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SENATE BILL 5413

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State of Washington

63rd Legislature

2013 Regular Session

By Senators Eide, Fain, Litzow, Chase, Hobbs, Conway, Delvin, Roach, Keiser, and Sheldon

Read first time 01/29/13. Referred to Committee on Law & Justice.

1 AN ACT Relating to metal theft; amending RCW 9A.48.100, 9A.56.030,  
2 9A.56.040, 19.290.020, and 19.290.070; adding new sections to chapter  
3 19.290 RCW; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 9A.48.100 and 1984 c 273 s 4 are each amended to read  
6 as follows:

7 For the purposes of RCW 9A.48.070 through 9A.48.090 inclusive:

8 (1) "Physical damage", in addition to its ordinary meaning, shall  
9 include:

10 (a) The total or partial alteration, damage, obliteration, or  
11 erasure of records, information, data, computer programs, or their  
12 computer representations, which are recorded for use in computers or  
13 the impairment, interruption, or interference with the use of such  
14 records, information, data, or computer programs, or the impairment,  
15 interruption, or interference with the use of any computer or services  
16 provided by computers(~~(. "Physical damage" also includes)~~);

17 (b) Any diminution in the value of any property as the consequence  
18 of an act; and

19 (c) The cost to repair.

1 (2) If more than one item of property is physically damaged as a  
2 result of a common scheme or plan by a person and the physical damage  
3 to the property would, when considered separately, constitute mischief  
4 in the third degree because of value, then the value of the damages may  
5 be aggregated in one count. If the sum of the value of all the  
6 physical damages exceeds two hundred fifty dollars, the defendant may  
7 be charged with and convicted of malicious mischief in the second  
8 degree.

9 **Sec. 2.** RCW 9A.56.030 and 2012 c 233 s 2 are each amended to read  
10 as follows:

11 (1) A person is guilty of theft in the first degree if he or she  
12 commits theft of:

13 (a) Property or services which exceed(s) five thousand dollars in  
14 value other than a firearm as defined in RCW 9.41.010;

15 (b) Property of any value, other than a firearm as defined in RCW  
16 9.41.010 or a motor vehicle, taken from the person of another;

17 (c) A search and rescue dog, as defined in RCW 9.91.175, while the  
18 search and rescue dog is on duty; or

19 (d) Metal wire, taken from a city, public service company, as  
20 defined in RCW 80.04.010, or a consumer-owned utility, as defined in  
21 RCW 19.280.020, and the costs of the damage to the city's, public  
22 service company's, or consumer-owned utility's property exceed five  
23 thousand dollars in value.

24 (2) Theft in the first degree is a class B felony.

25 **Sec. 3.** RCW 9A.56.040 and 2012 c 233 s 3 are each amended to read  
26 as follows:

27 (1) A person is guilty of theft in the second degree if he or she  
28 commits theft of:

29 (a) Property or services which exceed(s) seven hundred fifty  
30 dollars in value but does not exceed five thousand dollars in value,  
31 other than a firearm as defined in RCW 9.41.010 or a motor vehicle;

32 (b) A public record, writing, or instrument kept, filed, or  
33 deposited according to law with or in the keeping of any public office  
34 or public servant;

35 (c) Metal wire, taken from a city, public service company, as  
36 defined in RCW 80.04.010, or a consumer-owned utility, as defined in

1 RCW 19.280.020, and the costs of the damage to the city's public  
2 service company's, or consumer-owned utility's property exceed seven  
3 hundred fifty dollars but does not exceed five thousand dollars in  
4 value; or

5 (d) An access device.

6 (2) Theft in the second degree is a class C felony.

