

REFERENCE TITLE: scrap metal; theft

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

HB 2261

Introduced by
Representative Forese

AN ACT

AMENDING SECTION 13-1802, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 18, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-1820; AMENDING SECTION 28-3511, ARIZONA REVISED STATUTES; RELATING TO SCRAP METAL THEFT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-1802, Arizona Revised Statutes, is amended to
3 read:

4 13-1802. Theft; classification; definitions

5 A. A person commits theft if, without lawful authority, the person
6 knowingly:

7 1. Controls property of another with the intent to deprive the other
8 person of such property; or

9 2. Converts for an unauthorized term or use services or property of
10 another entrusted to the defendant or placed in the defendant's possession
11 for a limited, authorized term or use; or

12 3. Obtains services or property of another by means of any material
13 misrepresentation with intent to deprive the other person of such property or
14 services; or

15 4. Comes into control of lost, mislaid or misdelivered property of
16 another under circumstances providing means of inquiry as to the true owner
17 and appropriates such property to the person's own or another's use without
18 reasonable efforts to notify the true owner; or

19 5. Controls property of another knowing or having reason to know that
20 the property was stolen; or

21 6. Obtains services known to the defendant to be available only for
22 compensation without paying or an agreement to pay the compensation or
23 diverts another's services to the person's own or another's benefit without
24 authority to do so.

25 B. A person commits theft if, without lawful authority, the person
26 knowingly takes control, title, use or management of a vulnerable adult's
27 property while acting in a position of trust and confidence and with the
28 intent to deprive the vulnerable adult of the property. Proof that a person
29 took control, title, use or management of a vulnerable adult's property
30 without adequate consideration to the vulnerable adult may give rise to an
31 inference that the person intended to deprive the vulnerable adult of the
32 property.

33 C. It is an affirmative defense to any prosecution under subsection B
34 of this section that either:

35 1. The property was given as a gift consistent with a pattern of gift
36 giving to the person that existed before the adult became vulnerable.

37 2. The property was given as a gift consistent with a pattern of gift
38 giving to a class of individuals that existed before the adult became
39 vulnerable.

40 3. The superior court approved the transaction before the transaction
41 occurred.

42 D. The inferences set forth in section 13-2305 apply to any
43 prosecution under subsection A, paragraph 5 of this section.

1 E. At the conclusion of any grand jury proceeding, hearing or trial,
2 the court shall preserve any trade secret that is admitted in evidence or any
3 portion of a transcript that contains information relating to the trade
4 secret pursuant to section 44-405.

5 F. Subsection B of this section does not apply to an agent who is
6 acting within the scope of the agent's duties as or on behalf of a health
7 care institution that is licensed pursuant to title 36, chapter 4 and that
8 provides services to the vulnerable adult.

9 G. Theft of property or services with a value of twenty-five thousand
10 dollars or more is a class 2 felony. Theft of property or services with a
11 value of four thousand dollars or more but less than twenty-five thousand
12 dollars is a class 3 felony. Theft of property or services with a value of
13 three thousand dollars or more but less than four thousand dollars is a class
14 4 felony, except that theft of any vehicle engine or transmission is a class
15 4 felony regardless of value. Theft of property or services with a value of
16 two thousand dollars or more but less than three thousand dollars is a class
17 5 felony. Theft of property or services with a value of one thousand dollars
18 or more but less than two thousand dollars is a class 6 felony. Theft of any
19 property or services valued at less than one thousand dollars is a class 1
20 misdemeanor, unless the property is taken from the person of another, is a
21 firearm or is an animal taken for the purpose of animal fighting in violation
22 of section 13-2910.01, in which case the theft is a class 6 felony.

23 H. A person who is convicted of a violation of subsection A, paragraph
24 1 or 3 of this section that involved property with a value of one hundred
25 thousand dollars or more is not eligible for suspension of sentence,
26 probation, pardon or release from confinement on any basis except pursuant to
27 section 31-233, subsection A or B until the sentence imposed by the court has
28 been served, the person is eligible for release pursuant to section
29 41-1604.07 or the sentence is commuted.

