

1 **METAL THEFT AMENDMENTS AND**
2 **PENALTIES**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Jon J. Greiner**

6 House Sponsor: Brad L. Dee

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Criminal Code provisions regarding transactions of regulated
11 metals.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines wire made of regulated metal as a suspect metal if the wire has been burned;
- 15 ▶ requires a fingerprint of a seller of regulated metal if the seller does not have in state
16 identification;
- 17 ▶ requires that a dealer hold suspect metal for seven days before selling it;
- 18 ▶ requires that a dealer's purchase of regulated metal that exceeds \$100 may not be
19 paid for in cash; and
- 20 ▶ provides that a defendant is liable for restitution for damages caused during the
21 course of committing or attempting to commit a theft of regulated metal, and that
22 the victim may also bring a civil action for damages.

23 **Monies Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**



28 AMENDS:

29 76-10-901, as last amended by Laws of Utah 2007, Chapter 320

30 76-10-907, as last amended by Laws of Utah 2007, Chapter 320

31 76-10-907.3, as enacted by Laws of Utah 2007, Chapter 320

32 ENACTS:

33 76-6-412.5, Utah Code Annotated 1953

34 76-10-907.5, Utah Code Annotated 1953



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

37 Section 1. Section 76-6-412.5 is enacted to read:

38 **76-6-412.5. Property damage caused in the course of committing a theft.**

39 (1) If a defendant who commits or attempts to commit theft as defined in Section
40 76-6-404 of regulated metal as defined in Section 76-10-901 and in the course of committing
41 or attempting to commit the theft causes damage to any person's real or personal property other
42 than the regulated metal, the defendant is liable for restitution for all costs incurred due to the
43 damage to the person's property.

44 (2) Criminal prosecution for theft of regulated metal does not affect the right of a
45 person to bring a civil action for damages as described in Subsection (1), including court costs
46 and reasonable attorney fees.

47 Section 2. Section 76-10-901 is amended to read:

48 **76-10-901. Definitions.**

49 As used in this part:

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

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

54 (3) "Identification" means a form of positive identification issued by a governmental
55 entity that:

- 56 (a) contains a numerical identifier and a photograph of the person identified;
- 57 (b) provides the date of birth of the person identified; and
- 58 (c) includes a state identification card, a state driver license, a United States military

59 identification card, or a United States passport.

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

63 (5) "Local law enforcement agency" means the law enforcement agency that has
64 jurisdiction over the area where the dealer's business is located.

65 (6) "Nonferrous metal":

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

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

68 (7) (a) "Regulated metal" means any item composed primarily of nonferrous metal,
69 except as provided in Subsection (7)(c).

70 (b) "Regulated metal" includes:

71 (i) aluminum, brass, copper, lead, chromium, tin, nickel, or alloys of these metals,
72 except under Subsection (7)(c);

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

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

76 (B) a railroad company;

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

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

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

81 (iv) oil well rigs;

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

83 (vi) irrigation pipe.

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

85 (i) ferrous metal, except as provided in Subsection (7)(b)(ii) or (iv);

86 (ii) household generated recyclable materials;

87 (iii) items composed wholly of tin;

88 (iv) aluminum beverage containers; or

89 (v) containers used solely for containing food.

90 (8) "Secondary metals dealer or recycler" means any person who:
91 (a) is engaged in the business of purchasing, collecting, or soliciting regulated metal; or
92 (b) operates or maintains a facility where regulated metal is purchased or kept for
93 shipment, sale, transfer, or salvage.

94 (9) "Scrap metal processor" means any person who, from a fixed location, utilizes
95 machinery and equipment for processing and manufacturing iron, steel, or nonferrous scrap
96 into prepared grades, and whose principal product is scrap iron, scrap steel, or nonferrous
97 metallic scrap, not including precious metals, for sale for remelting purposes.

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

- 99 (a) manhole covers and sewer grates;
- 100 (b) gas meters and water meters;
- 101 (c) traffic signs, street signs, aluminum street light poles, communications transmission
102 towers, and guard rails;
- 103 (d) grave site monument vases and monument plaques;
- 104 (e) any monument plaque;
- 105 (f) brass or bronze bar stock and bar ends;
- 106 (g) ingots;
- 107 (h) nickel and nickel alloys containing greater than 50% nickel; [~~and~~]
- 108 (i) #1 and #2 copper as defined by the most recent institute of Scrap Recycling
109 Industries, Inc., Scrap Specifications Circular and unused and undamaged building materials,
110 including:
 - 111 (i) greenline copper;
 - 112 (ii) copper pipe, tubing, or wiring; or
 - 113 (iii) aluminum wire, siding, downspouts, or gutters[-]; and
 - 114 (j) wire that has been burned or that has the appearance of having been burned.

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

116 **76-10-907. Records of sales and purchases -- Identification required.**

- 117 (1) Every dealer shall:
 - 118 (a) require the information under Subsection (2) for each transaction of regulated
119 metal, except under Subsection 76-10-907.3(4); and
 - 120 (b) maintain for each purchase of regulated metal the information required by this part

121 in a written or electronic log, in the English language.

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

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

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

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

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

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

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

133 (g) at least one form of identification;

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

136 (i) a digital photograph or still video of the seller, taken at the time of the sale, or a
137 clearly legible photocopy of the seller's identification~~[-]; and~~

138 (j) if the identification provided by the seller is issued by an entity outside of Utah, the
139 seller shall also require a legible fingerprint of the seller's right thumb, or if the right thumb
140 cannot be fingerprinted, a legible fingerprint of the seller with a written notation identifying the
141 fingerprint and the reason why the thumb print was unavailable.

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

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

145 (a) the county sheriff or deputies;

146 (b) any law enforcement agency; and

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

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

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

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

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

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

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

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

162 **76-10-907.3. Restrictions on the purchase of regulated metal -- Exemption.**

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

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

170 (a) a manhole cover or sewer grate;

171 (b) an electric light pole; or

172 (c) a guard rail.

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

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

176 (i) his telephone number;

177 (ii) his business or residential address;

178 (iii) a copy of his driver license; and

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

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

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

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

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

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

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

196 (5) The dealer shall hold suspect metal for seven days after the date of purchase before
197 selling it.

198 Section 5. Section **76-10-907.5** is enacted to read:

199 **76-10-907.5. Transactions over \$100 may not be in cash.**

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

Legislative Review Note
as of 1-31-08 9:07 AM

Office of Legislative Research and General Counsel

S.B. 194 - Metal Theft Amendments and Penalties

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
