# *Fiscal Note & Local Impact Statement*

*127 th General Assembly of Ohio*

Ohio Legislative Service Commission
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BILL: **Sub. S.B. 171** DATE: **May 12, 2008**

STATUS: **As Reported by House State Government** SPONSOR: **Sen. Stivers**

LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**

CONTENTS: **Makes certain changes to the laws regulating secondhand and scrap metal dealers**

## *State Fiscal Highlights*

| STATE FUND | FY 2009 | FY 2010 | FUTURE YEARS |
|---|---|---|---|
| **General Revenue Fund** | | | |
| Revenues | Potential negligible gain | Potential negligible gain | Potential negligible gain |
| Expenditures | - 0 - | - 0 - | - 0 - |
| **Victims of Crime/Reparations Fund (Fund 402)** | | | |
| Revenues | Potential negligible gain | Potential negligible gain | Potential negligible gain |
| Expenditures | - 0 - | - 0 - | - 0 - |

Note: The state fiscal year is July 1 through June 30. For example, FY 2009 is July 1, 2008 – June 30, 2009.

- As a result of the potential for additional criminal prosecutions brought about by the additional requirements and prohibitions in the bill, the state may gain a negligible amount of revenue to the GRF and the Victims of Crime/Reparations Fund (Fund 402).

## *Local Fiscal Highlights*

| LOCAL GOVERNMENT | FY 2008 | FY 2009 | FUTURE YEARS |
|---|---|---|---|
| **Counties and Municipalities** | | | |
| Revenues | Potential minimal gain from fines, court costs, or fees | Potential minimal gain from fines, court costs, or fees | Potential minimal gain from fines, court costs, or fees |
| Expenditures | Potential increase in administrative and adjudication costs | Potential increase in administrative and adjudication costs | Potential increase in administrative and adjudication costs |
| **Townships** | | | |
| Revenues | Potential minimal gain from fees | Potential minimal gain from fees | Potential minimal gain from fees |
| Expenditures | Potential minimal increase in administrative costs | Potential minimal increase in administrative costs | Potential minimal increase in administrative costs |

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- ***Purchase and sale records.*** Redaction requirements for certain purchase and sale records kept by scrap metal dealers requested by police and subsequently requested by persons claiming to own a stolen article would likely not be a significant financial burden to law enforcement agencies. Though some additional

administrative costs (mainly for personnel) may be created to perform the redactions, the cost would depend on how often local law enforcement agencies requested records, the agency's records retention schedule, and the manner in which the records are received. The bill provides for law enforcement agencies to charge a fee for providing these records.

- ***Local criminal justice costs.*** The bill creates or increases penalties for secondhand dealers that fail to keep proper records and for scrap metal dealers that violate a number of requirements or prohibitions concerning proper record keeping, complying with certain procedures with respect to purchasing special purchase articles, and posting notice of the penalties for certain violations. As a result, the bill could lead to more prosecutions and convictions. This means that local prosecution and adjudication costs may increase. However, fine and/or court cost revenue would most likely offset some of the local prosecution or adjudication expenses. Fine proceeds remain in the county of prosecution.

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## *Detailed Fiscal Analysis*

***Overview***

This bill makes certain changes to the laws regulating secondhand and scrap metal dealers. Primarily, the bill modifies the Secondhand Dealers Law to define a "scrap metal dealer" as the owner or an operator of a business that purchases or receives scrap metal and defines "special purchase article" as a list of equipment or materials such as beer kegs, cable, and wire used in utility service, certain grave or memorial markers, guard rails, roadway signage, grocery carts, and so on. The bill requires scrap metal dealers to keep more stringent records, such as certain purchase or sale records and specific records for special purchase articles, in a manner specified by the bill. The bill requires the records to be open for inspection by local law enforcement as well as the Director of Public Safety or the Director's designee. The bill would appear to have three primary impacts on local government, which are discussed below.