30 ~~I. For the purposes of this section, the value of ferrous metal or~~
31 ~~nonferrous metal includes the amount of any damage to the property of another~~
32 ~~caused as a result of the theft of the metal.~~

33 ~~J. In an action for theft of ferrous metal or nonferrous metal:~~

34 ~~1. Unless satisfactorily explained or acquired in the ordinary course~~
35 ~~of business by an automotive recycler as defined and licensed pursuant to~~
36 ~~title 28, chapter 10 or by a scrap metal dealer as defined in section~~
37 ~~44-1641, proof of possession of scrap metal that was recently stolen may give~~
38 ~~rise to an inference that the person in possession of the scrap metal was~~
39 ~~aware of the risk that it had been stolen or in some way participated in its~~
40 ~~theft.~~

41 ~~2. Unless satisfactorily explained or sold in the ordinary course of~~
42 ~~business by an automotive recycler as defined and licensed pursuant to title~~
43 ~~28, chapter 10 or by a scrap metal dealer as defined in section 44-1641,~~
44 ~~proof of the sale of stolen scrap metal at a price substantially below its~~

1 ~~fair market value may give rise to an inference that the person selling the~~
2 ~~scrap metal was aware of the risk that it had been stolen.~~

3 ~~K.~~ 1. For the purposes of this section:

4 1. "Adequate consideration" means the property was given to the person
5 as payment for bona fide goods or services provided by the person and the
6 payment was at a rate that was customary for similar goods or services in the
7 community that the vulnerable adult resided in at the time of the
8 transaction.

9 ~~2. "Ferrous metal" and "nonferrous metal" have the same meanings~~
10 ~~prescribed in section 44-1641.~~

11 ~~3.~~ 2. "Pattern of gift giving" means two or more gifts that are the
12 same or similar in type and monetary value.

13 ~~4.~~ 3. "Position of trust and confidence" has the same meaning
14 prescribed in section 46-456.

15 ~~5.~~ 4. "Property" includes all forms of real property and personal
16 property.

17 ~~6.~~ 5. "Vulnerable adult" has the same meaning prescribed in section
18 46-451.

19 Sec. 2. Title 13, chapter 18, Arizona Revised Statutes, is amended by
20 adding section 13-1820, to read:

21 13-1820. Metal theft; vehicle impoundment; classification;
22 definitions

23 A. A PERSON COMMITS METAL THEFT IF, WITHOUT LAWFUL AUTHORITY, THE
24 PERSON KNOWINGLY:

25 1. CONTROLS FERROUS METAL OR NONFERROUS METAL THAT IS THE PROPERTY OF
26 ANOTHER WITH THE INTENT TO DEPRIVE THE OTHER PERSON OF THE METAL.

27 2. OBTAINS FERROUS METAL OR NONFERROUS METAL THAT IS THE PROPERTY OF
28 ANOTHER BY MEANS OF ANY MATERIAL MISREPRESENTATION WITH INTENT TO DEPRIVE THE
29 OTHER PERSON OF THE METAL.

30 3. COMES INTO CONTROL OF LOST, MISLAID OR MISDELIVERED FERROUS METAL
31 OR NONFERROUS METAL THAT IS THE PROPERTY OF ANOTHER UNDER CIRCUMSTANCES
32 PROVIDING MEANS OF INQUIRY AS TO THE TRUE OWNER AND APPROPRIATES THE METAL TO
33 THE PERSON'S OWN OR ANOTHER'S USE WITHOUT REASONABLE EFFORTS TO NOTIFY THE
34 TRUE OWNER.

35 4. CONTROLS FERROUS METAL OR NONFERROUS METAL THAT IS THE PROPERTY OF
36 ANOTHER KNOWING THAT THE METAL WAS STOLEN.

37 5. UNLESS ACQUIRED IN THE ORDINARY COURSE OF BUSINESS BY AN AUTOMOTIVE
38 RECYCLER OR A SCRAP METAL DEALER, THE INFERENCES LISTED IN SECTION 13-2305
39 APPLY TO ANY PROSECUTION UNDER SUBSECTION A, PARAGRAPH 4 OF THIS SECTION.

40 C. FOR THE PURPOSES OF THIS SECTION, THE VALUE OF FERROUS METAL OR
41 NONFERROUS METAL INCLUDES THE AMOUNT OF ANY DAMAGE TO THE PROPERTY OF ANOTHER
42 CAUSED AS A RESULT OF THE THEFT OF THE METAL.

