

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5312

60th Legislature
2007 Regular Session

Passed by the Senate April 19, 2007
YEAS 46 NAYS 0

President of the Senate

Passed by the House April 19, 2007
YEAS 98 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5312** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5312

AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

By 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)

READ FIRST TIME 02/28/07.

1 AN ACT Relating to protecting and recovering property owned by
2 utilities, telecommunications companies, railroads, state agencies,
3 political subdivisions of the state, construction firms, and other
4 parties; amending RCW 9.94A.535; adding a new chapter to Title 19 RCW;
5 creating a new section; repealing RCW 9.91.110; and prescribing
6 penalties.

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

8 NEW SECTION. **Sec. 1.** DEFINITIONS. The definitions in this
9 section apply throughout this chapter unless the context clearly
10 requires otherwise.

11 (1) "Commercial account" means a relationship between a scrap metal
12 business and a commercial enterprise that is ongoing and properly
13 documented under section 3 of this act.

14 (2) "Commercial enterprise" means a corporation, partnership,
15 limited liability company, association, state agency, political
16 subdivision of the state, public corporation, or any other legal or
17 commercial entity.

18 (3) "Commercial metal property" means: Utility access covers;
19 street light poles and fixtures; road and bridge guardrails; highway or

1 street signs; water meter covers; traffic directional and control
2 signs; traffic light signals; any metal property marked with the name
3 of a commercial enterprise, including but not limited to a telephone,
4 commercial mobile radio services, cable, electric, water, natural gas,
5 or other utility, or railroad; unused or undamaged building
6 construction materials consisting of copper pipe, tubing, or wiring, or
7 aluminum wire, siding, downspouts, or gutters; aluminum or stainless
8 steel fence panels made from one inch tubing, forty-two inches high
9 with four inch gaps; aluminum decking, bleachers, or risers; historical
10 markers; statue plaques; grave markers and funeral vases; or
11 agricultural irrigation wheels, sprinkler heads, and pipes.

12 (4) "Nonferrous metal property" means metal property for which the
13 value of the metal property is derived from the property's content of
14 copper, brass, aluminum, bronze, lead, zinc, nickel, and their alloys.
15 "Nonferrous metal property" does not include precious metals.

16 (5) "Precious metals" means gold, silver, and platinum.

17 (6) "Record" means a paper, electronic, or other method of storing
18 information.

19 (7) "Scrap metal business" means a scrap metal supplier, scrap
20 metal recycling center, and scrap metal processor.

21 (8) "Scrap metal processor" means a person with a current business
22 license that conducts business from a permanent location, that is
23 engaged in the business of purchasing or receiving nonferrous metal
24 property and commercial metal property for the purpose of altering the
25 metal in preparation for its use as feedstock in the manufacture of new
26 products, and that maintains a hydraulic bailer, shearing device, or
27 shredding device for recycling.

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

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

1 (11) "Transaction" means a pledge, or the purchase of, or the trade
2 of any item of nonferrous metal property by a scrap metal business
3 from a member of the general public. "Transaction" does not include
4 donations or the purchase or receipt of nonferrous metal property by a
5 scrap metal business from a commercial enterprise, from another scrap
6 metal business, or from a duly authorized employee or agent of the
7 commercial enterprise or scrap metal business.

8 NEW SECTION. **Sec. 2.** RECORDS REQUIRED FOR PURCHASING NONFERROUS
9 METAL PROPERTY FROM THE GENERAL PUBLIC. (1) At the time of a
10 transaction, every scrap metal business doing business in this state
11 shall produce wherever that business is conducted an accurate and
12 legible record of each transaction involving nonferrous metal property.
13 This record must be written in the English language, documented on a
14 standardized form or in electronic form, and contain the following
15 information:

- 16 (a) The signature of the person with whom the transaction is made;
- 17 (b) The time, date, location, and value of the transaction;
- 18 (c) The name of the employee representing the scrap metal business
19 in the transaction;
- 20 (d) The name, street address, and telephone number of the person
21 with whom the transaction is made;
- 22 (e) The license plate number and state of issuance of the license
23 plate on the motor vehicle used to deliver the nonferrous metal
24 property subject to the transaction;
- 25 (f) A description of the motor vehicle used to deliver the
26 nonferrous metal property subject to the transaction;
- 27 (g) The current driver's license number or other government-issued
28 picture identification card number of the seller or a copy of the
29 seller's government-issued picture identification card; and
- 30 (h) A description of the predominant types of nonferrous metal
31 property subject to the transaction, including the property's
32 classification code as provided in the institute of scrap recycling
33 industries scrap specifications circular, 2006, and weight, quantity,
34 or volume.

35 (2) For every transaction that involves nonferrous metal property,
36 every scrap metal business doing business in the state shall require
37 the person with whom a transaction is being made to sign a declaration.

