

**METAL THEFT AMENDMENTS AND  
PENALTIES**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jon J. Greiner**

House Sponsor: Brad L. Dee

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**LONG TITLE**

**General Description:**

This bill modifies the Criminal Code provisions regarding transactions involving regulated metals.

**Highlighted Provisions:**

This bill:

- ▶ defines wire made of regulated metal as a suspect metal if the wire has been burned;
- ▶ requires that a dealer's purchase of regulated metal that exceeds \$100 may not be paid for in cash; and
- ▶ provides that a defendant is liable for restitution for damages caused during the course of committing or attempting to commit a theft of regulated metal, and that the victim may also bring a civil action for damages.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

**§→ [None] This bill provides an immediate effective date. ←§**

**Utah Code Sections Affected:**

AMENDS:

**76-10-901**, as last amended by Laws of Utah 2007, Chapter 320

**76-10-907**, as last amended by Laws of Utah 2007, Chapter 320

S.B. 90



28 76-10-907.3, as enacted by Laws of Utah 2007, Chapter 320

29 ENACTS:

29a ~~§~~→ 76-6-402.5, Utah Code Annotated 1953 ←~~§~~

30 76-6-412.5, Utah Code Annotated 1953

31 ~~§~~→ [~~76-10-907.5, Utah Code Annotated 1953~~] ←~~§~~

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33 *Be it enacted by the Legislature of the state of Utah:*

33a ~~§~~→ **Section 1. Section 76-6-402.5 is enacted to read:**

33b **76-6-402.5. Defense regarding metal dealers.**

33c **It is a defense against a charge of theft under this part and a defense against a civil**

33d **claim for conversion if any dealer as defined in Section 76-10-901 has acted in compliance with**

33e **Title 76, Chapter 10, Part 9, Regulation of Metal Dealers.** ←~~§~~

34 Section ~~§~~→ [1] 2 ←~~§~~ . Section 76-6-412.5 is enacted to read:

35 **76-6-412.5. Property damage caused in the course of committing a theft.**

36 **If a defendant who commits or attempts to commit theft as defined in Section 76-6-404**

37 **of regulated metal as defined in Section 76-10-901 and in the course of committing or**

38 **attempting to commit the theft causes damage to any person's real or personal property other**

39 **than the regulated metal, the defendant is liable for restitution for all costs incurred due to the**

40 **damage to the person's property.**

41 Section ~~§~~→ [2] 3 ←~~§~~ . Section 76-10-901 is amended to read:

42 **76-10-901. Definitions.**

43 As used in this part:

44 (1) ~~§~~→ **"Catalytic converter" means a motor vehicle exhaust system component that**  
44a **reduces vehicle emissions by breaking down harmful exhaust emissions.**

44b (2) ←~~§~~ "Dealer" means any scrap metal processor or secondary metals dealer or recycler,  
45 but does not include junk dealers or solid waste management facilities as defined in Section  
46 19-6-502.

47 ~~§~~→ [(2)] (3) ←~~§~~ "Ferrous metal" means a metal that contains significant quantities of iron or steel.

48 ~~§~~→ [(3)] (4) ←~~§~~ "Identification" means a form of positive identification issued by a governmental  
49 entity that:

50 (a) contains a numerical identifier and a photograph of the person identified;

51 (b) provides the date of birth of the person identified; and

52 (c) includes a state identification card, a state driver license, a United States military

53 identification card, or a United States passport.

54            ~~§~~→ [(4)] (5) ←~~§~~ "Junk dealer" means all persons, firms, or corporations engaged in the business of  
55 purchasing or selling secondhand or castoff material, including ropes, cordage, bottles,  
56 bagging, rags, rubber, paper, and other like materials, but not including regulated metal.

57            ~~§~~→ [(5)] (6) ←~~§~~ "Local law enforcement agency" means the law enforcement agency that has  
58 jurisdiction over the area where the dealer's business is located.

59 ~~§~~ ~~(6)~~ (7) ~~←§~~ "Nonferrous metal":

60 (a) means a metal that does not contain significant quantities of iron or steel; and

61 (b) includes copper, brass, aluminum, bronze, lead, zinc, nickel, and their alloys.

62 ~~§~~ ~~(7)~~ (8) ~~←§~~ (a) "Regulated metal" means any item composed primarily of nonferrous metal,  
63 except as provided in Subsection ~~§~~ ~~(7)~~ (8) ~~←§~~ (c).

