



# Ohio Legislative Service Commission

## Final Analysis

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### **Am. Sub. S.B. 193** 129th General Assembly (As Passed by the General Assembly)

**Sens.** Seitz, Patton, Hughes, Bacon, Balderson, Beagle, Brown, Burke, Cafaro, Eklund, Hite, Jones, Kearney, LaRose, Lehner, Manning, Niehaus, Oelslager, Sawyer, Schiavoni, Tavares, Turner, Wagoner

**Reps.** R. Adams, Antonio, Ashford, Barnes, Boyce, Boyd, Bubp, Carney, Celebrezze, Celeste, Cera, Clyde, Combs, Conditt, Damschroder, Derickson, Driehaus, Duffey, Foley, Hackett, C. Hagan, Heard, Johnson, Letson, Lundy, Mallory, McGregor, Milkovich, O'Brien, Patmon, Phillips, Ramos, Schuring, Stautberg, Terhar, Uecker, Williams, Yuko, Batchelder

**Effective date:** September 28, 2012; certain provisions effective January 1, 2013

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## ACT SUMMARY

- Creates specific criminal penalties for the theft of special purchase articles and bulk merchandise containers.
- Requires a motor vehicle used in the theft of metal, special purchase articles, or bulk merchandise containers to be impounded for a specific period of time.
- Prohibits any person from receiving, purchasing, or selling a special purchase article or a bulk merchandise container except as in accordance with the laws governing scrap metal dealers and bulk merchandise containers and prescribes penalties for violating the prohibition.
- Expands the continuing law list of special purchase articles to include railroad material, specified metal trays and containers, and burnt wire.
- Requires scrap metal dealers and bulk merchandise container dealers to register with the Director of Public Safety and prescribes registration requirements.
- Revises the definition of "scrap metal dealer."
- Requires dealers to pay an initial registration fee of \$200 and an annual renewal fee of \$150.

- Requires the Director to develop and implement, by January 1, 2014, and maintain as a registry a secure database for use by law enforcement agencies regarding scrap metal and bulk merchandise container transactions and prescribes requirements for that registry.
- Requires dealers to transmit daily transaction reports to the Director for inclusion in the registry.
- Requires bulk merchandise container dealers to maintain records of transactions in accordance with the act and subjects bulk merchandise container purchases and receipts to the same requirements in which scrap metal dealers must comply for special purchase articles.
- Requires both types of dealers to take photographs of the person from whom the dealer purchases or receives the article or container and prohibits a dealer from purchasing or receiving an article or container from a person who refuses to have the person's picture taken.
- Makes changes to the recordkeeping requirements for scrap metal dealers.
- Increases the current law penalties applicable to scrap metal dealers and secondhand dealers for failure to comply with the applicable duties in the law and subjects bulk merchandise container dealers to those increased penalties.
- Requires the list provided by law enforcement to scrap metal dealers to include only persons known to be thieves or receivers of stolen property (instead of known or suspected under former law) and authorizes law enforcement agencies to request the clerk of courts to provide that list.
- Requires that list to be provided in a searchable, electronic format and to also be provided to bulk merchandise container dealers and the Department of Public Safety.
- Creates a joint select committee to study the act's effectiveness.

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## TABLE OF CONTENTS

Offenses and penalties related to theft.....	3
Special purchase articles .....	4
Registration of scrap metal dealers and bulk merchandise container dealers .....	4
Electronic registry .....	6
Daily reports.....	6
Advisory Council .....	7
Fees.....	7

Recordkeeping and transaction requirements .....	7
Bulk merchandise container dealers.....	7
Scrap metal dealers .....	9
Record format and retention.....	10
Examination of records.....	10
Additional duties.....	10
Penalties for failure to comply .....	11
Law enforcement list .....	11
Rulemaking.....	12
Creation of a joint select committee to study act's effectiveness .....	12

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## CONTENT AND OPERATION

### Offenses and penalties related to theft

The act creates specific criminal penalties with respect to the theft of a special purchase article (see "**Special purchase articles**" below) or bulk merchandise container (a plastic or wooden carrier or holder used by a manufacturer or distributor to transport merchandise to wholesale and retail outlets). Previously, theft of these items was governed by the general offense of theft under which the criminal penalty is generally based upon the value of the property stolen.<sup>1</sup> Under the act, theft of a special purchase article or bulk merchandise container is a fifth degree felony on the first offense and a third degree felony for any subsequent offense.<sup>2</sup> Additionally, the act also prohibits any person from receiving, purchasing, or selling a special purchase article or a bulk merchandise container except as in accordance with the laws governing scrap metal dealers and bulk merchandise containers. A violation of this prohibition is a fifth degree felony on the first offense and a third degree felony for any subsequent offense.<sup>3</sup>

