

HOUSE BILL REPORT

ESHB 1251

As Passed House:

March 9, 2007

Title: An act relating to protecting and recovering property owned by utilities, telecommunications companies, railroads, state agencies, political subdivisions of the state, construction firms, and other parties.

Brief Description: Addressing the issue of stolen metal property.

Sponsors: By House Committee on Insurance, Financial Services & Consumer Protection (originally sponsored by Representatives Morrell, Haler, O'Brien, Skinner, Lantz, Hinkle, Upthegrove, Takko, Moeller, Wallace, Crouse, Campbell, Kristiansen, Wood, Pearson, Ross, Fromhold, McCoy, Williams, Kretz, Hurst, Green, Kenney, VanDeWege, Haigh, McCune, Grant, Darneille, Simpson, Dunn and Rolfes).

Brief History:

Committee Activity:

Insurance, Financial Services & Consumer Protection: 1/25/07, 2/27/07 [DPS].

Floor Activity:

Passed House: 3/9/07, 97-0.

Brief Summary of Engrossed Substitute Bill

- Establishes record keeping requirements when scrap metal businesses engage in non-ferrous metal transactions with the general public.
- Establishes limitations on when scrap metal businesses may engage in transactions involving commercial metal property, metallic wire, and beer kegs.
- Requires scrap metal businesses to produce certain records when a law enforcement officer makes a request for those records.
- Prevents scrap metal businesses from paying cash for transactions involving metal property valued at greater than \$30.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- Creates a 12-month and one day sentencing enhancement for theft and possession of stolen property if the damage to the victim greatly exceeds the value of the property stolen.

HOUSE COMMITTEE ON INSURANCE, FINANCIAL SERVICES & CONSUMER PROTECTION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Kirby, Chair; Kelley, Vice Chair; Roach, Ranking Minority Member; Strow, Assistant Ranking Minority Member; Hurst, Rodne, Santos and Simpson.

Staff: Sarah Beznoska (786-7109).

Background:

General Statutory Requirements Related to Second-Hand Metals

It is a crime for any person, firm or corporation engaged in the business of buying or otherwise obtaining new, used, or second-hand metals to purchase or otherwise obtain these metals unless a permanent record of the purchase of the metals is maintained. The permanent record must contain the following information: a general description of all property purchased; the type and quantity or weight; the name, address, driver's license number, and signature of the seller or the person making delivery; and a description of any motor vehicle and the license number thereof used in the delivery of such metals.

"Metals" means copper, copper wire, copper cable, copper pipe, copper sheets and tubing, copper bus, aluminum wire, brass pipe, lead, electrolytic nickel, and zinc.

A violation of this requirement is punishable, upon conviction, by a fine of not more than \$500 or by imprisonment in the county jail for not more than six months, or by both.

Pawnbrokers and Second-Hand Dealers

Washington regulates the business of pawnbrokers and second-hand dealers. "Pawnbroker" is defined as every person engaged, in whole or in part, in the business of loaning money on the security of pledges, deposits or conditional sales of personal property or the purchase and sale of personal property. "Second-hand dealer" is defined as every person engaged, in whole or in part, in the business of purchasing, selling, trading, consignment selling, or otherwise transferring for value, second-hand property, including metal junk, melted metals, and precious metals, whether or not the person maintains a fixed place of business within the state.

"Second-hand property" is defined to include any item of personal property offered for sale which is not new, including metals in any form.

Although the statutory definition of second-hand dealer refers to transactions involving metal junk, a separate provision of the statute exempts persons in the business of buying or selling metal junk from requirements governing pawnbroker and second-hand dealer transactions.

"Metal junk" is defined as any metal that has previously been milled, shaped, stamped, or forged and that is no longer useful in its original form, except precious metals. "Melted metals" is defined as metals derived from metal junk or precious metals that have been reduced to a melted state from other than ore or ingots which are produced from ore that has not previously been processed.

