

**METAL THEFT AMENDMENTS AND
PENALTIES**

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jon J. Greiner

House Sponsor: Brad L. Dee

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;
- ▶ defines a catalytic converter as a suspect metal item; 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:

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

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

ENACTS:

30 76-6-402.5, Utah Code Annotated 1953

31 76-6-412.5, Utah Code Annotated 1953



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

34 Section 1. Section 76-6-402.5 is enacted to read:

35 **76-6-402.5. Defense regarding metal dealers.**

36 It is a defense against a charge of theft under this part and a defense against a civil
37 claim for conversion if any dealer as defined in Section 76-10-901 has acted in compliance
38 with Title 76, Chapter 10, Part 9, Regulation of Metal Dealers.

39 Section 2. Section 76-6-412.5 is enacted to read:

40 **76-6-412.5. Property damage caused in the course of committing a theft.**

41 If a defendant who commits or attempts to commit theft as defined in Section 76-6-404
42 of regulated metal as defined in Section 76-10-901 and in the course of committing or
43 attempting to commit the theft causes damage to any person's real or personal property other
44 than the regulated metal, the defendant is liable for restitution for all costs incurred due to the
45 damage to the person's property.

46 Section 3. Section 76-10-901 is amended to read:

47 **76-10-901. Definitions.**

48 As used in this part:

49 (1) "Catalytic converter" means a motor vehicle exhaust system component that
50 reduces vehicle emissions by breaking down harmful exhaust emissions.

51 [~~(1)~~] (2) "Dealer" means any scrap metal processor or secondary metals dealer or
52 recycler, but does not include junk dealers or solid waste management facilities as defined in
53 Section 19-6-502.

54 [~~(2)~~] (3) "Ferrous metal" means a metal that contains significant quantities of iron or
55 steel.

56 [~~(3)~~] (4) "Identification" means a form of positive identification issued by a
57 governmental entity that:

- 58 (a) contains a numerical identifier and a photograph of the person identified;
- 59 (b) provides the date of birth of the person identified; and
- 60 (c) includes a state identification card, a state driver license, a United States military
61 identification card, or a United States passport.

62 [~~(4)~~] (5) "Junk dealer" means all persons, firms, or corporations engaged in the
63 business of purchasing or selling secondhand or castoff material, including ropes, cordage,
64 bottles, bagging, rags, rubber, paper, and other like materials, but not including regulated
65 metal.

66 [~~(5)~~] (6) "Local law enforcement agency" means the law enforcement agency that has
67 jurisdiction over the area where the dealer's business is located.

68 [~~(6)~~] (7) "Nonferrous metal":

- 69 (a) means a metal that does not contain significant quantities of iron or steel; and
- 70 (b) includes copper, brass, aluminum, bronze, lead, zinc, nickel, and their alloys.

71 [~~(7)~~] (8) (a) "Regulated metal" means any item composed primarily of nonferrous
72 metal, except as provided in Subsection [~~(7)~~] (8)(c).

73 (b) "Regulated metal" includes:

74 (i) aluminum, brass, copper, lead, chromium, tin, nickel, or alloys of these metals,
75 except under Subsection [~~(7)~~] (8)(c);

76 (ii) property owned by, and also identified by marking or other means as the property
77 of:

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

79 (B) a railroad company;

80 (iii) unused and undamaged building construction materials made of metal or alloy,
81 including:

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

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

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

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

86 (vi) irrigation pipe.

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

88 (i) ferrous metal, except as provided in Subsection [~~(7)~~] (8)(b)(ii) or (iv);

89 (ii) household-generated recyclable materials;

90 (iii) items composed wholly of tin;

91 (iv) aluminum beverage containers; or

92 (v) containers used solely for containing food.

93 [~~(8)~~] (9) "Secondary metals dealer or recycler" means any person who:

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

95 or

96 (b) operates or maintains a facility where regulated metal is purchased or kept for
97 shipment, sale, transfer, or salvage.

