

Arkansas Metal Scrap Statute

This document is provided as background information for ISRI members. It does not constitute legal advice. Scrap recyclers should consult their attorneys/legal advisors regarding the application of the law and regulations to each company's individual circumstances. Other laws governing precious metals, secondhand materials, vehicles, and the like may apply.

Current as of April 29, 2013

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Please Note: 2013 [Arkansas House Bill 1975 / Act 1354](#) and [Arkansas SB 178 / Act 1125](#) amend existing law; changes are noted in the summary text. Both bills will be effective 90 days after the session adjourns.

Materials Covered and Other Definitions (amended for clarity and conciseness)

"Scrap Metal" means bits and pieces of metal parts that may be combined together with bolts or soldering and can be recycled when worn or superfluous.

"Nonferrous Metal" means a metal that does not contain significant quantities of iron or steel, including without limitation the following metals and their alloys: copper; brass; aluminum; bronze; lead; zinc; and nickel.

"Scrap Metal Recycler" means any person that purchases Scrap Metal, but does not include a person that only buys in quantities of 5,000 lbs. or more.

"Scrap Metal Processor" means a person that, from a fixed location, engages in the business of using machinery or equipment for the processing or manufacturing of iron, steel, or Nonferrous Metal scrap;

"Seller" means any person that receives in a transaction monetary consideration from a Recycler in exchange for Nonferrous Metal, iron, or steel, but does not include a person that sells Scrap Metal generated in a manufacturing or production process and sold to a Recycler under a contract or an agreement.

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Exemptions

The Recordkeeping and Reporting provisions exempt transactions:

- Between metal processors if the purchaser or transferee obtained a bill of sale;
- Involving only beverage or food containers; or
- Involving only ferrous metals.

The Theft Notification provision exempts transactions involving only beverage containers.

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Recordkeeping

A Recycler's must keep two types of records: the "Reasonable, Written Documentation of Ownership" by the Seller; and Transaction Records. Records must be in paper, electronic, or another method of storing information.

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Reasonable, Written Documentation of Ownership

A Seller shall not sell and a Recycler shall not purchase Scrap Metal unless the Seller provides "reasonable, written documentation" that the Seller is the owner or is authorized to sell on the owner's behalf. The documentation must include the following information:

- The name of the entity or individual from whom the Seller acquired the metal;
- The date the Seller acquired the Scrap Metal;
- The physical address from where the Seller acquired the metal;
- Affirmations or certifications that the Seller:
 - Is the owner of the Scrap Metal or is the employer, agent, licensed contractor, licensed HVACR, plumber, electrician, or other person authorized to sell on behalf of the owner; and
 - Has not pleaded guilty or nolo contendere to or been found guilty of theft, burglary, or vandalism involving Scrap Metal.

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Transaction Records

Recyclers must record the following for each Scrap Metal transaction, except that individual records are not required for a series of transactions made under a contract.

Information for repeat Sellers may be saved and referred to for future transactions.

- The name, address, gender, birth date, and identifying number from the seller's government-issued photo identification;
- A photocopy of the Seller's government-issued photo identification;
- The date of the Scrap Metal purchase transaction;
- The digital thumbprints of the seller;
- A general description of the predominant types of scrap metal purchased made in accordance with the custom of the trade, the configuration of the scrap metal, whether the material is insulated, and the weight, quantity, or volume;
- The consideration paid;

- The license plate number of the vehicle used in transporting the materials;
- A date and time-stamped digital photograph of the Seller and of the Scrap Metal recorded with the name of the person taking the photographs.

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No Purchase from Minors

A Recycler may not purchase Scrap Metal claimed by a minor unless accompanied by a parent or guardian. The Recycler must record a written statement that the transaction is taking place with the parent or guardian's full knowledge and consent.

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Retention

Records must be retained for 1 year. A written statement of consent by a parent or guardian to a purchase from a minor must be retained for 3 years.

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Inspection

Records and statements of parental consent must be made available to any State, municipal, or county law enforcement officer and for use in any legal proceeding.

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Reporting

A Recycler must file a daily electronic report of Scrap Metal purchases, consisting of the "reasonable, written documentation" and transaction record. The information must be entered into an automated database which may be accessed by law enforcement. Municipalities may require electronic records and reporting by ordinance.

(added by HB 1975) The database operator shall send a report every 7 days to the county sheriffs and to any law enforcement agency that requests periodic copies more frequently than 7 days. The report shall list all Recyclers in the country that have accessed or have access to the database but have not filed a daily report as required.

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Theft Notification

Any person may notify a Recycler of a known or presumed theft of Nonferrous Metal, with the notice setting forth any available information including the following:

- The approximate quantity and size of the Nonferrous Metal stolen;
- The geographic area from which the metal was reported missing or stolen; and
- Any distinguishing marks or other method of identification.

If metal meeting the description is purchased by or offered for sale to the Recycler within 90 days of a notice, then the Recycler must notify law enforcement of the purchase or offer.

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License (provision added by HB 1975)

A Recycler must be licensed by the county sheriff. Licenses are valid for 1 year, with an initial fee of \$250 and a renewal fee of \$25 (fees do not apply to not-for-profit dealers or recyclers), usable for the sheriff's general operating expenses. An applicant must:

- Have a fixed location with a full complement of permanent utilities, if applicable, including without limitation water; sewer; electricity; and gas;
- Show proof of a required national pollution discharge elimination system stormwater permit issued by Arkansas Department of Environmental Quality; and
- Have the ability to comply with the Reporting provision.

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Penalties

A person convicted of Theft of Scrap Metal is forever prohibited from selling Scrap Metal. (added by HB 1975)

Violations of the law are subject to civil penalties of up to \$1000 per violation, except that:

- Knowingly giving false information for the records is a Class A misdemeanor;
- A second offense of the Reporting provision is a Class A misdemeanor;
- A 3rd or subsequent offense of the Reporting provision is a Class D felony.

(Fine increased and second and subsequent penalties added by HB 1975)

A Recycler's license may be suspended or revoked by a court with jurisdiction for failure to comply with the License provision.

A person commits Theft of Scrap Metal (§ 5-36-123) if the person commits, **aids, or is an accomplice** to a theft of property involving Scrap Metal (bolded text added by HB 1975), treated the same as theft of property (§ 5-36-103), except the classification and penalty is increased one step if:

- The total amount of money damages suffered by the owner of the Scrap Metal as a direct result of the theft, including lost income, lost profits, and costs of repair or replacement of property damage, was greater than \$250; or
- The person transported the Scrap Metal across state lines to sell or dispose of it.

A person commits Theft by Receiving of Scrap Metal (§ 5-36-124) if the person receives, retains, **purchases**, or disposes of Scrap Metal if the person knows **or should have known** the Scrap Metal was stolen (bolded text added by HB 1975), punishable as a:

- Class A misdemeanor; or
- A Class D felony if:
 - The value is more than \$1,000, or
 - It is a second or subsequent offense (added by SB 178);

The following crimes are subject to an additional 5 years imprisonment if the stolen or damaged property involves Nonferrous Metals: (added by HB 1975)

- Theft by Receiving (§ 5-36-106)
- A felony offense of Theft by Receiving of Scrap Metal (§ 5-36-124)
- Criminal Mischief in the 1st Degree (§ 5-38-203)
- A felony offense of Criminal Mischief in the 2nd Degree (§ 5-38-204)

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