64 (b) "Regulated metal" includes:

65 (i) aluminum, brass, copper, lead, chromium, tin, nickel, or alloys of these metals,

66 except under Subsection ~~§~~ ~~(7)~~ (8) ~~←§~~ (c);

67 (ii) property owned by, and also identified by marking or other means as the property

68 of:

69 (A) a telephone, cable, electric, water, or other utility; or

70 (B) a railroad company;

71 (iii) unused and undamaged building construction materials made of metal or alloy,

72 including:

73 (A) copper pipe, tubing, or wiring; and

74 (B) aluminum wire, siding, downspouts, or gutters;

75 (iv) oil well rigs, including any part of the rig;

76 (v) nonferrous materials, stainless steel, and nickel; and

77 (vi) irrigation pipe.

78 (c) "Regulated metal" does not include:

79 (i) ferrous metal, except as provided in Subsection ~~§~~ ~~(7)~~ (8) ~~←§~~ (b)(ii) or (iv);

80 (ii) household-generated recyclable materials;

81 (iii) items composed wholly of tin;

82 (iv) aluminum beverage containers; or

83 (v) containers used solely for containing food.

84 (8) "Secondary metals dealer or recycler" means any person who:

85 (a) is engaged in the business of purchasing, collecting, or soliciting regulated metal; or

86 (b) operates or maintains a facility where regulated metal is purchased or kept for

87 shipment, sale, transfer, or salvage.

88 (9) "Scrap metal processor" means any person:

89 (a) who, from a fixed location, utilizes machinery and equipment for processing and

90 manufacturing iron, steel, or nonferrous scrap into prepared grades[;]; and

91 (b) whose principal product is scrap iron, scrap steel, or nonferrous metallic scrap, not  
92 including precious metals, for sale for remelting purposes.

93 (10) "Suspect metal items" are the following items made of regulated metal:

94 (a) manhole covers and sewer grates;

95 (b) gas meters and water meters;

96 (c) traffic signs, street signs, aluminum street light poles, communications transmission  
97 towers, and guard rails;

98 (d) grave site monument vases and monument plaques;

99 (e) any monument plaque;

100 (f) brass or bronze bar stock and bar ends;

101 (g) ingots;

102 (h) nickel and nickel alloys containing greater than 50% nickel; [~~and~~]

103 (i) #1 and #2 copper as defined by the most recent institute of Scrap Recycling

104 Industries, Inc., Scrap Specifications Circular [~~and~~];

105 (j) unused and undamaged building materials, including:

106 (i) greenline copper;

107 (ii) copper pipe, tubing, or wiring; [~~or~~] and

108 (iii) aluminum wire, siding, downspouts, or gutters[;]; ~~§~~ → [~~and~~]

108a **(k) catalytic converters; and**

109 ~~(4)~~ **(l) ←§ wire that has been burned or that has the appearance of having been burned.**

110 Section 3. Section **76-10-907** is amended to read:

111 **76-10-907. Records of sales and purchases -- Identification required.**

112 (1) Every dealer shall:

113 (a) require the information under Subsection (2) for each transaction of regulated  
114 metal, except under Subsection 76-10-907.3(4); and

115 (b) maintain for each purchase of regulated metal the information required by this part  
116 in a written or electronic log, in the English language.

117 (2) The dealer shall require the following information of the seller and shall record the  
118 information as required under Subsection (1) for each purchase of regulated metal:

119 (a) a complete description of the regulated metal, including weight and metallic  
120 description, in accordance with scrap metal recycling industry standards;