7 **Sec. 4.** RCW 19.290.020 and 2008 c 233 s 2 are each amended to read  
8 as follows:

9 (1) At the time of a transaction, every scrap metal business doing  
10 business in this state shall produce wherever that business is  
11 conducted an accurate and legible record of each transaction involving  
12 private metal property or nonferrous metal property. This record must  
13 be written in the English language, documented on a standardized form  
14 or in electronic form, and contain the following information:

15 (a) The signature of the person with whom the transaction is made;

16 (b) The time, date, location, and value of the transaction;

17 (c) The name of the employee representing the scrap metal business  
18 in the transaction;

19 (d) The name, street address, and telephone number of the person  
20 with whom the transaction is made;

21 (e) The license plate number and state of issuance of the license  
22 plate on the motor vehicle used to deliver the private metal property  
23 or nonferrous metal property subject to the transaction;

24 (f) A description of the motor vehicle used to deliver the private  
25 metal property or nonferrous metal property subject to the transaction;

26 (g) The current driver's license number or other government-issued  
27 picture identification card number of the seller or a copy of the  
28 seller's government-issued picture identification card; (~~and~~)

29 (h) A description of the predominant types of private metal  
30 property or nonferrous metal property subject to the transaction,  
31 including the property's classification code as provided in the  
32 institute of scrap recycling industries scrap specifications circular,  
33 2006, and weight, quantity, or volume; and

34 (i) For nonferrous metal, a copy of the seller's valid nonferrous  
35 metal permit.

36 (2) For every transaction that involves private metal property or  
37 nonferrous metal property, every scrap metal business doing business in

1 the state shall require the person with whom a transaction is being  
2 made to sign a declaration. The declaration may be included as part of  
3 the transactional record required under subsection (1) of this section,  
4 or on a receipt for the transaction. The declaration must state  
5 substantially the following:

6 "I, the undersigned, affirm under penalty of law that the property  
7 that is subject to this transaction is not to the best of my knowledge  
8 stolen property."

9 The declaration must be signed and dated by the person with whom  
10 the transaction is being made. An employee of the scrap metal business  
11 must witness the signing and dating of the declaration and sign the  
12 declaration accordingly before any transaction may be consummated.

13 (3) The record and declaration required under this section must be  
14 open to the inspection of any commissioned law enforcement officer of  
15 the state or any of its political subdivisions at all times during the  
16 ordinary hours of business, or at reasonable times if ordinary hours of  
17 business are not kept, and must be maintained wherever that business is  
18 conducted for one year following the date of the transaction.

19 **Sec. 5.** RCW 19.290.070 and 2008 c 233 s 7 are each amended to read  
20 as follows:

21 (1) It is a gross misdemeanor under chapter 9A.20 RCW for:

22 ~~((+1))~~ (a) Any person to deliberately remove, alter, or obliterate  
23 any manufacturer's make, model, or serial number, personal  
24 identification number, or identifying marks engraved or etched upon an  
25 item of private metal property, nonferrous metal property, or  
26 commercial metal property in order to deceive a scrap metal business;

27 ~~((+2))~~ (b) Any scrap metal business to enter into a transaction to  
28 purchase or receive any private metal property, nonferrous metal  
29 property, or commercial metal property where the manufacturer's make,  
30 model, or serial number, personal identification number, or identifying  
31 marks engraved or etched upon the property have been deliberately and  
32 conspicuously removed, altered, or obliterated;

33 ~~((+3))~~ (c) Any person to knowingly make, cause, or allow to be  
34 made any false entry or misstatement of any material matter in any  
35 book, record, or writing required to be kept under this chapter;

36 ~~((+4))~~ (d) Any scrap metal business to enter into a transaction to  
37 purchase or receive private metal property, nonferrous metal property,

1 or commercial metal property from any person under the age of eighteen  
2 years or any person who is discernibly under the influence of  
3 intoxicating liquor or drugs;

4 ~~((+5))~~ (e) Any scrap metal business to enter into a transaction to  
5 purchase or receive private metal property, nonferrous metal property,  
6 or commercial metal property with anyone whom the scrap metal business  
7 has been informed by a law enforcement agency to have been convicted of  
8 a crime involving drugs, burglary, robbery, theft, or possession of or  
9 receiving stolen property, manufacturing, delivering, or possessing  
10 with intent to deliver methamphetamine, or possession of ephedrine or  
11 any of its salts or isomers or salts of isomers, pseudoephedrine or any  
12 of its salts or isomers or salts of isomers, or anhydrous ammonia with  
13 intent to manufacture methamphetamine within the past ten years whether  
14 the person is acting in his or her own behalf or as the agent of  
15 another;