43 D. IN A PROSECUTION FOR A VIOLATION OF THIS SECTION:

44 1. UNLESS SATISFACTORILY EXPLAINED OR ACQUIRED IN THE ORDINARY COURSE
45 OF BUSINESS BY AN AUTOMOTIVE RECYCLER OR A SCRAP METAL DEALER, PROOF OF

1 POSSESSION OF SCRAP METAL THAT WAS RECENTLY STOLEN MAY GIVE RISE TO AN
2 INFERENCE THAT THE PERSON IN POSSESSION OF THE SCRAP METAL WAS AWARE OF THE
3 RISK THAT IT HAD BEEN STOLEN OR IN SOME WAY PARTICIPATED IN ITS THEFT.

4 2. UNLESS SATISFACTORILY EXPLAINED OR SOLD IN THE ORDINARY COURSE OF
5 BUSINESS BY AN AUTOMOTIVE RECYCLER OR A SCRAP METAL DEALER, PROOF OF THE SALE
6 OF STOLEN SCRAP METAL AT A PRICE SUBSTANTIALLY BELOW ITS FAIR MARKET VALUE
7 MAY GIVE RISE TO AN INFERENCE THAT THE PERSON SELLING THE SCRAP METAL WAS
8 AWARE OF THE RISK THAT IT HAD BEEN STOLEN.

9 E. A MEANS OF TRANSPORTATION THAT IS USED IN THE COMMISSION OF A
10 VIOLATION OF THIS SECTION IS SUBJECT TO MANDATORY VEHICLE IMMOBILIZATION OR
11 IMPOUNDMENT PURSUANT TO SECTION 28-3511.

12 F. METAL THEFT IS A CLASS 2 FELONY. A PERSON WHO IS CONVICTED OF A
13 VIOLATION OF SUBSECTION A, PARAGRAPH 1 OR 2 OF THIS SECTION THAT INVOLVED
14 METAL WITH A VALUE OF ONE HUNDRED THOUSAND DOLLARS OR MORE IS NOT ELIGIBLE
15 FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM CONFINEMENT ON
16 ANY BASIS EXCEPT PURSUANT TO SECTION 31-233, SUBSECTION A OR B UNTIL THE
17 SENTENCE IMPOSED BY THE COURT HAS BEEN SERVED, THE PERSON IS ELIGIBLE FOR
18 RELEASE PURSUANT TO SECTION 41-1604.07 OR THE SENTENCE IS COMMUTED.

19 G. FOR THE PURPOSES OF THIS SECTION:

20 1. "AUTOMOTIVE RECYCLER" MEANS AN AUTOMOTIVE RECYCLER AS DEFINED IN
21 AND LICENSED PURSUANT TO TITLE 28, CHAPTER 10.

22 2. "FERROUS METAL" MEANS METAL THAT WILL ATTRACT A MAGNET.

23 3. "NONFERROUS METAL" MEANS METAL THAT WILL NOT NORMALLY ATTRACT A
24 MAGNET, INCLUDING COPPER, BRASS AND ALUMINUM.

25 4. "SCRAP METAL DEALER" MEANS A SCRAP METAL DEALER AS DEFINED IN
26 SECTION 44-1641 AND REGISTERED PURSUANT TO SECTIONS 44-1641.03 AND
27 44-1641.04.

28 Sec. 3. Section 28-3511, Arizona Revised Statutes, is amended to read:
29 28-3511. Removal and immobilization or impoundment of vehicle

30 A. A peace officer shall cause the removal and either immobilization
31 or impoundment of a vehicle if the peace officer determines that a person is
32 driving the vehicle while any of the following applies:

33 1. Except as otherwise provided in this paragraph, the person's
34 driving privilege is suspended or revoked for any reason. A peace officer
35 shall not cause the removal and either immobilization or impoundment of a
36 vehicle pursuant to this paragraph if the person's privilege to drive is
37 valid in this state.

38 2. The person has not ever been issued a valid driver license or
39 permit by this state and the person does not produce evidence of ever having
40 a valid driver license or permit issued by another jurisdiction. This
41 paragraph does not apply to the operation of an implement of husbandry.