There are a variety of requirements that pawnbrokers and second-hand dealers must meet when engaging in transactions. These requirements include record keeping requirements and general restrictions on transferring property for 120 days after the police provide notification that property has been reported as stolen.

A recent Attorney General Opinion determined that the existing definitions of metal junk and second-hand property are not broad enough to include all metal that might be purchased for further processing. (AGO 2007 No. 3).

Summary of Engrossed Substitute Bill:

General Statutory Requirements Related to Second-Hand Metals

The criminal statute related to keeping a permanent record of second-hand metal transactions is repealed.

Scrap Metal Dealers and Scrap Metal Processors

New requirements are created for transactions between a scrap metal business and a member of the general public. The term "transaction" does not include donations, or the purchase or receipt of metal property by a scrap metal dealer or scrap metal processor from a commercial enterprise, from another scrap metal dealer or scrap metal processor, or from a duly authorized employee or agent of the commercial enterprise, scrap metal dealer, or scrap metal processor.

"Scrap metal business" means a scrap metal supplier, scrap metal recycling center, and scrap metal processor.

"Scrap metal supplier" means a person with a current business license that is engaged in the business of purchasing or receiving nonferrous metal property for the purpose of aggregation and sale to a scrap metal recycling center or scrap metal processor and that does not maintain a fixed business location in the state.

"Scrap metal recycling center" means a person with a current business license that is engaged in the business of purchasing or receiving nonferrous metal property for the purpose of aggregation and sale to another scrap metal business and that maintains a fixed place of business within the state."

"Scrap metal processor" means a person with a current business license that conducts business from a permanent location, that is engaged in the business of purchasing or receiving metal property for the purpose of altering the metal in preparation for its use as feedstock in the manufacture of new products, and that maintains a hydraulic bailer, shearing device, or shredding device for recycling.

"Commercial enterprise" means a corporation, partnership, limited liability company, association, state agency, political subdivision of the state, public corporation, or any other legal or commercial entity.

Record Keeping Requirements for Transactions Involving Non-Ferrous Metal Property

Specific record keeping requirements for transactions involving non-ferrous metal property are established. Records must be maintained for one year. The records that must be kept are:

- the signature of the person with whom the transaction is made;
- the time, date, location, and value of the transaction;
- the name of the employee representing the scrap metal business in the transaction;
- the name, street address, and telephone number, of the person with whom the transaction is made;
- the license plate number and state of issuance of the license plate on the motor vehicle used to deliver the non-ferrous metal property;
- a description of the motor vehicle;
- the current driver's license number or other identification (ID) card number of the seller or a copy of the ID; and
- a description of the predominant types of non-ferrous metal property subject to the transaction, including the property's classification code.

A declaration requirement is also created for transactions involving non-ferrous metal property. The person selling the property must sign a declaration that the property is not stolen. A statement included on a receipt is sufficient to meet this requirement. An employee of the scrap metal business must witness the signing and dating of the declaration and sign the declaration.

Required records and the declaration must be open to inspection by law enforcement at all times during the ordinary hours of business, or at reasonable times if ordinary hours of business are not kept.

A scrap metal business is prohibited from entering into a transaction to purchase or receive non-ferrous metal property unless the person can produce government-issued picture ID, including a valid driver's license or identification card issued by any state. A copy of the ID must be kept.

"Non-ferrous metal property" means metal property for which the value of the metal property is derived from the property's content of copper, brass, aluminum, bronze, lead, zinc, nickel, and their alloys, and unwanted electronic product.

Commercial Metal Property

Specific requirements are created for transactions involving commercial metal property. No scrap metal business may enter into a transaction for commercial metal property unless the seller:

- has a commercial account with the scrap metal dealer or scrap metal processor;
- can prove ownership of the property by producing written documentation that the seller is the owner of the property; or
- can produce written documentation that the seller is an employee or agent authorized to sell the property on behalf of a commercial enterprise.