- 121 (b) the full name and residence of each person selling the regulated metal;
- 122 (c) the vehicle type and license plate number, if applicable, of the vehicle transporting
- 123 the regulated metal to the dealer;
- 124 (d) the price per pound and the amount paid for each type of regulated metal purchased
- 125 by the dealer;
- 126 (e) the date, time, and place of the purchase;
- 127 (f) the type and number of the identification provided in Subsection (2)(g);
- 128 (g) at least one form of identification;
- 129 (h) the seller's signature on a certificate stating that he has the legal right to sell the
- 130 scrap metal or junk; and
- 131 (i) a digital photograph or still video of the seller, taken at the time of the sale, or a
- 132 clearly legible photocopy of the seller's identification.
- 133 (3) No entry in the log may be erased, deleted, mutilated, or changed.
- 134 (4) The log and entries shall be open to inspection by the following officials having
- 135 jurisdiction over the area in which the dealer does business during regular business hours:
- 136 (a) the county sheriff or deputies;
- 137 (b) any law enforcement agency; and
- 138 (c) any constable or other state, municipal, or county official in the county in which
- 139 the dealer does business.
- 140 (5) A dealer shall make these records available for inspection by any law enforcement
- 141 agency, upon request, at the dealer's place of business during the dealer's regular business
- 142 hours.
- 143 (6) Log entries made under this section shall be maintained for not less than one year
- 144 from date of entry.
- 145 (7) The dealer may maintain the information required by Subsection (2) [~~may be~~
- 146 ~~maintained~~] for repeat sellers who use the same vehicle to bring regulated metal for each
- 147 transaction in a relational database that allows the dealer to enter an initial record of the seller's
- 148 information and then relate subsequent transaction records to that initial information.
- 149 (8) This section does not apply to a single purchase of regulated metal by a dealer if:
- 150 (a) the weight of regulated metal is less than 50 pounds; and
- 151 (b) the price paid to the seller is less than \$100.

152 Section 4. Section **76-10-907.3** is amended to read:

153 **76-10-907.3. Restrictions on the purchase of regulated metal -- Exemption.**

154 (1) A dealer may conduct purchase transactions involving regulated metal only  
155 between the hours of 6 a.m. and 7 p.m.

156 (2) Except when the dealer pays a government entity by check for regulated metal, the  
157 dealer may not purchase any of the following regulated metal without obtaining and keeping on  
158 file reasonable documentation that the seller is an employee, agent, or contractor of a  
159 governmental entity who is authorized to sell the item of regulated metal property on behalf of  
160 the governmental entity:

161 (a) a manhole cover or sewer grate;

162 (b) an electric light pole; or

163 (c) a guard rail.

164 (3) (a) A dealer may not purchase suspect metal without obtaining the information  
165 under Subsection (3)(b) identifying the owner of the suspect metal.

166 (b) The owner of the suspect metal shall provide in writing:

167 (i) ~~his~~ the owner's telephone number;

168 (ii) ~~his~~ the owner's business or residential address, which may not be a post box;

169 (iii) a copy of ~~his~~ the owner's driver license; and

170 (iv) a signed statement that ~~he~~ the person is the lawful owner of the suspect metal and  
171 ~~that he~~ authorizes the seller, ~~whom he has~~ identified by name, to sell the suspect metal.

172 (c) The dealer shall keep the identifying information provided in Subsection (3)(b) on  
173 file for not less than one year.

174 (4) Transactions with businesses that have an established account with the dealer are  
175 exempt from the requirements of Subsections (2) and (3) if the business holds a valid business  
176 license, and:

177 (a) (i) the dealer has on file a statement from the business identifying those employees  
178 authorized to sell all metals to the dealer; and

179 (ii) the dealer conducts regulated metal transactions only with those identified  
180 employees of the business and records the name of the employee when recording the  
181 transaction;

182 (b) the dealer has on file reasonable documentation from the business that any person

183 verified as representing the business as an employee, and whom the dealer has verified is an  
184 employee, may sell regulated metal; or

185 (c) the dealer makes payment for regulated metal purchased from a person by issuing a  
186 check to the business employing the seller.

187 **§→ [Section 5. Section 76-10-907.5 is enacted to read:**

188 ~~76-10-907.5. Transactions over \$100 may not be in cash.~~

189 ~~A dealer making a purchase of more than \$100 worth of regulated metal in a single  
190 transaction shall pay for the metal by check or money order, and may not pay by cash.]~~

190a **Section 5. Effective date.**

190b **If approved by two-thirds of all the members elected to each house, this bill takes effect upon**  
190c **approval by the governor, or the day following the constitutional time limit of Utah Constitution**  
**Article**

190d **VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override. ←§**

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**Legislative Review Note**  
as of 6-13-08 9:19 AM

**Office of Legislative Research and General Counsel**

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**S.B. 90 - Metal Theft Amendments and Penalties**

**Fiscal Note**

2009 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill will likely increase the restitution amounts owed by sentenced offenders which may affect businesses. The bill will not otherwise affect local governments or individuals.

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