill 473 on February 12, 2008, by Senators Plale, Hansen, Harsdorf, and eight others. It was cosponsored by Representatives Montgomery, Honadel, Zepnick, and 26 others. SB-473 passed the Senate unanimously and the Assembly on a voice vote on February 28, 2008. It took effect on March 26, 2008.

High metal prices spur thefts. Record and near-record prices for metal in recent years, fueled in part by demand in developing economies such as China, have led to a surge in the theft of commodities such as copper, aluminum, iron, and steel. Thieves have raided construction sites, homes, and businesses in search of electrical cable and plumbing fixtures, siding, beer kegs, and other items. Public safety has been compromised by scavengers stealing manhole covers and sewer grates, street lamps, and roadside guardrails and has resulted in electric utility and cable TV outages.

New Mexico and Washington have enacted laws regulating scrap metal dealers, and legislation has recently been considered in about a dozen other states.

CATEGORIES OF SCRAP METAL

The identification and record-keeping requirements of Act 64 (www.legis.state.wi.us/2007/data/acts/07Act64.pdf) generally do not apply to ferrous scrap, mean-

ing scrap metal consisting primarily of iron or steel. The sole requirement for ferrous scrap is that a dealer may only buy material from a person who is at least age 18.

The law's provisions (Sections 134.405 and 895.09, Wisconsin Statutes) apply to three defined classes of metal materials or items:

- **"Metal article"** means a manufactured item that consists of metal (which may be iron or steel), is usable for its original intended purpose without additional processing, repair, or alteration; and is offered for sale for the value of metal it contains. Not included are antique or collectible articles, including jewelry, coins, silverware, and watches.
- **"Nonferrous scrap"** means scrap metal consisting primarily of metal other than iron or steel, but does not include aluminum beverage cans, used household items, items removed from a structure during renovation or demolition, or small quantities of nonferrous metals contained in large manufactured items.
- **"Proprietary article"** means a metal article stamped, engraved, stenciled, or marked to identify it as the property of a governmental entity; telecommunications provider, public utility or electrical producer or transmitter; cable operator; or a transportation, shipbuilding, ship repair, mining, or manufacturing company. Articles include copper or aluminum cables or wires, metal beer kegs, manhole covers, grave markers or other cemetery items, and railroad rails or spikes.

IDENTIFICATION; RECORD-KEEPING

At the time of the sale, a seller or deliverer of nonferrous scrap, metal articles, or proprietary articles must provide to the scrap metal dealer the motor vehicle operator license or other government-issued, current photographic identification which includes the person's full name, current address, date of birth, and ID number. Sellers must be over age 18.

The scrap metal dealer must record the seller's or deliverer's identification, 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, the weight of the scrap or articles, and a description of the items received that is consistent with recognized national recycling industry guidelines.

Proof of ownership. If the purchase involves nonferrous scrap or a metal article, the scrap metal dealer must obtain the seller's signed declaration that the seller is the owner of the items being sold.

For a proprietary article, the dealer must ask for documentation establishing lawful possession, such a bill of sale, receipt, or letter of authorization. If the seller fails to provide ownership evidence, the dealer must document that he or she has made a diligent inquiry into whether the seller has a legal right to sell. Not later than one business day after the purchase, the dealer must submit to a local law enforcement department a report describing the proprietary article and the seller's ID information.

Retain records for two years. Records must be maintained at the dealer's place of business regarding the seller's or deliverer's identification and the description of the scrap or articles sold for not less than two years. Other than to law enforcement personnel, a dealer may disclose personally identifiable information relating to scrap sales only to a successor in interest in the operation, resulting from the sale, merger, assignment, restructuring, or change of control of the business. A law enforcement officer or agency that receives a report may disclose the information only to another law enforcement officer or agency.

Commercial accounts. If purchases are made from a commercial enterprise with whom the scrap dealer maintains an ongoing business relationship, the dealer must create a record that includes the full name of the commercial account; its business address and telephone number; the name of the responsible contact person; the time, date, and value of each purchase; and a description of the predominant types of scrap the dealer has purchased from that account. The ID information

must be maintained for not less than two years after the most recent transaction.

Police access. A dealer's records may be examined by a law enforcement officer who presents proper credentials at the dealer's place of business during business hours. Also, a law enforcement officer of the city, village, town, or county in which a dealer conducts business may request that all scrap metal dealers in the jurisdiction provide reports of all applicable purchases. Dealers must comply no later than the next business day. Municipalities may specify that reports to police be in an electronic format.

PENALTIES

A dealer who knowingly violates the law and has not knowingly committed a previous offense may be subject to a fine not to exceed \$1,000 or imprisonment not to exceed 90 days, or both. A second violation carries the same 90 day sentence, with a fine of up to \$10,000. Third and subsequent violations are a Class I felony, with a fine of not to exceed \$10,000 or imprisonment not to exceed 3 years and 6 months, or both. Each day constitutes a separate violation. Municipalities may enact local ordinances not more stringent than state law, except that a 1st class city (Milwaukee) may enact one more stringent.

CIVIL SUITS FOR THEFT COSTS

An owner of stolen items sold in violation of the law may bring a civil action against a dealer seeking actual damages; lost profits; costs, disbursements, and reasonable attorney fees; and punitive damages if the court determines the violation was committed for the purpose of commercial advantage. The burden of proof in such suits is "by the preponderance of the evidence." Awards will be reduced by any restitution collected in a criminal theft prosecution. "Value" of the items 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, including any costs that would be incurred in repairing or replacing any property damaged in the theft or removal of the scrap metal.