To establish a commercial account with a commercial enterprise, a scrap metal business must keep records with the commercial enterprise. The record must contain the name of the commercial enterprise, the business address and telephone number of the commercial enterprise, the full name of the person employed by the commercial enterprise who is authorized to designate an employee or agent to deliver metal property and commercial metal property, and a record of every purchase or receipt of metal property and commercial metal property from the commercial enterprise.

Commercial metal property means: utility access covers; street light poles and fixtures; road and bridge guardrails; highway or street signs; water meter covers; traffic directional and control signs; traffic light signals; any metal property marked with the name of a commercial enterprise, including but not limited to a telephone, cable, electric, water, natural gas, or other utility, or railroad; unused or undamaged building construction materials consisting of copper pipe, tubing, or wiring, or aluminum wire, siding, downspouts, or gutters; aluminum or stainless steel fence panels made from one inch tubing; forty-two inches high with four inch gaps; aluminum decking, bleachers, or risers; historical markers; statue plaques; grave markers and funeral vases; agricultural irrigation wheels, sprinkler heads and pipes.

Metallic Wire

Scrap metal dealers or scrap metal processors are prohibited from entering into a transaction involving metallic wire that was burned in whole or in part to remove insulation unless the seller can produce written proof that the wire was lawfully burned.

Beer Kegs

Scrap metal dealers and scrap metal processors are prohibited from receiving beer kegs from anyone except a manufacturer of beer kegs or a licensed brewery.

Cash Transaction Requirements

Transactions involving non-ferrous metal property valued at greater than \$30 may not be made in cash or to anyone who does not provide a street address. Payment must be by non-transferable check no earlier than 10 days after the transaction.

Requests from Law Enforcement

If requested by law enforcement, a scrap metal business must provide the transcript of records of the purchase or receipt of non-ferrous metal property involving a specific individual,

vehicle, or item of non-ferrous metal property. The information may be transmitted within a specified time of not less than two business days. The information may be transmitted electronically, by fax, by computer, or by delivery of a computer disk subject to approval by law enforcement.

If the scrap metal business has good cause to believe that non-ferrous metal property or commercial metal property in his or her possession is lost or stolen, the scrap metal business must report to law enforcement.

Preserving Evidence of Metal Theft

After notice from law enforcement that an item of non-ferrous metal property or commercial metal property has been reported as stolen, a scrap metal business must tag and hold that property for a period of time directed by law enforcement up to a maximum of 10 business days.

Law enforcement is prohibited from placing a hold unless law enforcement reasonably suspects that the property is a lost or stolen item and any hold may be removed within 10 business days.

Criminal Penalties

It is a gross misdemeanor:

- to deliberately remove, alter, or obliterate any manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon an item of non-ferrous metal property or commercial metal property;
- to purchase or receive any non-ferrous metal property or commercial metal property where the manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon the property have been deliberately and conspicuously removed, altered, or obliterated;
- to knowingly make, cause, or allow to be made any false entry or misstatement of any material matter in any book, record, or writing required to be kept under this chapter;
- to enter into a transaction to purchase or receive metal property from any person under the age of 18 years or any person who is discernibly under the influence of intoxicating liquor or drugs;
- to enter into a transaction to purchase or receive metal property with anyone whom the scrap business has been informed by a law enforcement agency to have been convicted of a crime involving drugs, burglary, robbery, theft, or possession of or receiving stolen property, manufacturing, delivering, or possessing with intent to deliver methamphetamine, or possession of ephedrine or any of its salts or isomers or salts of isomers, pseudoephedrine or any of its salts or isomers or salts of isomers, or anhydrous ammonia with intent to manufacture methamphetamine within the past 10 years whether the person is acting in his or her own behalf or as the agent of another;
- to sign the required declaration knowing that the nonferrous metal property subject to the transaction is stolen;
- to possess commercial metal property that was not lawfully purchased or received; or

- to engage in a series of transactions valued at less than \$30 with the same seller to avoid the cash payment limitations.

Civil Penalties

Any other violation of the requirements is punishable by a fine of not more than \$1,000 for a first conviction and \$2,000 for subsequent convictions within two years of the first violation.

