

# MAINE STATE LEGISLATURE

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# 125th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2012

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Legislative Document

No. 1708

H.P. 1260

House of Representatives, December 23, 2011

### **An Act To Prevent the Theft and Illegal Sale of Copper and Other Metals**

(EMERGENCY)

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 21, 2011. Referred to the Committee on Labor, Commerce, Research and Economic Development pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Clerk

Presented by Representative LONGSTAFF of Waterville.  
Cosponsored by Senator RECTOR of Knox and  
Representatives: CAREY of Lewiston, CHIPMAN of Portland, CUSHING of Hampden,  
HANLEY of Gardiner, MALONEY of Augusta, VALENTINO of Saco, VOLK of  
Scarborough, Senator: PATRICK of Oxford.

1           **Emergency preamble.** Whereas, acts and resolves of the Legislature do not  
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3           **Whereas,** the theft of copper and other metals and their subsequent sale as scrap  
4 metal is a growing problem in Maine and the nation; and

5           **Whereas,** the theft of metal, such as catalytic converters, manhole covers and traffic  
6 signs, places members of the public in jeopardy; and

7           **Whereas,** without further restrictions on the sale of scrap metal, the theft of scrap  
8 metal will continue to grow, further endangering lives and the well-being of the public;  
9 and

10           **Whereas,** in the judgment of the Legislature, these facts create an emergency within  
11 the meaning of the Constitution of Maine and require the following legislation as  
12 immediately necessary for the preservation of the public peace, health and safety; now,  
13 therefore,

14           **Be it enacted by the People of the State of Maine as follows:**

15           **Sec. 1. 30-A MRSA §3772, sub-§1,** as enacted by PL 2007, c. 549, §1, is  
16 amended to read:

17           **1. Maintenance of records requirement.** Except as provided in subsection 2, a  
18 scrap metal processor doing business in the State shall maintain an accurate and legible  
19 record of each scrap metal purchase transaction ~~that exceeds 100 pounds or \$50. A scrap~~  
20 ~~metal processor shall provide payment to a seller only in the form of a check, and shall~~  
21 ~~maintain a record of the payee, check number and name of the financial institution upon~~  
22 ~~which the check is drawn.~~

23           **Sec. 2. 30-A MRSA §3772, sub-§1-A** is enacted to read:

24           **1-A. Form and method of payment.** A scrap metal processor shall provide  
25 payment to a seller only in the form of a check and shall maintain a record of the payee,  
26 check number and name of the financial institution upon which the check is drawn. A  
27 scrap metal processor shall send the payment by first-class mail to the seller's physical  
28 address.

29           **Sec. 3. 30-A MRSA §3772, sub-§3, ¶A,** as enacted by PL 2007, c. 549, §1, is  
30 amended to read:

31           A. The name, address and gender of the seller. The scrap metal processor shall  
32 require the seller to provide proof of identification with a driver's license, military  
33 identification card, passport or other form of government-issued photo identification.  
34 The scrap metal processor shall photocopy the form of photo identification presented  
35 and record the distinct identifying number of that photo identification. If the proof  
36 of identification contains a photograph that is faded, out of date or otherwise  
37 indiscernible, the scrap metal processor shall photograph the seller. Information  
38 required under this paragraph may be maintained for repeat sellers in a relational

1 database that allows the scrap metal processor to record the information one time and  
2 relate future purchase records to that information;

3 **Sec. 4. 30-A MRSA §3772, sub-§3, ¶F**, as enacted by PL 2007, c. 549, §1, is  
4 amended to read:

5 F. The consideration paid; ~~and~~

6 **Sec. 5. 30-A MRSA §3772, sub-§3, ¶G**, as enacted by PL 2007, c. 549, §1, is  
7 amended to read:

8 G. A signed statement that the seller is the owner or is otherwise authorized to sell  
9 the scrap metal; and

10 **Sec. 6. 30-A MRSA §3772, sub-§3, ¶H** is enacted to read:

11 H. The make, model and number and state of issue of the license plate of the vehicle  
12 being used to deliver the scrap metal.

13 **Sec. 7. 30-A MRSA §3775-A** is enacted to read:

14 **§3775-A. Holding period; inspection**

15 A scrap metal processor shall retain and make available for inspection by a law  
16 enforcement officer for a minimum of 72 hours, not including weekends or holidays,  
17 scrap metal purchased by that scrap metal processor.

18 **1. Fifteen-day hold.** If a law enforcement officer has a reasonable suspicion that  
19 scrap metal being held by a scrap metal processor is stolen, the officer may issue a  
20 written order to the scrap metal processor, specifying the scrap metal that must be  
21 retained and the length of time, but no more than 15 days, that the scrap metal processor  
22 must retain the identified scrap metal.

