

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

House Bill 1261
Economic Matters

(Delegate Sophocleus, *et al.*)

Junk Dealers and Scrap Metal Processors - Required Records

This emergency bill modifies the definition of junk and scrap metal and alters recordkeeping requirements for junk dealers and scrap metal processors that operate in the State. The bill applies to all junk dealers and scrap metal processors in the State, including those operating in jurisdictions that are generally exempted from statewide licensing and recordkeeping requirements.

The bill specifies that counties and municipalities may license junk dealers and scrap metal processors but preempts the right of a county or municipality to regulate the resale of junk or scrap metal and supersedes any existing local law that regulates the resale of these materials.

Fiscal Summary

State Effect: General fund expenditures increase by \$190,000 in FY 2011 due to a one-time contractual cost of \$150,000 to modify the State’s electronic recordkeeping system, and annual license fees paid by the State to add 200 businesses to the system’s database. Beginning in FY 2012, general fund expenditures increase by \$40,000 annually. Potential minimal increase in general fund revenues and expenditures due to the bill’s penalty provisions.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
GF Revenue	-	-	-	-	-
GF Expenditure	\$190,000	\$40,000	\$40,000	\$40,000	\$40,000
Net Effect	(\$190,000)	(\$40,000)	(\$40,000)	(\$40,000)	(\$40,000)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potential minimal increase in revenues and expenditures due to the bill’s penalty provisions.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill amends the definition of junk or scrap metal to include articles made wholly or substantially of enumerated metals and alloys, while repealing its applicability to certain fixtures and equipment and adding other articles. The list is expanded to include stainless steel, platinum, gold, rhodium, and other nonferrous metals. However, the bill specifies that transactions that include gold and platinum are not subject to requirements for secondhand precious metal object dealers.

The definition of articles is expanded to include used articles made of ferrous or nonferrous metal – specifically catalytic converters, metal bleachers, hard-drawn copper, metal beer kegs, cemetery urns, and grave markers. Other used materials owned by public utilities are included as well, such as guard rails, manhole covers, metal light poles, tree grates, water meters, and street signs. Requirements do not apply to beverage or food cans.

The bill applies to automotive dismantlers, recyclers, and scrap processors if they conduct business as a licensed junk dealer or scrap metal processor or they acquire vehicle parts or other articles that qualify as junk or scrap metal. Such businesses that acquire only whole vehicles for the purpose of dismantling, destroying, or scrapping them for the benefit of their parts are excluded.

A State junk metal dealer or scrap metal processor may only purchase a cemetery urn, grave marker, or any of the other used articles made of either ferrous or nonferrous metal listed above under specified circumstances. The individual selling the items must, at the time of the purchase, provide appropriate authorization from a relevant business or unit of federal, State, or local government specifically authorizing the individual to conduct the transaction.

A State junk metal dealer or scrap metal processor may not purchase a catalytic converter from a seller unless the seller is a licensed automotive dismantler and recycler or scrap processor, or an employee of a licensed commercial enterprise.

The bill repeals existing recordkeeping requirements for resident and nonresident junk dealers and scrap metal processors in favor of requirements that apply to all such persons doing business in the State. For each purchase, a junk dealer or scrap metal processor has to keep a record in English that includes the date and time of the transaction; a description of the junk or scrap metal; the type and grade of the junk or scrap metal, including weight if applicable; the amount paid for the junk or scrap metal; the license tag number, make, and model of the vehicle used; the name and address of the seller; the

signatures of the parties to the transaction; and other identifying information about the individual involved in the transaction that is obtained from a valid, State-issued photo ID.

Each resident junk dealer or scrap metal processor is required to keep records for one year following a transaction, subject to review by State and local law enforcement as part of an investigation of a specific crime. A junk dealer and scrap metal processor must keep electronic transaction records unless waived from this requirement by the jurisdiction's primary law enforcement unit, which may occur under certain circumstances.