1 The declaration may be included as part of the transactional record
2 required under subsection (1) of this section, or on a receipt for the
3 transaction. The declaration must state substantially the following:

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

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

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

17 NEW SECTION. **Sec. 3.** REQUIREMENTS FOR PURCHASING OR RECEIVING
18 NONFERROUS METAL PROPERTY FROM THE GENERAL PUBLIC. (1) No scrap metal
19 business may enter into a transaction to purchase or receive nonferrous
20 metal property from any person who cannot produce at least one piece of
21 current government-issued picture identification, including a valid
22 driver's license or identification card issued by any state.

23 (2) No scrap metal business may purchase or receive commercial
24 metal property unless the seller: (a) Has a commercial account with
25 the scrap metal business; (b) can prove ownership of the property by
26 producing written documentation that the seller is the owner of the
27 property; or (c) can produce written documentation that the seller is
28 an employee or agent authorized to sell the property on behalf of a
29 commercial enterprise.

30 (3) No scrap metal business may enter into a transaction to
31 purchase or receive metallic wire that was burned in whole or in part
32 to remove insulation unless the seller can produce written proof to the
33 scrap metal business that the wire was lawfully burned.

34 (4) No transaction involving nonferrous metal property valued at
35 greater than thirty dollars may be made in cash or with any person who
36 does not provide a street address under the requirements of section 2
37 of this act. For transactions valued at greater than thirty dollars,

1 the person with whom the transaction is being made may only be paid by
2 a nontransferable check, mailed by the scrap metal business to a street
3 address provided under section 2 of this act, no earlier than ten days
4 after the transaction was made. A transaction occurs on the date
5 provided in the record required under section 2 of this act.

6 (5) No scrap metal business may purchase or receive beer kegs from
7 anyone except a manufacturer of beer kegs or licensed brewery.

8 NEW SECTION. **Sec. 4.** RECORD FOR COMMERCIAL ACCOUNTS. (1) Every
9 scrap metal business must create and maintain a permanent record with
10 a commercial enterprise, including another scrap metal business, in
11 order to establish a commercial account. That record, at a minimum,
12 must include the following information:

13 (a) The full name of the commercial enterprise or commercial
14 account;

15 (b) The business address and telephone number of the commercial
16 enterprise or commercial account; and

17 (c) The full name of the person employed by the commercial
18 enterprise who is authorized to deliver nonferrous metal property and
19 commercial metal property to the scrap metal business.

20 (2) The record maintained by a scrap metal business for a
21 commercial account must document every purchase or receipt of
22 nonferrous metal property and commercial metal property from the
23 commercial enterprise. The documentation must include, at a minimum,
24 the following information:

25 (a) The time, date, and value of the property being purchased or
26 received;

27 (b) A description of the predominant types of property being
28 purchased or received; and

29 (c) The signature of the person delivering the property to the
30 scrap metal business.

31 NEW SECTION. **Sec. 5.** REPORTING TO LAW ENFORCEMENT. (1) Upon
32 request by any commissioned law enforcement officer of the state or any
33 of its political subdivisions, every scrap metal business shall furnish
34 a full, true, and correct transcript of the records from the purchase
35 or receipt of nonferrous metal property and commercial metal property
36 involving a specific individual, vehicle, or item of nonferrous metal

1 property or commercial metal property. This information may be
2 transmitted within a specified time of not less than two business days
3 to the applicable law enforcement agency electronically, by facsimile
4 transmission, or by modem or similar device, or by delivery of computer
5 disk subject to the requirements of, and approval by, the chief of
6 police or the county's chief law enforcement officer.

7 (2) If the scrap metal business has good cause to believe that any
8 nonferrous metal property or commercial metal property in his or her
9 possession has been previously lost or stolen, the scrap metal business
10 shall promptly report that fact to the applicable commissioned law
11 enforcement officer of the state, the chief of police, or the county's
12 chief law enforcement officer, together with the name of the owner, if
13 known, and the date when and the name of the person from whom it was
14 received.

15 NEW SECTION. **Sec. 6.** PRESERVING EVIDENCE OF METAL THEFT. (1)
16 Following notification, either verbally or in writing, from a
17 commissioned law enforcement officer of the state or any of its
18 political subdivisions that an item of nonferrous metal property or
19 commercial metal property has been reported as stolen, a scrap metal
20 business shall hold that property intact and safe from alteration,
21 damage, or commingling, and shall place an identifying tag or other
22 suitable identification upon the property. The scrap metal business
23 shall hold the property for a period of time as directed by the
24 applicable law enforcement agency up to a maximum of ten business days.