23 **2. Additional hold.** Prior to the expiration of the time period of the hold specified  
24 by a law enforcement officer pursuant to subsection 1, a law enforcement officer may  
25 impose an additional hold period of no more than 15 days. The law enforcement officer  
26 imposing the additional hold shall provide the scrap metal processor with a written  
27 description of the scrap metal to be retained and the length of time the scrap metal  
28 processor must retain the identified scrap metal.

29 **Sec. 8. 30-A MRSA §3777**, as enacted by PL 2007, c. 549, §1, is repealed.

30 **Sec. 9. 30-A MRSA §3778** is enacted to read:

31 **§3778. Penalties**

32 The following penalties apply to the following violations of this subchapter.

33 **1. False information.** The following penalties apply to a person who provides false  
34 or misleading information in response to a requirement of this subchapter.

1 A. A person who knowingly makes a written false material statement or displays a  
2 false or altered form of identification with respect to the requirements of section 3772  
3 or any other provision of this subchapter commits a Class D crime.

4 B. Notwithstanding Title 17-A, section 453, a person who violates paragraph A and  
5 at the time of the offense has one or more prior convictions for engaging in conduct  
6 substantially similar to that contained in paragraph A commits a Class C crime.

7 Title 17-A, section 9-A governs the use of prior convictions when determining a  
8 sentence.

9 **2. Receiving stolen scrap metal.** The following penalties apply to a person who  
10 receives stolen scrap metal.

11 A. A person who receives, retains or disposes of, by sale or otherwise, scrap metal  
12 that is the property of another, knowing that it has been stolen or believing that it has  
13 probably been stolen, with the intent to deprive the owner of the property is guilty of  
14 receiving stolen property and is subject to the provisions of Title 17-A, section 359,  
15 subsection 1, paragraph A. Violation of this paragraph is a Class E crime.

16 B. Notwithstanding Title 17-A, section 359, subsection 1, paragraph B, subparagraph  
17 (6), a person who violates paragraph A and at the time of the offense has one or more  
18 prior convictions for engaging in conduct substantially similar to that contained in  
19 paragraph A commits a Class C crime.

20 Title 17-A, section 9-A governs the use of prior convictions when determining a  
21 sentence.

22 As used in this subsection, "receives" means acquiring possession, control or title or  
23 lending on the security of the scrap metal. For purposes of this subsection, scrap metal is  
24 "stolen" if it was obtained or unauthorized control was exercised over it in violation of  
25 this subchapter or Title 17-A, chapter 15.

26 **3. Other penalties.** In addition to the penalties described in subsections 1 and 2, a  
27 scrap metal processor who violates a provision of this subchapter is subject to the  
28 following fines and civil penalties:

29 A. For the first violation of this subchapter, the scrap metal processor is subject to a  
30 mandatory fine of \$1,000;

31 B. For a 2nd violation of this subchapter, the scrap metal processor is subject to a  
32 mandatory fine of \$3,000; and

33 C. For a 3rd and subsequent violation of this subchapter, the scrap metal processor is  
34 subject to a mandatory fine of \$5,000 and is prohibited from acting as a scrap metal  
35 processor for 6 months.

36 **Emergency clause.** In view of the emergency cited in the preamble, this  
37 legislation takes effect when approved.

1 **SUMMARY**

2 This bill makes the following changes to the laws regulating the sale and purchase of  
3 scrap metal.

4 1. Current law regulates transactions involving more than 100 pounds or \$50 of scrap  
5 metal. This bill removes that limitation so that the law applies to all scrap metal  
6 transactions.

7 2. Current law requires the seller to be paid with a check. This bill strengthens that  
8 limitation by requiring the check to be mailed to the seller's physical address.

9 3. Current law requires a scrap metal processor to record certain information  
10 regarding the seller of scrap metal, such as name, address and gender. This bill requires  
11 the scrap metal processor to also photocopy the form of photo identification presented  
12 and record the distinct identifying number of that photo identification. If the proof of  
13 identification contains a photograph that is faded, out of date or otherwise indiscernible,  
14 the scrap metal processor is required to photograph the seller. The bill also requires the  
15 scrap metal processor to record the make, model and number and state of issue of the  
16 license plate of the vehicle being used to deliver the scrap metal.

17 4. This bill requires a scrap metal processor to retain any scrap metal received for 72  
18 hours, not including weekends and holidays, and to make the scrap metal available for  
19 inspection by law enforcement. If a law enforcement officer has a reasonable suspicion  
20 that the scrap metal is stolen, the officer may, in writing, require the scrap metal  
21 processor to retain the scrap metal for 15 days; this holding period may be extended by no  
22 more than 15 additional days.

23 5. Current law provides that a violation of the laws regulating scrap metal purchases  
24 and sales is a civil violation. This bill makes a first violation of providing false  
25 information a Class D crime and a first violation of receiving stolen scrap metal a Class E  
26 crime; a 2nd or subsequent violation of those prohibitions is a Class C crime. A scrap  
27 metal processor is also subject to mandatory fines ranging from \$1,000 to \$5,000 and a  
28 6-month suspension from scrap metal processing, depending on the number of violations.