
**Public Safety & Emergency
Preparedness Committee**

ESSB 5312

Brief Description: Addressing the issue of stolen metal property.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Tom, Holmquist, Kline, Roach, Kilmer, Marr, Sheldon, Morton, Pridemore, McCaslin, Berkey, Delvin, Shin, Rasmussen, Parlette and Stevens).

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.

Hearing Date: 3/26/07

Staff: Sarah Beznoska (786-7109).

Background:

General Statutory Requirements Related to Second-Hand Metals

It is unlawful 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

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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 in the pawnbroker and second-hand dealer laws are not broad enough to include all metal that might be purchased for further processing. (AGO 2007 No. 3).

Summary of Bill:

General Statutory Requirements Related to Second-Hand Metals

The current statute related to keeping a permanent record of second-hand metal transactions is repealed.

Scrap Metal Businesses

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 non-ferrous 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 card number of the seller or a copy of the identification; 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.

The 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 identification, including a valid driver's license or identification card issued by any state.

"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 when scrap metal businesses purchase or receive commercial metal property. No scrap metal business may purchase or receive commercial metal property unless the seller:

- has a commercial account with the scrap metal business;
- 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, down spouts, or gutters; aluminum or stainless steel fence panels made from one-inch tubing, 42 inches high with four-inch gaps; aluminum decking, bleachers, or risers; historical markers; statue plaques; grave markers and funeral vases; and 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 or commercial 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 deceive a scrap metal business;
- 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 required book, record, or writing required to be kept;
- 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 non-ferrous 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 businesses:

- 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.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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