Any motor vehicle used in the theft or illegal transportation of metal under the act must be impounded for at least 30 days and not more than 60 days. If the same motor vehicle is used in connection with a second or subsequent theft or illegal transportation of metal, the motor vehicle must be impounded for at least 60 days and not more than 180 days. Any motor vehicle used in the theft or illegal transportation of a special purchase article or bulk merchandise container must be impounded for at least 90 days and not more than 360 days. A motor vehicle impounded pursuant to the act must be stored at a municipal corporation impound lot, if available, or at a lot owned by a private entity or another governmental unit that the municipal corporation utilizes for the purpose of impounding a motor vehicle. An impounded motor vehicle may be

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<sup>1</sup> R.C. 2913.02, not in the act.

<sup>2</sup> R.C. 4737.04(B)(2) and 4737.99(E) with a conforming change in R.C. 2913.01(K).

<sup>3</sup> R.C. 4737.04(B)(3) and 4737.99(E).

recovered from the impound lot at the end of the impound term upon payment of fees, 50% of which must be remitted to the Department to offset the costs of operating the registry created under the act (see "**Fees**" below).<sup>4</sup>

### **Special purchase articles**

Continuing law places additional requirements on scrap metal dealers with respect to purchasing or receiving "special purchase articles" as compared to other types of scrap metal (see "**Recordkeeping and transaction requirements**" below). The act expands the continuing law list of special purchase articles to include all of the following items:

- Railroad material, including journal brasses, rail spikes, rails, tie plates, frogs, and communication wire;
- Metal trays, merchandise containers, or similar transport containers used by a product producer, distributor, retailer, or an agent of a product producer, distributor, or retailer as a means for the bulk transportation, storage, or carrying of retail containers of milk, baked goods, eggs, or bottled beverage products;
- "Burnt wire," which is any metal that has been smelted, burned, or melted.<sup>5</sup>

### **Registration of scrap metal dealers and bulk merchandise container dealers**

Beginning January 1, 2013, the act prohibits any person from engaging in the business of scrap metal dealing or acting as a bulk merchandise container dealer (a dealer who is in the business of purchasing, reselling, exchanging, recycling, shredding, or receiving bulk merchandise containers subject to the act's recordkeeping requirements) without first registering with the Director of Public Safety. A person who violates this prohibition is guilty of a fifth degree felony, and the act requires a court also to enjoin the person from engaging in the business of a scrap metal dealer or a bulk merchandise dealer.<sup>6</sup>

The act narrows the definition of "scrap metal dealer" to mean the owner or operator of a business that purchases or receives scrap metal for the purpose of sorting,

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<sup>4</sup> R.C. 4737.99(F).

<sup>5</sup> R.C. 4737.04(A).

<sup>6</sup> R.C. 4737.04(B)(1) and 4737.99(D) and Section 3.

grading, and shipping metals to third parties for direct or indirect melting into new products, rather than simply an owner or operator of a business that purchases or receives scrap metal as under former law.<sup>7</sup> Thus, only scrap metal dealers who meet this definition are required to register under the act.

To register as a scrap metal dealer or a bulk merchandise container dealer, a person must do all of the following:

- Provide the name and street address of the dealer's place of business;
- Provide the name of the primary owner of the business, and of the manager of the business, if the manager is not the primary owner;
- Provide the electronic mail address of the business;
- Provide confirmation that the dealer has the capabilities to electronically connect with the Department of Public Safety for the purpose of sending and receiving information (see "**Electronic registry**" below);
- Provide any other information required by the Director in rules the Director adopts under the act;
- Pay an initial registration fee of \$200.

The act requires a person engaging in the business of a scrap metal dealer or a bulk merchandise container dealer in Ohio on or before the act's effective date to register with the Director not later than January 1, 2013. With respect to a person who commences engaging in the business of a scrap metal dealer or a bulk merchandise container dealer after the act's effective date, the person must register with the Director prior to commencing business as a scrap metal dealer or a bulk merchandise container dealer.

A registration is valid for a period of one year. A dealer must renew the registration in accordance with the rules adopted by the Director and pay a renewal fee of \$150 to cover the costs of operating and maintaining the registry created in the act.<sup>8</sup>

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<sup>7</sup> R.C. 4737.04(A).

<sup>8</sup> R.C. 4737.045(A), (B), (C), and (E)(2).