25 (2) A commissioned law enforcement officer of the state or any of
26 its political subdivisions shall not place on hold any item of
27 nonferrous metal property or commercial metal property unless that law
28 enforcement agency reasonably suspects that the property is a lost or
29 stolen item. Any hold that is placed on the property must be removed
30 within ten business days after the property on hold is determined not
31 to be stolen or lost and the property must be returned to the owner or
32 released.

33 NEW SECTION. **Sec. 7.** UNLAWFUL VIOLATIONS. It is a gross
34 misdemeanor under chapter 9A.20 RCW for:

35 (1) Any person to deliberately remove, alter, or obliterate any
36 manufacturer's make, model, or serial number, personal identification

1 number, or identifying marks engraved or etched upon an item of
2 nonferrous metal property or commercial metal property in order to
3 deceive a scrap metal business;

4 (2) Any scrap metal business to enter into a transaction to
5 purchase or receive any nonferrous metal property or commercial metal
6 property where the manufacturer's make, model, or serial number,
7 personal identification number, or identifying marks engraved or etched
8 upon the property have been deliberately and conspicuously removed,
9 altered, or obliterated;

10 (3) Any person to knowingly make, cause, or allow to be made any
11 false entry or misstatement of any material matter in any book, record,
12 or writing required to be kept under this chapter;

13 (4) Any scrap metal business to enter into a transaction to
14 purchase or receive nonferrous metal property or commercial metal
15 property from any person under the age of eighteen years or any person
16 who is discernibly under the influence of intoxicating liquor or drugs;

17 (5) Any scrap metal business to enter into a transaction to
18 purchase or receive nonferrous metal property or commercial metal
19 property with anyone whom the scrap metal business has been informed by
20 a law enforcement agency to have been convicted of a crime involving
21 drugs, burglary, robbery, theft, or possession of or receiving stolen
22 property, manufacturing, delivering, or possessing with intent to
23 deliver methamphetamine, or possession of ephedrine or any of its salts
24 or isomers or salts of isomers, pseudoephedrine or any of its salts or
25 isomers or salts of isomers, or anhydrous ammonia with intent to
26 manufacture methamphetamine within the past ten years whether the
27 person is acting in his or her own behalf or as the agent of another;

28 (6) Any person to sign the declaration required under section 2 of
29 this act knowing that the nonferrous metal property subject to the
30 transaction is stolen. The signature of a person on the declaration
31 required under section 2 of this act constitutes evidence of intent to
32 defraud a scrap metal business if that person is found to have known
33 that the nonferrous metal property subject to the transaction was
34 stolen;

35 (7) Any scrap metal business to possess commercial metal property
36 that was not lawfully purchased or received under the requirements of
37 this chapter; or

1 (8) Any scrap metal business to engage in a series of transactions
2 valued at less than thirty dollars with the same seller for the
3 purposes of avoiding the requirements of section 3(4) of this act.

4 NEW SECTION. **Sec. 8.** CIVIL PENALTIES. (1) Each violation of the
5 requirements of this chapter that are not subject to the criminal
6 penalties under section 7 of this act shall be punishable, upon
7 conviction, by a fine of not more than one thousand dollars.

8 (2) Within two years of being convicted of a violation of any of
9 the requirements of this chapter that are not subject to the criminal
10 penalties under section 7 of this act, each subsequent violation shall
11 be punishable, upon conviction, by a fine of not more than two thousand
12 dollars.

13 NEW SECTION. **Sec. 9.** EXEMPTIONS. The provisions of this chapter
14 do not apply to transactions conducted by the following:

15 (1) Motor vehicle dealers licensed under chapter 46.70 RCW;

16 (2) Vehicle wreckers or hulk haulers licensed under chapter 46.79
17 or 46.80 RCW;

18 (3) Persons in the business of operating an automotive repair
19 facility as defined under RCW 46.71.011; and

20 (4) Persons in the business of buying or selling empty food and
21 beverage containers, including metal food and beverage containers.

22 **Sec. 10.** RCW 9.94A.535 and 2005 c 68 s 3 are each amended to read
23 as follows:

24 The court may impose a sentence outside the standard sentence range
25 for an offense if it finds, considering the purpose of this chapter,
26 that there are substantial and compelling reasons justifying an
27 exceptional sentence. Facts supporting aggravated sentences, other
28 than the fact of a prior conviction, shall be determined pursuant to
29 the provisions of RCW 9.94A.537.

30 Whenever a sentence outside the standard sentence range is imposed,
31 the court shall set forth the reasons for its decision in written
32 findings of fact and conclusions of law. A sentence outside the
33 standard sentence range shall be a determinate sentence.

34 If the sentencing court finds that an exceptional sentence outside

1 the standard sentence range should be imposed, the sentence is subject
2 to review only as provided for in RCW 9.94A.585(4).