All transaction records must be submitted to the law enforcement unit by the end of each business day. Records are confidential and not public records, and may be destroyed by the law enforcement unit after one year. The primary law enforcement unit may extend the reporting deadline for a junk dealer or scrap metal processor by up to one day. Records of transactions must be sent in a format that can be successfully received by the primary law enforcement unit. The bill specifies that the electronic recordkeeping requirements may not be construed to require a junk dealer or scrap metal processor to incur any additional expense to comply with these provisions.

The recordkeeping and reporting requirements do not apply to an item acquired from a licensed junk dealer; a unit of federal, State, or local government; or a commercial enterprise with whom the junk dealer or scrap metal processor has established an account or other business relationship.

State or local law enforcement agencies are authorized to issue a written hold notice after providing reasonable cause to believe that the junk dealer or scrap metal processor is in possession of stolen items. The identified items may not be moved from the place of business unless authorized by law enforcement or court order. Notices must specify a time period for the hold, not to exceed 15 days.

Local law enforcement agencies are authorized to enforce recordkeeping provisions. A person who violates these provisions is guilty of a misdemeanor and subject to a fine of up to \$500 for a first offense and a fine of up to \$5,000 and/or imprisonment for up to one year for subsequent offenses.

Current Law: A junk dealer or scrap metal processor is a person who does business buying or selling articles made of metals and compounds enumerated in State law, including aluminum, brass, bronze, light copper, heavy copper, pewter, nickel, and tin. The law also extends to buyers and sellers of certain equipment and supplies, including plumbing and electrical fixtures, pipes, locks, railroad equipment, and farm machinery. A person is required to have a junk dealer or scrap metal processor license when doing business in the State. A person must have an agent license if buying or selling on behalf

of a junk dealer or scrap metal processor. An applicant for a license must certify the name and business address to the clerk of the circuit court for the county with jurisdiction and pay the required license and issuing fee.

Each junk dealer or scrap metal processor who is a resident of the State is required to keep a written record in English made at the time of purchase that includes a description of the item, the name and address of the buyer and seller, the license tag of any vehicle used, and the date and time of the purchase. Records must be open to inspection by State or local law enforcement personnel at the place of business.

Nonresident junk dealers, scrap metal processors, or their agents are required to register all items in the county of purchase before transporting the item from the State. A description of the item must include the date of purchase; the license number of the buyer and seller, if applicable; the license tag number of the vehicle used; and the name of any consignee.

A person who violates the law relating to junk dealers and scrap metal processors is guilty of a misdemeanor and is subject to a fine of \$500 for each offense. Provisions do not generally apply in Baltimore City or Anne Arundel, Baltimore, Caroline, Carroll, Dorchester, Kent, Somerset, Washington, or Worcester counties; exempted jurisdictions vary in their regulatory requirements. Additional provisions apply in Calvert County.

In November 2009, Baltimore County enacted a law intended to require scrap metal dealers to be licensed, keep daily records of each transaction, including the seller's identity and vehicle information, and report all sales to the police at the end of each business day.

Background: High demand for metals such as copper and aluminum tend to encourage metal theft in the United States. The price of copper increased from \$0.65 per pound in 2001 to over \$4.00 per pound in July 2008. As of January 2010, the price of copper is about \$3.40 per pound. The premium on copper has been linked to theft of catalytic converters, cemetery markers and memorial plaques, and destruction of irrigation systems. Over the past few years, theft of copper wiring from utility property also has become a serious problem for utilities.

As of December 2008, 33 states had enacted legislation regulating scrap metal sales or explicitly criminalizing scrap metal theft. In 2009, 25 states introduced legislation to address the increase of theft of junk or scrap metal, according to the National Conference of State Legislatures. The various initiatives attempt to establish or expand state regulation and typically focus on increasing the access of law enforcement agencies to the records and identities of metal scrap dealers and sellers, and establishing penalties for metal theft and metal recyclers who purchase stolen property.

State Fiscal Effect: The State uses the Regional Automated Property Information Database (RAPID) system to transmit acquisition information to law enforcement from pawn shops, secondhand precious metal dealers, and automotive dismantlers. Grant funding from the Governor's Office of Crime Control and Prevention (GOCCP) in 2009 allowed the Department of State Police (DSP) to procure this statewide system. GOCCP advises that grant funding for RAPID expires soon and additional program expenses must be paid from the general fund.