42 3. The person is subject to an ignition interlock device requirement
43 pursuant to chapter 4 of this title and the person is operating a vehicle
44 without a functioning certified ignition interlock device. This paragraph

1 does not apply to a person operating an employer's vehicle or the operation
2 of a vehicle due to a substantial emergency as defined in section 28-1464.

3 4. In furtherance of the illegal presence of an alien in the United
4 States and in violation of a criminal offense, the person is transporting or
5 moving or attempting to transport or move an alien in this state in a vehicle
6 if the person knows or recklessly disregards the fact that the alien has come
7 to, has entered or remains in the United States in violation of law.

8 5. The person is concealing, harboring or shielding or attempting to
9 conceal, harbor or shield from detection an alien in this state in a vehicle
10 if the person knows or recklessly disregards the fact that the alien has come
11 to, entered or remains in the United States in violation of law.

12 6. THE PERSON IS KNOWINGLY TRANSPORTING FERROUS METAL OR NONFERROUS
13 METAL WITHOUT THE LAWFUL AUTHORITY TO POSSESS THE METAL AND INTENDS TO
14 PERMANENTLY DEPRIVE THE LAWFUL OWNER OF THE METAL. FOR THE PURPOSES OF THIS
15 PARAGRAPH:

16 (a) FERROUS METAL MEANS METAL THAT WILL ATTRACT A MAGNET.

17 (b) NONFERROUS METAL MEANS METAL THAT WILL NOT NORMALLY ATTRACT A
18 MAGNET, INCLUDING COPPER, BRASS AND ALUMINUM.

19 B. A peace officer shall cause the removal and impoundment of a
20 vehicle if the peace officer determines that a person is driving the vehicle
21 and if all of the following apply:

22 1. The person's driving privilege is canceled, suspended or revoked
23 for any reason or the person has not ever been issued a driver license or
24 permit by this state and the person does not produce evidence of ever having
25 a driver license or permit issued by another jurisdiction.

26 2. The person is not in compliance with the financial responsibility
27 requirements of chapter 9, article 4 of this title.

28 3. The person is driving a vehicle that is involved in an accident
29 that results in either property damage or injury to or death of another
30 person.

31 C. Except as provided in subsection D of this section, while a peace
32 officer has control of the vehicle the peace officer shall cause the removal
33 and either immobilization or impoundment of the vehicle if the peace officer
34 has probable cause to arrest the driver of the vehicle for a violation of
35 section 4-244, paragraph 34 or section 28-1382 or 28-1383.

36 D. A peace officer shall not cause the removal and either the
37 immobilization or impoundment of a vehicle pursuant to subsection C of this
38 section if all of the following apply:

39 1. The peace officer determines that the vehicle is currently
40 registered and that the driver or the vehicle is in compliance with the
41 financial responsibility requirements of chapter 9, article 4 of this title.

42 2. The spouse of the driver is with the driver at the time of the
43 arrest.

44 3. The peace officer has reasonable grounds to believe that the spouse
45 of the driver:

1 (a) Has a valid driver license.

2 (b) Is not impaired by intoxicating liquor, any drug, a vapor
3 releasing substance containing a toxic substance or any combination of
4 liquor, drugs or vapor releasing substances.

5 (c) Does not have any spirituous liquor in the spouse's body if the
6 spouse is under twenty-one years of age.

7 4. The spouse notifies the peace officer that the spouse will drive
8 the vehicle from the place of arrest to the driver's home or other place of
9 safety.

10 5. The spouse drives the vehicle as prescribed by paragraph 4 of this
11 subsection.

12 E. Except as otherwise provided in this article, a vehicle that is
13 removed and either immobilized or impounded pursuant to subsection A, B or C
14 of this section shall be immobilized or impounded for thirty days. An
15 insurance company does not have a duty to pay any benefits for charges or
16 fees for immobilization or impoundment.

17 F. The owner of a vehicle that is removed and either immobilized or
18 impounded pursuant to subsection A, B or C of this section, the spouse of the
19 owner and each person identified on the department's record with an interest
20 in the vehicle shall be provided with an opportunity for an immobilization or
21 poststorage hearing pursuant to section 28-3514.