16 ~~((+6))~~ (f) Any person to sign the declaration required under RCW  
17 19.290.020 knowing that the private metal property or nonferrous metal  
18 property subject to the transaction is stolen. The signature of a  
19 person on the declaration required under RCW 19.290.020 constitutes  
20 evidence of intent to defraud a scrap metal business if that person is  
21 found to have known that the private metal property or nonferrous metal  
22 property subject to the transaction was stolen;

23 ~~((+7))~~ (g) Any scrap metal business to possess private metal  
24 property or commercial metal property that was not lawfully purchased  
25 or received under the requirements of this chapter; or

26 ~~((+8))~~ (h) Any scrap metal business to engage in a series of  
27 transactions valued at less than thirty dollars with the same seller  
28 for the purposes of avoiding the requirements of RCW 19.290.030(4).

29 (2) It is a class C felony under chapter 9A.20 RCW for:

30 (a) Any person who does not have a valid nonferrous metal permit to  
31 enter into a nonferrous metal material transaction with a scrap metal  
32 business.

33 (b) Any person who is not acting on behalf of a commercial  
34 enterprise to sell or trade nonferrous metal material.

35 (c) Any person representing a scrap metal business to enter into a  
36 transaction for nonferrous metal material with a person who does not  
37 have a valid nonferrous metal permit.

1        NEW SECTION.    **Sec. 6.**    A new section is added to chapter 19.290 RCW  
2 to read as follows:

3        (1) The sheriff of each county must issue a nonferrous metal permit  
4 if the applicant:    (a) Has a fixed residence or business in the  
5 sheriff's county; (b) has not been convicted of a crime related to  
6 metal theft; (c) provides a description of the type of nonferrous metal  
7 he or she intends to sell and how he or she intends to acquire the  
8 nonferrous metal; and (d) provides his or her name, street address,  
9 telephone number, and current driver's license or other government-  
10 issued picture identification card.

11        (2) The attorney general must prescribe, consistent with this  
12 chapter, a standard application form and a standard permit form to be  
13 used by sheriffs. The permit form must contain, at a minimum, the date  
14 of issuance and the name and address of the permit holder. The permit  
15 must be valid for one year from the date of issuance. The sheriff must  
16 not charge an application fee in excess of twenty dollars, and must  
17 retain a copy of any permit issued.

18        NEW SECTION.    **Sec. 7.**    A new section is added to chapter 19.290 RCW  
19 to read as follows:

20        A scrap metal business must not enter into a transaction for any  
21 nonferrous metal material with a person who does not have a nonferrous  
22 metal permit.

23        NEW SECTION.    **Sec. 8.**    A new section is added to chapter 19.290 RCW  
24 to read as follows:

25        (1) The following are subject to seizure and forfeiture and no  
26 property right exists in them:

27        (a) All personal property including, but not limited to, any item,  
28 object, tool, substance, device, weapon, machine, vehicle of any kind,  
29 money, security, or negotiable instrument, which has been or was  
30 actually employed as an instrumentality in the commission of, or in  
31 aiding or abetting in the commission of any violation of this chapter,  
32 or which was furnished or was intended to be furnished by any person in  
33 the commission of, as a result of, or as compensation for the  
34 commission of, any violation of this chapter, or which was acquired in  
35 whole or in part with proceeds traceable to the commission of any  
36 violation of this chapter.

1 (b) All real property, including any right, title, and interest in  
2 the whole of any lot or tract of land, and any appurtenances or  
3 improvements which are being used with the knowledge of the owner for  
4 the transaction of nonferrous metal materials in violation of this  
5 chapter. However:

6 (i) No property may be forfeited pursuant to this subsection, to  
7 the extent of the interest of an owner, by reason of any act or  
8 omission committed or omitted without the owner's knowledge or consent;  
9 and

10 (ii) A forfeiture of real property encumbered by a bona fide  
11 security interest is subject to the interest of the secured party if  
12 the secured party, at the time the security interest was created,  
13 neither had knowledge of nor consented to the act or omission.