## Electronic registry

Under the act the Director must develop and implement, by January 1, 2014, and maintain as a registry a secure database for use by law enforcement agencies that is capable of all of the following:

- Receiving and securely storing all of the information required for registration and the daily transaction data that scrap metal dealers and bulk merchandise dealers are required to send pursuant to the act (see "**Daily reports**" below);
- Providing secure search capabilities to law enforcement agencies for enforcement purposes;
- Creating a link and retransmission capability for receipt of routine scrap theft alerts published by the institute of scrap recycling industries for transmission to dealers and law enforcement agencies in Ohio;
- Making the electronic lists of persons known to be thieves or receivers of stolen property (see "**Law enforcement lists**" below) available through an electronic searchable format for individual law enforcement agencies and dealers in Ohio;
- Providing, without charge, interlink programming enabling the transfer of information to dealers.

The act permits a scrap metal dealer or bulk merchandise container dealer to search, modify, or update only the dealer's own business data contained within the registry.<sup>9</sup>

### Daily reports

The act requires both types of dealers to prepare a daily electronic report, the content and format of which must be established in rules adopted by the Director, listing all retail transactions that occurred during the preceding day and containing the information maintained under the applicable recordkeeping requirements (see "**Recordkeeping and transaction requirements**" below). A dealer must electronically transfer, by 12 p.m. Eastern Standard Time, the report for inclusion in the registry. The Director must adopt rules regarding the delivery of the daily reports.<sup>10</sup>

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<sup>9</sup> R.C. 4737.045(E)(1) and (F).

<sup>10</sup> R.C. 4737.04(E)(1) and 4737.045(E)(3).

## **Advisory Council**

The act creates the Scrap Metal and Bulk Merchandise Container Registry Advisory Council. The Director must appoint the members of the Council, who must represent the scrap metal recycling industry, businesses that provide software to the scrap metal recycling industry, law enforcement, and other interests as the Director determines necessary. The Council must provide guidance and assistance to the Director in the development and implementation of the registry required under the act. The Department must provide assistance to the Council as the Director determines necessary. Members serve without compensation or reimbursement. The act abolishes the Council on January 1, 2014.<sup>11</sup>

## **Fees**

The act requires all fees received by the Director for registration and renewal and for impounded cars as described under "**Offenses and penalties related to theft**" above to be used to develop and maintain the required registry. The fees must be deposited into the Security, Investigations, and Policing Fund.

In order to cover the costs of the creation and initial implementation of the registry, the act permits the Director to accept funds from public donors for that purpose. The Director must deposit any funds received into the Security, Investigations, and Policing Fund.<sup>12</sup>

## **Recordkeeping and transaction requirements**

### **Bulk merchandise container dealers**

The act requires every bulk merchandise container dealer who purchases or receives plastic bulk merchandise containers that are marked with a company name or logo or more than nine wooden bulk merchandise containers from any other person at one time to maintain a record book or electronic file that holds an accurate and complete record of all containers purchased or received by the dealer. Entries in the record book must be numbered consecutively. Each record must contain the name and residence of the person who transferred the containers to the dealer, and a copy of that person's personal identification card. Each record must also contain a description of the containers, including the number purchased or received, the date and time of purchase or receipt, and the license plate number of the motor vehicle the seller or provider of the

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<sup>11</sup> Section 6.

<sup>12</sup> R.C. 4737.045(G) and Section 4.

containers arrived in and the state where the license was issued, if the seller arrived in a vehicle.<sup>13</sup>

Every dealer who is in the business of reselling bulk merchandise containers must, in addition to the requirements outlined above, take a photograph of each container for which the dealer must make a record at the time of purchase or receipt of the containers and a photograph of the person who sells or otherwise gives the dealer the containers. The photographs must be taken at the time of purchase or receipt of the containers and in accordance with rules adopted by the Director and must be kept as part of the required record.<sup>14</sup>

A dealer who is in the business of purchasing, reselling, exchanging, recycling, shredding, or receiving bulk merchandise containers must fulfill the following requirements with respect to the containers purchased or received by the dealer for which the dealer must make a record, which are the same requirements that a scrap metal dealer must comply with respect to special purchase articles:

- (1) Take a photograph of each bulk merchandise container;
- (2) Obtain from the seller or provider of the bulk merchandise container proof that the seller or provider owns the bulk merchandise container;
- (3) If payment is rendered for the bulk merchandise containers, issue a check for the purchase of the bulk merchandise containers;
- (4) Withhold payment for the purchase of the bulk merchandise containers for a period of two days after the day the bulk merchandise containers are purchased;
- (5) If an asserted owner of stolen bulk merchandise containers or that owner's agent provides proof of having filed a stolen property report with the appropriate law enforcement agency, make records describing bulk merchandise containers the dealer purchased or received after the alleged date of theft available for inspection to the asserted owner or owner's agent for a period of six months after the alleged date of theft of the articles, except that the dealer must withhold the name of the person from whom the bulk merchandise containers were purchased or received and the amount paid for the bulk merchandise containers.