The bill requires junk dealers and scrap metal processors to keep and file records electronically. DSP advises that it must create a new program within RAPID to allow the system to integrate electronic submissions from these dealers. In order for RAPID to have the capability to receive transaction information and effectively record specified information about products acquired by a dealer, the system must undergo a comprehensive software modification. DSP advises that the cost of the upgrade is \$150,000. Additionally, DSP estimates that 200 junk dealers or scrap metal processors are added to the database due to the bill. The State must pay an annual license fee of \$200 for each business it adds to RAPID. Therefore, general fund expenditures increase by \$190,000 in fiscal 2011 due to RAPID software system upgrades to accommodate junk dealers and scrap metal processors and for annual license fees. DSP advises that, despite the emergency application of the bill, any such upgrades could not be accommodated until fiscal 2011 at the earliest. Future year expenditures increase by \$40,000 annually. Otherwise, enforcement, particularly in counties where DSP is designated as the primary law enforcement until under current law, can be handled with existing resources.

General fund revenues increase marginally for District Court cases resulting in monetary penalties, as fines for subsequent offenses exceed penalties under current law regulating junk dealers and scrap metal transactions and the recordkeeping requirements are expanded to all junk dealers and scrap metal processors doing business in the State.

General fund expenditures increase minimally as a result of the bill's incarceration penalty due to more people being committed to Division of Correction facilities for convictions in Baltimore City. The number of people convicted of this proposed crime is expected to be minimal.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Fiscal Effect: Revenues increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

Expenditures increase as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities are expected to range from \$57 to \$157 per inmate in fiscal 2011.

DSP, through expansion of RAPID, should cover any expenditures that local law enforcement agencies would otherwise incur to acquire recordkeeping software and technical support to meet the electronic recordkeeping requirements. Further, counties may have designated DSP as their primary law enforcement unit. Regardless, once electronic recordkeeping replaces the use of paper transaction reports, local recordkeeping operations become more efficient and local governments may experience a decrease in expenditures.

Many local public works departments collect recyclables that residents leave outside of their dwellings. Some of these disposed-of items qualify as scrap or junk metal, as defined by the bill. Thus, some local governments meet the statutory definition of a junk dealer or scrap metal processor. Legislative Services advises that the bill's recordkeeping requirements only apply to purchasers of scrap or junk metal. Legislative Services assumes that local governments do not pay residents for items left at the curb. Therefore, the recordkeeping requirements do not apply to local governments, even if the governments later sell the scrap items. Local government practices for collecting and reselling junk or scrap metal are not affected by the bill.

Small Business Effect: Although the recordkeeping requirements may not be construed to require a junk dealer or scrap metal processor to incur additional expenses, complying with the bill's requirements may place an operational burden on these businesses in some cases. The impact of the bill on small business varies depending on the extent of current regulation by State or local governments.

Additional Information

Prior Introductions: Different versions of SB 32 of 2009, a similar bill, passed the Senate and the House, but the House did not adopt the conference committee report. Its cross file, HB 207, received an unfavorable report from the House Economic Matters Committee. Different versions of HB 23 of 2009, also a similar bill, passed the House and the Senate, but differences were not resolved by the conference committee. Similar bills were also introduced in 2008. Different versions of SB 521 passed the House and the Senate, but the House did not adopt the conference committee report. HB 727 was amended by the House but did not receive a hearing from the Senate Finance Committee.

Cross File: Although not designated as a cross file, SB 99 as introduced (Senators DeGrange and Astle – Finance) is identical.

Information Source(s): National Conference of State Legislatures; *The Baltimore Sun*; Allegany, Charles, Frederick, Harford, and Montgomery counties; Cities of Baltimore and Rockville; Governor’s Office of Crime Control and Prevention; Judiciary (Administrative Office of the Courts); Department of State Police; Department of Labor, Licensing, and Regulation; Department of Legislative Services

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