14 (2)(a) Real property subject to forfeiture under this chapter may  
15 be seized by any board inspector or law enforcement officer of this  
16 state upon process issued by any superior court having jurisdiction  
17 over the property. Seizure of real property must include the filing of  
18 a lis pendens by the seizing agency. Real property seized under this  
19 section must not be transferred or otherwise conveyed until ninety days  
20 after seizure or until a judgment of forfeiture is entered, whichever  
21 is later. However, real property seized under this section may be  
22 transferred or conveyed to any person or entity who acquires title by  
23 foreclosure or deed in lieu of foreclosure of a security interest. A  
24 forfeiture of property encumbered by a bona fide security interest is  
25 subject to the interest of the secured party if at the time the  
26 security interest was created, the secured party neither had knowledge  
27 of nor consented to the commission of a violation of this chapter.

28 (b) Personal property subject to forfeiture under this chapter may  
29 be seized by any law enforcement officer of this state upon process  
30 issued by any superior court having jurisdiction over the property.  
31 Seizure of personal property without process may also be made if:

32 (i) The seizure is incident to an arrest or a search under a search  
33 warrant;

34 (ii) The property subject to seizure has been the subject of a  
35 prior judgment in favor of the state in a criminal injunction or  
36 forfeiture proceeding;

37 (iii) A law enforcement officer has probable cause to believe that  
38 the property is directly dangerous to health or safety; or

1 (iv) The law enforcement officer has probable cause to believe that  
2 the property was used or is intended to be used in the commission of a  
3 felony.

4 (3) In the event of seizure pursuant to subsection (2) of this  
5 section, proceedings for forfeiture are deemed commenced by the  
6 seizure. The law enforcement agency under whose authority the seizure  
7 was made must cause notice to be served within fifteen days following  
8 the seizure on the owner of the property seized and the person in  
9 charge thereof and any person having any known right or interest  
10 therein, including any community property interest, of the seizure and  
11 intended forfeiture of the seized property. Service of notice of  
12 seizure of real property must be made according to the rules of civil  
13 procedure. However, the state may not obtain a default judgment with  
14 respect to real property against a party who is served by substituted  
15 service absent an affidavit stating that a good faith effort has been  
16 made to ascertain if the defaulted party is incarcerated within the  
17 state, and that there is no present basis to believe that the party is  
18 incarcerated within the state. Notice of seizure in the case of  
19 property subject to a security interest that has been perfected by  
20 filing a financing statement in accordance with chapter 62A.9A RCW, or  
21 a certificate of title, must be made by service upon the secured party  
22 or the secured party's assignee at the address shown on the financing  
23 statement or the certificate of title. The notice of seizure in other  
24 cases may be served by any method authorized by law or court rule  
25 including but not limited to service by certified mail with return  
26 receipt requested. Service by mail is deemed complete upon mailing  
27 within the fifteen-day period following the seizure.

28 (4) If a person does not notify the seizing law enforcement agency  
29 in writing of the person's claim of ownership or right to possession of  
30 items specified in this chapter within forty-five days of the service  
31 of notice from the seizing agency in the case of personal property and  
32 ninety days in the case of real property, the item seized is deemed  
33 forfeited. The community property interest in real property of a  
34 person whose spouse or domestic partner committed a violation giving  
35 rise to seizure of the real property may not be forfeited if the person  
36 did not participate in the violation.

