

## Responsible Recyclers Association

### Analysis of

### HB 4593, HB 4594 & HB 4595

House Bill's 4593, 4594 and 4595 collectively seek to amend the existing Michigan Non-Ferrous Metal Regulatory Act. The Responsible Recyclers Association favors amending the Michigan Non-Ferrous Metal Regulatory Act to make it an effective tool in the battle to eliminate metal theft. However, unlike the approach taken in the House Bill package, the Association favors amending the existing law to meaningfully empower law enforcement to combat crime, while simultaneously empowering the recycling yards and dealers in that fight.

The following are some of the deficiencies that we have found in the House Bill package:

- **Unjust Penalties** - The penalties imposed by the package are unjust for the business owners. They place a 5 year felony or \$5,000 fine, or both for the first offense and a 5 year felony or \$10,000 fine or both for the second offense. It also allows for individuals to sue the scrap metal dealers for monetary damages incurred by the original theft of their property.
- **No Funding Provided for Enforcement** - There is no funding mechanism for enforcement. The Association has proposed a \$1 transaction fee at the time and place of each transaction to be collectively submitted to the Michigan State Police (MSP). Half the funds will be distributed to the local law enforcement agency in the community where the transaction occurred, to be used exclusively for metal theft law enforcement. This will allow for local law enforcement to respond to metal thefts in progress and investigate and prosecute wrongdoers.
- **No Funding Provided for the Registry**- There is no funding mechanism for development and maintenance of a metal registry database. The Association has proposed that half the funds collected from the \$1 transaction fee be distributed to the MSP to be used exclusively for development, maintenance and enforcement of violations of the registry. This will allow scrap dealers to identify the known thieves and not do business with them, along with sharing the information with everyone.
- **No Cash** – The legislation doesn't allow for recyclers to transact in cash. All transactions will have to be paid by check, money order or ATM. The Association recommends a limit of \$200 for cash transactions.
- **No Barter** – The legislation prohibits the use of barter between non commercial customers. This will preclude dealers from exchanging the cost of transportation of a recycled item for that item. Individuals and businesses would be unable to utilize this method to dispose of unwanted objects from their homes, farms and businesses.
- **Excludes Auto Recyclers** – A significant portion of the recycling business, including auto recyclers and all related entities are excluded from this legislation. All should participate.





**KOTZ SANGSTER WYSOCKI P.C.**  
400 RENAISSANCE CENTER, SUITE 3400 | DETROIT | MICHIGAN | 48243-1618  
(313) 259-8300 | (313) 259-1451 FAX  
[WWW.KOTZSANGSTER.COM](http://WWW.KOTZSANGSTER.COM)

GEORGE F. CURRAN, III  
gcurran@kotzsangster.com  
(313) 259-8723 Direct

June 3, 2013

**MICHIGAN HOUSE REGULATORY  
REFORM COMMITTEE**

**RE: TESTIMONY BEFORE THE MICHIGAN HOUSE REGULATORY REFORM COMMITTEE CONCERNING  
HB 4593, HB 4594 AND HB 4595  
(SPONSORS: REPRESENTATIVES TLIAB, MUXLOW AND ANANICH)**

Attn: Honorable Chairman Hugh D. Crawford and Members of the Michigan House Regulatory Reform Committee:

My name is George F. Curran, III and I am legal counsel to the Responsible Recycler's Association, a Michigan non-profit association established to protect the Right to Recycle of Michigan's Metal Recycling industry, comprising more than 535 businesses state-wide, employing thousands of taxpaying, hardworking citizens. Ordinarily I would be here in person to deliver this testimony, but due to the short notice of today's hearing, I have previous court-required commitments that cannot be rearranged.

The current package of House Bills before this Committee for discussion today, HB's 4593, 4594 and 4595 collectively seek to amend the existing Michigan Non-Ferrous Metal Regulatory Act, (Michigan Compiled Laws Section 445.421, et seq.) which was enacted in 2008.

The Responsible Recycler's Association favors amending the Michigan Non-Ferrous Metal Regulatory Act, in order to make it an effective weapon in the battle to end the epidemic of metal theft that has been spreading across our state and the country. Like Representatives Tliab, Muxlow and Ananich who have sponsored the Bills before you, the Association favors expanding the scope of the Act to encompass not just the non-ferrous metals such as copper, aluminum, and others, but also to include ferrous metals.

However, unlike the approach taken in the House Bill package, the Association favors amending the existing law to meaningfully empower law enforcement to combat crime and the criminals, while simultaneously empowering the Recycling yards and dealers in that fight.

