

SENATE BILL REPORT

ESSB 5312

As Amended by House, March 4, 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: 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 History:

Committee Activity: Judiciary: 1/31/07, 2/28/07 [DPS].

Passed Senate: 3/13/07, 48-0.

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5312 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Tom, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Hargrove, Murray, Roach and Weinstein.

Staff: Juliana Roe (786-7405)

Background: Authorities have seen a substantial increase in the theft of scrap metal. Items such as catalytic converters on vehicles, cases from headstones and mausoleums, wire from construction sites, and manhole covers are stolen or damaged by thieves who remove scrap metal. In many cases, the scrap metal is melted down to facilitate its sale. Law enforcement has linked these thefts to those seeking money for drugs and other illegal activities.

It is currently a gross misdemeanor for any person to remove, alter, or obliterate a manufacturer's make, model, serial number, personal identification number, or identifying marks engraved upon an item of personal property. An item cannot be accepted for second-hand purchase where these markings have been removed, altered, or obliterated. It is a gross misdemeanor for a person to knowingly make, cause, or allow any false entry or misstatement of material information to be entered into any book, record, or writing required to be kept by law. This applies to pawnbrokers and second-dealers, not necessarily to recyclers.

Unfortunately, these crimes are not being pursued because the current statutes do not provide law enforcement the tools they need to investigate. Furthermore, those involved in the

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business of recycling, as opposed to pawnbrokers or second-hand dealers, do not necessarily fit within chapter 19 involving pawnbrokers and second-hand dealers. Rather, one statute, RCW 19.91.110, refers to "metal buyers" but provides very little guidance or regulation. It merely states that it is unlawful for any person or business engaged in buying or obtaining new or used metals without maintaining a permanent record of the transaction. This does not include those purchases made by or from a manufacturer of such metals. The statute defines "metals" as copper, copper wire, copper cable, copper pipe, copper sheets and tubing, copper bus, aluminum wire, brass pipe, lead, electrolytic nickel, and zinc. It requires the permanent record of the transaction to contain: a general description of the property; the type and quantity or weight; the name, address, driver's license number, and signature of the seller or person making delivery; and a description of any motor vehicle and the license number used in the delivery of the metal. This record must be retained by the purchaser for at least one year. A violation of this section is punishable by up to a \$500 fine and up to six months in jail. There is no classification for this crime.

Summary of Engrossed Substitute Bill: The term "recycler" is defined. Recyclers doing business in this state must produce an accurate and legible record of information pertaining to the parties and items involved in the transaction. The records must be open to inspection by law enforcement at all times during regular business hours and these records must be maintained for up to one year after the date of transaction.

Recyclers must require the party with whom a transaction is made to sign a declaration if the property involved is worth more than \$100.

Transactions involving metal property worth more than \$30 must be paid by nontransferable check no sooner than ten days after the transaction. Transactions involving metal property worth less than \$30 may be made in cash.

Once law enforcement notifies a recycler that they reasonably believe an item of metal property has been stolen, the recycler is required to hold that property for no more than ten business days from the date of notification.

It is a gross misdemeanor for any person to: (1) remove or alter a make, model, or serial number, personal identification number, or identifying marks engraved or etched upon metal property purchased or received in pledge; (2) accept for purchase any metal property where someone has removed or altered a make, model, or serial number, personal identification number, or identifying marks have been engraved or etched; (3) knowingly make or allow for a false entry to be made in any record required to be kept under this chapter; (4) receive metal property from someone under the age of 18 or under the influence of intoxicating liquor or drugs; (5) receive metal property from someone who is known to the recycler to have been convicted of burglary, robbery, theft, or possession of 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 ten years whether the person is acting in his or her own behalf or as the agent of another; (6) sign the declaration required knowing that the metal property is stolen; (7) possess metal property not lawfully purchased or received; or (7)

engage in a series of transaction valued at less than \$30 with the same seller to avoid record keeping requirements.

Civil penalties are imposed for violations not subject to the criminal penalties. The first violation carries a penalty of not more than \$1,000. Each subsequent violation, within a two year period, carries a fine of not more than \$2,000.

The provisions of this chapter do not apply to: motor vehicle dealers; vehicle wreckers or hulk haulers; automotive repair businesses; and those in the business of buying or selling empty food and beverage containers; including metal food and beverage containers, or nonmetal junk.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony on Proposed Substitute: PRO: This has effected all of our communities and people in all walks of life. The massive damage caused by this crime increases costs in other areas, such as an increase in utility bills. The bill imposes various requirements on both parties involved in the buying and selling of scrap metal. The 30 day requirement is included because there are not many people who will give the wrong address when they are expecting a check at that address in 30 days. Due to the nature of the methamphetamine problems and the ferocity that these people go to in order to feed their habit, the time has come for this bill.

Metal can be stolen from an innumerable amount of places, whether it is empty homes, construction sites, utility poles, or cemeteries. These thefts are not only costly, they are potentially dangerous. The damage to infrastructure is substantial. These thieves steal and sell without accountability because they are never identified. By requiring more information, the anonymity of these individuals is removed.

Some industries deal with metal theft on a daily basis. Power companies are forced to change the way they do business to stay ahead of the thieves. In the last year, all of Elmhurst Mutual Power's areas of business have been burglarized at least twice and some up to four times. The consumers are unfortunately forced to pay to replace what has been stolen. These thefts have even caused outages. These individuals are looking for instant gratification of cash in hand. Scrap dealers should obtain and maintain appropriate records so that law enforcement can apprehend and prosecute these individuals.

For contractors, the replacement value is the most burdensome and costly. It takes the metal, effort, and time to replace the stolen items.

CON: Scrap metal processors want to be part of the solution to this problem. Recyclers have already worked with local law enforcement to resolve this issue. Recyclers want to come up with bright line rules and penalties for members crossing those bright lines. The problem with the bill is that it interferes with the way in which this business is conducted. There should be something that works for both large and small recyclers.

Recycling is a cash intensive and high volume business. Forcing recyclers to hold property for long periods of time is burdensome. There are also groups such as the girl and boy scouts that come in to recycle cans. These groups need the cash now, not in 30 days.

Persons Testifying: PRO: Senator Tom, prime sponsor; Carolyn Barclift, Olympia Police Department; Dan Brooks, General Manager of Elmhurst Mutual Power; Michael Transue, Association of General Contractors and Washington Construction Industry Council.

CON: Brad Tower, Schnitzer Steel Industries; Charlie Urbick, Skagit River Steels Recycler; Mark Simon, Joseph Simon, Simon and Sons.

House Amendment(s): Provisions related to theft in the first and second degree and possessing stolen property in the first and second degree are added.

The prosecution, in a prosecution for theft or possessing stolen property in the first and second degree, is allowed to 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. It is provided that 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 judge in a bench trial. If the special allegation is proved, an additional 12 months and one day will be added to the standard sentence range for the offense.

The term "commercial metal property" includes metal property marked with the name of a commercial mobile radio services entity.

The reference to "unwanted electronic product" is removed from the definition of "nonferrous metal property."

The definition of "scrap metal processor" is amended to include a person who conducts business involving the purchase or receipt of "nonferrous metal property" and "commercial metal property."

The definition of "scrap metal recycling center" is amended to include a person who conducts business involving the purchase or receipt of "commercial metal property."

Those businesses involved in the purchase or receipt of "commercial metal property" must comply with the record requirements already applicable to those involved in the purchase or receipt of "nonferrous metal property."