98 [~~(9)~~] (10) "Scrap metal processor" means any person:

99 (a) who, from a fixed location, utilizes machinery and equipment for processing and
100 manufacturing iron, steel, or nonferrous scrap into prepared grades^[;]; and

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

103 [~~(10)~~] (11) "Suspect metal items" are the following items made of regulated metal:

104 (a) manhole covers and sewer grates;

105 (b) gas meters and water meters;

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

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

109 (e) any monument plaque;

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

111 (g) ingots;

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

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

114 Industries, Inc., Scrap Specifications Circular [~~and~~];
115 (j) unused and undamaged building materials, including:
116 (i) greenline copper;
117 (ii) copper pipe, tubing, or wiring; [~~or~~] and
118 (iii) aluminum wire, siding, downspouts, or gutters[-];
119 (k) catalytic converters; and
120 (l) wire that has been burned or that has the appearance of having been burned.

121 Section 4. Section **76-10-907** is amended to read:

122 **76-10-907. Records of sales and purchases -- Identification required.**

123 (1) Every dealer shall:

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

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

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

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

132 (b) the full name and residence of each person selling the regulated metal;

133 (c) the vehicle type and license plate number, if applicable, of the vehicle transporting
134 the regulated metal to the dealer;

135 (d) the price per pound and the amount paid for each type of regulated metal
136 purchased by the dealer;

137 (e) the date, time, and place of the purchase;

138 (f) the type and number of the identification provided in Subsection (2)(g);

139 (g) at least one form of identification;

140 (h) the seller's signature on a certificate stating that he has the legal right to sell the
141 scrap metal or junk; and

142 (i) a digital photograph or still video of the seller, taken at the time of the sale, or a
143 clearly legible photocopy of the seller's identification.

144 (3) No entry in the log may be erased, deleted, mutilated, or changed.

145 (4) The log and entries shall be open to inspection by the following officials having
146 jurisdiction over the area in which the dealer does business during regular business hours:

147 (a) the county sheriff or deputies;

148 (b) any law enforcement agency; and

149 (c) any constable or other state, municipal, or county official in the county in which
150 the dealer does business.

151 (5) A dealer shall make these records available for inspection by any law enforcement
152 agency, upon request, at the dealer's place of business during the dealer's regular business
153 hours.

154 (6) Log entries made under this section shall be maintained for not less than one year
155 from date of entry.

156 (7) The dealer may maintain the information required by Subsection (2) [~~may be~~
157 ~~maintained~~] for repeat sellers who use the same vehicle to bring regulated metal for each
158 transaction in a relational database that allows the dealer to enter an initial record of the seller's
159 information and then relate subsequent transaction records to that initial information.

160 (8) This section does not apply to a single purchase of regulated metal by a dealer if:

161 (a) the weight of regulated metal is less than 50 pounds; and

162 (b) the price paid to the seller is less than \$100.

163 Section 5. Section **76-10-907.3** is amended to read:

164 **76-10-907.3. Restrictions on the purchase of regulated metal -- Exemption.**

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

167 (2) Except when the dealer pays a government entity by check for regulated metal, the
168 dealer may not purchase any of the following regulated metal without obtaining and keeping
169 on file reasonable documentation that the seller is an employee, agent, or contractor of a

170 governmental entity who is authorized to sell the item of regulated metal property on behalf of
171 the governmental entity:

- 172 (a) a manhole cover or sewer grate;
- 173 (b) an electric light pole; or
- 174 (c) a guard rail.

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

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

- 178 (i) ~~[his]~~ the owner's telephone number;
- 179 (ii) ~~[his]~~ the owner's business or residential address, which may not be a post box;
- 180 (iii) a copy of ~~[his]~~ the owner's driver license; and
- 181 (iv) a signed statement that ~~[he]~~ the person is the lawful owner of the suspect metal

182 and ~~[that he]~~ authorizes the seller, ~~[whom he has]~~ identified by name, to sell the suspect metal.

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

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

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

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

193 (b) the dealer has on file reasonable documentation from the business that any person
194 verified as representing the business as an employee, and whom the dealer has verified is an
195 employee, may sell regulated metal; or

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

198 Section 6. **Effective date.**

199 If approved by two-thirds of all the members elected to each house, this bill takes effect
200 upon approval by the governor, or the day following the constitutional time limit of Utah
201 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
202 the date of veto override.