The most prevalent complaint heard across the state, from the Town Hall Meetings offered by Representative Tliab, to the views echoed by the Institute for Scrap and Recycling Industries, in the American Metal Market publication, is the **lack of law enforcement resources to combat metal theft**, or to even respond to telephone calls for help, reporting metal theft in progress. **Any legislation which does not provide a mechanism for funding law enforcement activities dedicated to metal theft will not be successful in reducing metal theft.** ISRI stated, *"Legislative effort without including provisions*

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*for additional resources to enhance and strengthen the effort of our law enforcement community will prove to be more cosmetic than effective”.*

To that end, the Responsible Recyclers Association has participated in promoting the development of the three bill package (HB 4699, HB 4700 and HB 4701) introduced by Representatives Eileen Kowall, Philip Cavanagh and Rashida Tliab, which have also been submitted to this Committee for consideration.

Bill Package HB presently before this Committee today includes provisions that will adversely affect metal recyclers across the state and will not provide effective solutions to combat metal theft. Accordingly, the Responsible Recyclers Association opposes the following provisions in **Bill Package 4593-4595**:

A. **NO CASH:** Under the Substitute Bill Package before the Committee today, no metal recycler can transact in cash. All transactions will have to be paid by check, money order or by an ATM card which is only usable at an ATM machine installed at the metal recycler's place of business. Such a machine is anticipated to cost in the range of \$50,000 with an additional \$50,000 expense in software and a significant expense in maintaining the security of the machine on the premises, and keeping it stocked with cash. Most of the 535 metal recycling companies in the State of Michigan would find this cost-prohibitive. It is also contrary to custom and practice, and while it provides an opportunity to take a photograph of the recipient of the cash from the machine, **most recycling yards already have photographic capabilities at the point of transaction.** The Association has no objection to the use of ATM machines *as a method of payment*, but does object if ATMs were the only acceptable method of payment allowed or were otherwise required by statute. The Association recommends a limit of \$200 for cash transactions.

B. Bills 4593, 4594 and 4595 exclude by definition a significant portion of the recycling business, including auto recyclers and all related entities. All should participate.

C. Bills 4593, 4594 and 4595 also expressly prohibit the use of barter unless between a recycler and a commercial customer. As the Bills are currently written, this could conceivably preclude Recyclers from exchanging the cost of transportation of a recycled metal object for that object, depriving many individuals and companies from the opportunity of disposing of unwanted objects from their houses, farms and garages. This represents a significant amount of recycling.

D. There is no provision in the Proposed Bill Package for dealing with these issues of predominant interest to the Responsible Recycler's Association:

1. Establish a mechanism to identify who the known thieves are so the recyclers can choose not to do business with them (the Metal Offenders Registry),
2. Creation of a completely self-funded mechanism to pay for the development and maintenance of the Registry; to police the recycling yards to assure their compliance; and to provide funding for the exclusive use by local law enforcement to respond to metal thefts in progress and to investigate and prosecute wrongdoers.

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3. By leaving unchanged the current "knew or should have known" standard of liability in the existing Bill, there will be repeated instances of misdeeds and improper enforcement.
4. Holding the owner of a Recycling company liable for mistakes or misdeeds of employees at the scales, will have a potentially chilling effect upon the industry as a whole.
5. While the 72 hour hold for payment of checks to recipients (rather than mailing) involving transactions of certain items has merit, the inclusion of copper wire, AC condensers and catalytic converters in that group of products is unworkable as a practical matter and overly restrictive to Recyclers.


It is widely been accepted that the single biggest problem in combatting the crime of metal theft is the lack of law enforcement. The Responsible Recycler's Association has proposed assessing a \$1 transaction fee at the time and place of each transaction to be collectively submitted to the Michigan State Police. Half of the money will be exclusively used by the MSP. It will fund the development and maintenance of a metal theft registry database, to enable recyclers to know whether the individual they are about to transact with is a known metal thief. This will enable the Recyclers to turn such persons away, or to alert the police. The transaction fee fund will also enable the MSP to investigate and enforce violations and assure compliance by Recycling yards.

The remaining 50 percent of such money will be returned back to the local law enforcement agency in the community where the transactions occurred, to be used **exclusively for metal theft law enforcement**. Thus, the problem of metal theft would be addressed by funding law enforcement in the very locations where the thefts are occurring and the sales of stolen metal objects can be tracked, trended and attacked.

On behalf of the Responsible Recycler's Association, we thank you for the opportunity to provide this statement and look forward to the opportunity to present live testimony at a future date.

Respectively submitted,

KOTZ SANGSTER WYSOCKI P.C.

  
GEORGE F. CURRAN, III  
Counsel for the Responsible Recycler's Association

GFC/slt  
Enclosure