The act prohibits a dealer from purchasing or receiving any bulk merchandise container for which the dealer must make a record without complying with (1), (2), or

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<sup>13</sup> R.C. 4737.012(A).

<sup>14</sup> R.C. 4737.012(B).



(3) above.<sup>15</sup> Additionally, no bulk merchandise container dealer can purchase or receive any bulk merchandise containers from any person who is under 18 years of age or from a person who refuses to show the dealer the person's personal identification card, or who refuses to allow the dealer to take a photograph of the person or container.<sup>16</sup>

### **Scrap metal dealers**

The act expands the continuing law recordkeeping requirements for scrap metal dealers. Under continuing law records must be numbered consecutively, and, beginning on the act's effective date, the records must be maintained for inspection in numerical order. Additionally, under the act the record also must contain a photograph of each person who sells or otherwise gives the dealer an article for which the dealer must make record. The dealer must take the required photograph at the time the dealer purchases or receives the article in accordance with rules adopted by the Director. The act prohibits a scrap metal dealer from purchasing or receiving any metal articles from any person who refuses to allow the dealer to take a photograph of the person.

In addition to including information required under continuing law, the record must also contain the weight of the articles as determined by a licensed commercial scale.

Continuing law also prescribes categories that a scrap metal dealer must use to identify certain recyclable materials. The act expands the categories to include "steel structural," which includes all structural steel such as I-beams, trusses, channel iron, and similar steel from buildings. For recyclable materials that are special purchase articles, the act requires the record to contain the relevant category of special purchase article.<sup>17</sup>

The act prohibits a scrap metal dealer from purchasing or receiving a beer keg that is marked with a company name or logo except from a manufacturer of beer as described in the Liquor Law or an agent authorized by the manufacturer to dispose of damaged kegs.<sup>18</sup>

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<sup>15</sup> R.C. 4737.012(C) and 4737.041.

<sup>16</sup> R.C. 4737.04(F)(1) and (3).

<sup>17</sup> R.C. 4737.04(C), (F)(1), and (I).

<sup>18</sup> R.C. 4737.04(F)(6), by reference to R.C. 4303.02, not in the act.

## **Record format and retention**

With respect to records maintained by both types of dealers, the act requires the Director to adopt rules for the format and maintenance of the records. Additionally, until the registry is operational, the act requires a scrap metal dealer to maintain the required photograph only for a period of 60 days after the dealer purchased or received the article and, as under law retained in part by the act, to maintain the rest of the record for a period of one year. Similarly, the act requires a bulk merchandise container dealer, until the registry is operational, to maintain the record for each container purchased or received for a minimum period of one year after the date the dealer purchased or received the container. Beginning on the date the registry is operational, a dealer must maintain the record for each container purchased or received only for a period of 60 days after the date the dealer purchased or received the article or container.<sup>19</sup>

## **Examination of records**

The act requires bulk merchandise container dealers, similar to scrap metal dealers under continuing law, to provide the required records to any law enforcement agency upon request, and also requires both types of dealers to provide a copy of the required records to railroad police officers. Additionally, the act permits a law enforcement agency to inspect any photographic records collected and maintained by a scrap metal dealer of either yard operations or individual transactions. Under continuing law, any records submitted to a law enforcement agency are not public records under the Public Records Law.<sup>20</sup>

## **Additional duties**

The act requires a registered dealer to prominently display a copy of the annual registration certificate received from the Director.<sup>21</sup>

Continuing law requires every scrap metal dealer to post a notice in a conspicuous place on the dealer's premises notifying persons who may wish to transact business with the dealer of the penalties applicable to any person who does any of the following:

- Provides a false personal identification card to the dealer;

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<sup>19</sup> R.C. 4737.012(A), 4737.04(C), and 4737.045(E)(3).

<sup>20</sup> R.C. 4737.04(E), by reference to R.C. 149.43, not in the act.

<sup>21</sup> R.C. 4737.045(D).

- With purpose to defraud, provides any other false information to the dealer in connection with the dealer's duty to maintain the required records;
- Commits the offense of theft.