Exemptions

The following entities are exempt from all of the requirements that apply to scrap metal dealers and scrap metal processors:

- licensed motor vehicle dealers;
- licensed vehicle wreckers or hulk haulers;
- persons in the business of operating an automotive repair facility; and
- persons in the business of buying or selling empty food and beverage containers including metal food and beverage containers.

Sentencing Enhancements

In a prosecution for Theft or Possession of Stolen Property in the first degree or Theft or Possession of Stolen Property in the second degree, the prosecutor may file a special allegation of disproportionate impact when sufficient evidence exists that the damage to the victim greatly exceeds the value of the stolen property. Damage to the victim greatly exceeds the value of the stolen property when the replacement cost of the stolen item is more than three times the value of the stolen item, or the theft of the item creates a public hazard.

The prosecutor has the burden of proving the special allegation beyond a reasonable doubt to the jury (or to the judge, if there is no jury). If the special allegation is proved, an additional 12 months and one day will be added to the standard sentence range for the offense.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support of original bill) There is an Attorney General Opinion that states that we do not have our bases covered when it comes to regulating certain types of metal transactions. This bill is necessary. There is theft happening at construction sites, on railroad lines, and many other places. This is not always just scrap metal that is being stolen. For example, the Puyallup Fair has reported that people have stolen ramps from them, and they cannot track down the people who have stolen and sold these ramps. Valuable metal that schools and public entities have paid for is being stolen. It is important to find a solution to this problem.

Trained detectives and good police work cannot always solve these issues, especially when there are not serial numbers to trace. There needs to be a better process to assist law enforcement with resolving these cases. The Legislature has given law enforcement many tools to combat methamphetamine problems. There is still a methamphetamine problem and people are selling non-ferrous metals for use in buying methamphetamine. This bill will help that issue.

The recent storm is another example of when problems arose. Light poles were knocked down and when the utilities went to go fix the poles, they found that thieves had stolen wire. This delayed fixing the power for days. Substations at electrical companies are being broken into causing damages of up to \$30,000. This is dangerous for the thief and for the worker going to repair the problem. The potential for death is elevated.

A crane construction business in Sumner is having copper stolen. A 300-foot-long electric power cable that supplies power to a crane was stolen. This takes eight hours to replace, which is an entire business day. It costs them \$50,000 to replace this. This bill would help these types of situations. The bill should also protect new production materials and new wire used by government entities and utility companies.

Stealing and selling of metal has become part of the methamphetamine culture. Addicts steal this metal to get quick cash. These crimes could be solved if more records were kept at the scrap yards. Currently, records are not consistently kept, and the records have scant details. It makes it almost impossible to recover property. This bill would require more records. It would also eliminate the quick cash incentive because payment would be by check.

Our business has been burglarized five different times and had metal property stolen that equaled about \$50,000 in damages. The scrap metal yards in our area denied that they had accepted any wire until the sheriff approached them and they admitted they had purchased some wire. We had to hire our own security to deal with the issue.

The City of Auburn has experienced a \$15,000 loss in the last 18 months related to theft of metal property. We have had significant losses.

Microbreweries have incurred great losses of stainless steel kegs. Kegs cost about \$150 each. There have been more than 1,000 kegs that disappeared last year. Stainless steel should be included in the metals in the bill or, even better, a specific reference to kegs.

This is not just an issue about cost. It is an issue of safety, including employee and customer safety. Stolen goods are one thing, but hindering the ability to do business safely is another issue.

There is a coalition of rural electric utilities that are in support of this bill. We are a small rural electric utility and we pride ourselves on service to our customers. In the past three months, we have experienced a number of thefts. This causes many homes to be without power. Thieves have stolen more than 2,200 feet of wire, which caused day-long delays in the restoration of power. Even worse is that this is a rural area, which means that people without power are not only without electricity, but are without water from their wells.