37 (5) If a person notifies the seizing law enforcement agency in  
38 writing of the person's claim of ownership or right to possession of



1 the seized items within forty-five days of the service of notice from  
2 the seizing agency in the case of personal property and ninety days in  
3 the case of real property, the person or persons must be afforded a  
4 reasonable opportunity to be heard as to the claim or right. The  
5 notice of claim may be served by any method authorized by law or court  
6 rule including, but not limited to, service by first-class mail.  
7 Service by mail is deemed complete upon mailing within the forty-five  
8 day period following service of the notice of seizure in the case of  
9 personal property and within the ninety-day period following service of  
10 the notice of seizure in the case of real property. The hearing must  
11 be before the chief law enforcement officer of the seizing agency or  
12 the chief law enforcement officer's designee, except where the seizing  
13 agency is a state agency as defined in RCW 34.12.020(4), the hearing  
14 must be before the chief law enforcement officer of the seizing agency  
15 or an administrative law judge appointed under chapter 34.12 RCW,  
16 except that any person asserting a claim or right may remove the matter  
17 to a court of competent jurisdiction. Removal of any matter involving  
18 personal property may only be accomplished according to the rules of  
19 civil procedure. The person seeking removal of the matter must serve  
20 process against the state, county, political subdivision, or  
21 municipality that operates the seizing agency, and any other party of  
22 interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-  
23 five days after the person seeking removal has notified the seizing law  
24 enforcement agency of the person's claim of ownership or right to  
25 possession. The court to which the matter is to be removed must be the  
26 district court when the aggregate value of personal property is within  
27 the jurisdictional limit set forth in RCW 3.66.020. A hearing before  
28 the seizing agency and any appeal therefrom must be under Title 34 RCW.  
29 In all cases, the burden of proof is upon the law enforcement agency to  
30 establish, by a preponderance of the evidence, that the property is  
31 subject to forfeiture.

32 (6) When property is forfeited under this chapter the seizing law  
33 enforcement agency may:

34 (a) Retain it for official use or upon application by any law  
35 enforcement agency of this state release such property to such agency  
36 for the exclusive use of enforcing the criminal law;

37 (b) Sell that which is not required to be destroyed by law and  
38 which is not harmful to the public.

1 (7) By January 31st of each year, remit to the state treasurer an  
2 amount equal to ten percent of the net proceeds of any property  
3 forfeited during the preceding calendar year. Money remitted must be  
4 deposited in the state general fund.

5 (a) The net proceeds of forfeited property is the value of the  
6 forfeitable interest in the property after deducting the cost of  
7 satisfying any bona fide security interest to which the property is  
8 subject at the time of seizure; and in the case of sold property, after  
9 deducting the cost of sale, including reasonable fees or commissions  
10 paid to independent selling agents.

11 (b) The value of sold forfeited property is the sale price. The  
12 value of retained forfeited property is the fair market value of the  
13 property at the time of seizure, determined when possible by reference  
14 to an applicable commonly used index, such as the index used by the  
15 department of licensing for valuation of motor vehicles. A seizing  
16 agency may use, but need not use, an independent qualified appraiser to  
17 determine the value of retained property. If an appraiser is used, the  
18 value of the property appraised is net of the cost of the appraisal.  
19 The value of destroyed property and retained firearms or illegal  
20 property is zero.

21 (c) Retained property and net proceeds not required to be paid to  
22 the state treasurer, or otherwise required to be spent under this  
23 section, must be retained by the seizing law enforcement agency  
24 exclusively for the expansion and improvement of law enforcement  
25 activity. Money retained under this section may not be used to  
26 supplant preexisting funding sources.

27 NEW SECTION. **Sec. 9.** A new section is added to chapter 19.290 RCW  
28 to read as follows:

29 (1) The Washington wire theft task force is established.

30 (2) The task force shall consist of representatives of local law  
31 enforcement and prosecution agencies representing the two most populous  
32 counties in the state.

33 (3) The wire theft task force has the following duties:

34 (a) Investigate and prosecute wire theft;

35 (b) Compile annual data regarding the number of wire thefts and  
36 property damage throughout the state;

1           (c) Estimate the funds needed to hire sufficient investigators to  
2 respond to wire thefts and prosecute;

3           (d) Analyze the various methods of combating the problem of wire  
4 theft, which may include theft alert systems;

5           (e) Develop and implement a plan of operation;

6           (f) Propose state and regional policies regarding the regulation of  
7 wire theft; and

8           (g) Report any findings to the Washington association of sheriffs  
9 and police chiefs by December 1, 2015.

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