The act requires bulk merchandise container dealers to post this notice and requires both types of dealers to include in the notice the penalties for the theft of special purchase articles or bulk merchandise containers as prescribed in the act.<sup>22</sup>

### Penalties for failure to comply

Former law prescribed criminal penalties for secondhand dealers who failed to comply with continuing law recordkeeping requirements and for scrap metal dealers who failed to comply with the various requirements of the law governing scrap metal dealers. The act increases the penalties as follows:

Offense	Former law	The act
First offense	Third degree misdemeanor	First degree misdemeanor
Second offense	Second degree misdemeanor	Fifth degree felony
Subsequent offense	First degree misdemeanor	Fourth degree felony

The act also applies the increased penalties to a bulk merchandise dealer who fails to comply with the act's duties or violates the act's prohibitions. Additionally, these penalties apply to a dealer who fails to comply with the act's photograph requirements, requirements to submit daily reports, and the duties listed under "**Additional duties**" above. Under the act, for any second or subsequent violation of or failure to comply with the laws governing secondhand dealers, scrap metal dealers, or bulk merchandise container dealers, the act permits a court to suspend the scrap metal dealer's or bulk merchandise container dealer's registration for a period of 90 days, during which time period the person must not engage in the business of a scrap metal dealer or a bulk merchandise container dealer, as applicable.<sup>23</sup>

### Law enforcement list

Under continuing law retained in part by the act the law enforcement agency that serves the jurisdiction in which a scrap metal dealer is located must provide a list,

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<sup>22</sup> R.C. 4737.04(G).

<sup>23</sup> R.C. 4737.99(C).

as that agency determines appropriate, of the names and descriptions of persons known to be or who are suspected to be thieves or receivers of stolen property. Continuing law prohibits any scrap metal dealer from purchasing or receiving articles from any person identified on the list. The act requires a law enforcement agency also to provide that list to a bulk merchandise container dealer. Similar to a scrap metal dealer, a bulk merchandise container dealer is prohibited from purchasing or receiving articles from any person identified on the list. Under the act, the list contains only the names and descriptions of persons known to be (as opposed to known or suspected to be under former law) thieves or receivers of stolen property. The act requires the list to be searchable and electronic and to be prepared in accordance with rules adopted by the Director. The act also allows the law enforcement agency to request the appropriate clerk of courts to provide the list.

The act requires the law enforcement agency also to provide the list to the Department, in an electronic format in accordance with rules adopted by the Director, for inclusion in the registry (see "**Electronic registry**" above).

The act expands the continuing law immunity for law enforcement agencies in actions for defamation, libel, or slander with regard to the list to include the clerk of courts, the clerk's employees, and the Department's employees.<sup>24</sup>

## **Rulemaking**

The act requires the Director to adopt rules to enforce the laws governing secondhand dealers, scrap metal dealers, and bulk merchandise container dealers.<sup>25</sup>

## **Creation of a joint select committee to study act's effectiveness**

The act requires that during the first year of the 134th General Assembly (2021), the House Speaker or Senate President must initiate creation of a joint select committee of the House and Senate, in accordance with the Joint Rules for the 134th General Assembly, to consider the act's effectiveness in deterring crime and the costs of compliance to industries affected by the act.

The joint select committee must hold public hearings at which representatives of the Ohio Municipal League, the Ohio Prosecuting Attorneys Association, the Ohio Sheriff's Association, representatives of the scrap metal recycling industry, and other interested parties may present testimony on the act's effect on metals theft rates, theft deterrence, criminal enforcement and prosecution, and economic and administrative

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<sup>24</sup> R.C. 4737.04(F)(2) and (H).

<sup>25</sup> R.C. 4737.045(E)(3).

burdens on industry. The joint select committee must provide advance notice of its hearings to, and must solicit comments in advance of those hearings from, these organizations and other interested parties that the committee determines should receive notice.

The joint select committee must issue a report summarizing the act's effectiveness and impacts. The joint committee must submit the report to House Speaker and Senate President. The Legislative Service Commission must assist the committee in preparing and finalizing the report.<sup>26</sup>

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## HISTORY

ACTION	DATE
Introduced	06-30-11
Reported, S. Insurance, Commerce & Labor	03-14-12
Passed Senate (31-0)	03-14-12
Reported, H. Commerce, Labor and Technology	05-24-12
Passed House (82-10)	06-12-12
Senate concurred in House amendments (32-0)	06-13-12

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<sup>26</sup> Section 5.