Agriculture must be included. The definition of metal must include stainless steel and aluminum and anything that gets stolen from a farm. We have had irrigation pipes stolen, which greatly impacts crops. We've caught people in our shed stealing pipe. Police are treating these as minor claims. The bill should also require a photograph be taken of the person who delivers property to be sold.

The hold time frame needs to be longer. Higher penalties should be included.

(Opposed to original bill) We recognize that there are problems with stolen metal items. Those are crimes and the best way to deal with crimes is to punish criminals. There are re-drafts of the bill being circulated that impose a number of requirements on recyclers. This is not tied to apprehension and prosecution of the criminals who are stealing the property.

We buy and process a variety of metal items, processing at least 50,000 tons of metal scrap in a month. This is a huge amount of scrap metal. A tag and hold system would overwhelm our system. We would have to ship material out of state. Scrap metal includes vehicles, washers and dryers, siding, and other items. If this metal did not come to us, it would be alongside roads or in landfills.

We spend time training employees and we have people inspect the metal we receive for hazardous materials, contraband, or anything that catches their eye. We want to solve this problem too and we want to cooperate with local law enforcement. Putting constraints against recyclers will not solve the problem; it will just drive it further underground.

There should be further discussions on problem-solving ideas related to this issue. There are other ways to address the problem. The appropriate statute needs to be amended to strengthen enforcement. Crimes need to be reported by victims, and owners of valuable metals need to make more effort to protect these metals. Local law enforcement needs to be supportive. A statewide no-buy list might be helpful and is something that other states do.

The recycling industry contributed more than \$40 billion to the U.S. economy in 2005 and employed more than 60,000 people. More than \$9 billion in scrap commodities were exported in 2005. Washington is a major contributor. There is already a law related to taking name, address, phone number, and other information. Existing law needs to be enforced.

Recyclers already comply with the existing law. This bill assumes that anyone who buys metal is a recycler and does not comply with the law. Recyclers with fixed facilities definitely do comply. Unless law enforcement can enforce the existing laws, putting a burden on the entire industry does not make sense. The biggest problem that police have is identifying material. If the material does not have a serial number or identifying marks, a recycler cannot help the police.

Only 7.5 percent of material coming to recyclers comes from utilities and of that 7.5 percent, most of it is from commercial accounts. The law needs to define specific property coming from utilities and establish stronger penalties related to these metals. A better definition of metals in existing law would help.

Recyclers are frustrated with the lack of resources on the part of law enforcement to respond to items that are flagged by recyclers. Recyclers are also frustrated because even when recycling businesses are burglarized, the police take a long time to respond.

The law should distinguish between pawnshops and second-hand dealers and scrap metal dealers and processors.

Persons Testifying: (In support of original bill) Representative Morrell, prime sponsor; Robin James and Pete Bellmer, Puyallup Police Department; Michael Phipps and Brian Stepp, Pierce County Sheriff's Department; James McMahan, Washington Association of Sheriffs and Police Chiefs; Ben Wheeler, King County Sheriff's Office; Rob Burbach, Outdoor Amusement Association; Michael Davis, Davis Amusements and Guild of Small Business Owners; Kent Lopez, Washington Rural Electric Association; Isabella Deditch, Ohop Mutual Light Company; Dean Moergeli, Port Orchard Sand; Carolyn Robertson, City of Auburn; George Hancock, Maritime Pacific Brewery; Erin Thoeny, Thoeny Farms, Inc; and Jim Boyd, Tacoma Power.

(Opposed to original bill) Brad Tower, Ann Gardiner, and Vern McClure, Schnitzer Steel; Jay Sternoff, Pacific Iron and Metal and Pacific Northwest Chapter of the Institute of Scrap Recycling Industries; Jacob Van de Rhoer, Arrow Metals Corporation; and Matt Haslett, Metro Metals and Pacific Coast Shredder.

Persons Signed In To Testify But Not Testifying: Heather Hansen, Carnival Guild and Washington State Fairs Association; Michael Transue, Associated General Contractors; and Rico Baroga, Washington State Department of Transportation.