***Purchase and sale records***

The bill requires scrap metal dealers to provide purchase and sale records to any local law enforcement or Department of Public Safety personnel that request them. The Ohio Association of Chiefs of Police noted that most agencies would likely only inspect the records at the scrap yard, indicating that such records requests by law enforcement would be infrequent or no different than current practice. However, if there was a substantial increase in thefts in a particular area, the law enforcement agency may request that the records be sent to them temporarily or until the theft activity lessens.

The bill allows a person who claims to own a stolen article that may be identified in the purchase and sale records and that provides proof of having filed a stolen property report to request those records, but the law enforcement agency must redact information revealing the name of the seller, the price paid for any article the dealer purchased, or the estimated value of any article the dealer received.

The redaction requirement would likely not be a significant financial burden to law enforcement agencies. For instance, some police departments, such as the Columbus Police Department, have dedicated Public Records Units that exclusively handle public records

requests. Though some additional costs (mainly for personnel) may be created, the particular effect would likely depend on how often local law enforcement agencies requested such records, the agency's records retention schedule, and the manner in which the records are received (such as through e-mail, paper copy, and so on). The bill allows a law enforcement agency to charge or collect a fee for providing these records, which would offset any increased administrative costs that occur from providing records.

***Suspected thieves list***

The bill requires the local law enforcement agency with jurisdiction to provide a list, as the 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 and prohibits scrap metal dealers from purchasing or receiving articles from any person identified on the list the dealer receives from the law enforcement agency. The bill also provides immunity to local law enforcement personnel from liability in a civil action, including an action for defamation, libel, or slander, to recover damages for injury, death, or loss to persons or property or reputation allegedly caused by the compilation and provision of the list. An official with the Buckeye State Sheriffs' Association noted that there would likely be a *de minimus* cost associated with generating such a list, as the agency's case management system could be used for this purpose.

Additionally, some law enforcement agencies may already be sending similar lists under an existing statute in the Pawnbrokers Law. Specifically, the Columbus Police Department noted that it regularly sends to pawnbrokers and scrap yards a list of persons with at least two theft convictions. There would be no new cost to law enforcement agencies already sending out these lists to scrap metal dealers.

***New penalty and requirements***

Under current law, most violations of the secondhand dealers law are punishable by fines between $25 and $1,000 and the cost of prosecution (the amount of the fine indicates the penalty would be treated as an unclassified misdemeanor). The bill creates or increases penalties for secondhand dealers that fail to keep proper records and for scrap metal dealers that violate a number of requirements or prohibitions concerning proper record keeping, complying with certain procedures with respect to purchasing special purchase articles, and posting notice of the penalties for certain violations. Violators are guilty of a third-degree misdemeanor (M3) on a first offense. An M3 carries a maximum fine of $500 and a maximum sentence of 60 days. Subsequent offenses are punishable by more severe sanctions.

The new penalty and requirements could mean that persons who would not have been prosecuted and convicted under current law may be prosecuted and convicted under the bill. This means that local prosecution and adjudication costs may increase. However, fine and/or court cost revenue would, to some degree, offset local prosecution or adjudication expenses. Fine proceeds remain in the county of prosecution. As a result of the potential for additional criminal prosecutions, the state may gain a negligible amount of revenue to the GRF, which receives $15 per misdemeanor case, and the Victims of Crime/Reparations Fund (Fund 402), which receives $9 per misdemeanor case.

***Joint select committee***

The bill requires the President of the Senate or the Speaker of the House of Representatives to initiate the creation of a joint select committee of the Senate and House of Representatives during the first year of the 129th General Assembly to consider the effectiveness of this bill in deterring crime and the costs of compliance with the bill. The committee is required to (1) hold public hearings at which various interested parties may testify on the effect of the bill on metals theft rates, theft deterrence, criminal enforcement and prosecution and economic and administrative burdens on industry, and (2) issue a report on the effectiveness and impacts of the bill. The Legislative Service Commission (LSC) is required to assist in preparing and finalizing the report. There would be no fiscal effect resulting from the creation of the committee or any additional spending required on the part of LSC.

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