3 A departure from the standards in RCW 9.94A.589 (1) and (2)
4 governing whether sentences are to be served consecutively or
5 concurrently is an exceptional sentence subject to the limitations in
6 this section, and may be appealed by the offender or the state as set
7 forth in RCW 9.94A.585 (2) through (6).

8 (1) Mitigating Circumstances - Court to Consider

9 The court may impose an exceptional sentence below the standard
10 range if it finds that mitigating circumstances are established by a
11 preponderance of the evidence. The following are illustrative only and
12 are not intended to be exclusive reasons for exceptional sentences.

13 (a) To a significant degree, the victim was an initiator, willing
14 participant, aggressor, or provoker of the incident.

15 (b) Before detection, the defendant compensated, or made a good
16 faith effort to compensate, the victim of the criminal conduct for any
17 damage or injury sustained.

18 (c) The defendant committed the crime under duress, coercion,
19 threat, or compulsion insufficient to constitute a complete defense but
20 which significantly affected his or her conduct.

21 (d) The defendant, with no apparent predisposition to do so, was
22 induced by others to participate in the crime.

23 (e) The defendant's capacity to appreciate the wrongfulness of his
24 or her conduct, or to conform his or her conduct to the requirements of
25 the law, was significantly impaired. Voluntary use of drugs or alcohol
26 is excluded.

27 (f) The offense was principally accomplished by another person and
28 the defendant manifested extreme caution or sincere concern for the
29 safety or well-being of the victim.

30 (g) The operation of the multiple offense policy of RCW 9.94A.589
31 results in a presumptive sentence that is clearly excessive in light of
32 the purpose of this chapter, as expressed in RCW 9.94A.010.

33 (h) The defendant or the defendant's children suffered a continuing
34 pattern of physical or sexual abuse by the victim of the offense and
35 the offense is a response to that abuse.

36 (2) Aggravating Circumstances - Considered and Imposed by the Court

37 The trial court may impose an aggravated exceptional sentence
38 without a finding of fact by a jury under the following circumstances:

1 (a) The defendant and the state both stipulate that justice is best
2 served by the imposition of an exceptional sentence outside the
3 standard range, and the court finds the exceptional sentence to be
4 consistent with and in furtherance of the interests of justice and the
5 purposes of the sentencing reform act.

6 (b) The defendant's prior unscored misdemeanor or prior unscored
7 foreign criminal history results in a presumptive sentence that is
8 clearly too lenient in light of the purpose of this chapter, as
9 expressed in RCW 9.94A.010.

10 (c) The defendant has committed multiple current offenses and the
11 defendant's high offender score results in some of the current offenses
12 going unpunished.

13 (d) The failure to consider the defendant's prior criminal history
14 which was omitted from the offender score calculation pursuant to RCW
15 9.94A.525 results in a presumptive sentence that is clearly too
16 lenient.

17 (3) Aggravating Circumstances - Considered by a Jury -Imposed by
18 the Court

19 Except for circumstances listed in subsection (2) of this section,
20 the following circumstances are an exclusive list of factors that can
21 support a sentence above the standard range. Such facts should be
22 determined by procedures specified in RCW 9.94A.537.

23 (a) The defendant's conduct during the commission of the current
24 offense manifested deliberate cruelty to the victim.

25 (b) The defendant knew or should have known that the victim of the
26 current offense was particularly vulnerable or incapable of resistance.

27 (c) The current offense was a violent offense, and the defendant
28 knew that the victim of the current offense was pregnant.

29 (d) The current offense was a major economic offense or series of
30 offenses, so identified by a consideration of any of the following
31 factors:

32 (i) The current offense involved multiple victims or multiple
33 incidents per victim;

34 (ii) The current offense involved attempted or actual monetary loss
35 substantially greater than typical for the offense;

36 (iii) The current offense involved a high degree of sophistication
37 or planning or occurred over a lengthy period of time; or

1 (iv) The defendant used his or her position of trust, confidence,
2 or fiduciary responsibility to facilitate the commission of the current
3 offense.

4 (e) The current offense was a major violation of the Uniform
5 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
6 trafficking in controlled substances, which was more onerous than the
7 typical offense of its statutory definition: The presence of ANY of
8 the following may identify a current offense as a major VUCSA:

9 (i) The current offense involved at least three separate
10 transactions in which controlled substances were sold, transferred, or
11 possessed with intent to do so;

12 (ii) The current offense involved an attempted or actual sale or
13 transfer of controlled substances in quantities substantially larger
14 than for personal use;

15 (iii) The current offense involved the manufacture of controlled
16 substances for use by other parties;

17 (iv) The circumstances of the current offense reveal the offender
18 to have occupied a high position in the drug distribution hierarchy;

19 (v) The current offense involved a high degree of sophistication or
20 planning, occurred over a lengthy period of time, or involved a broad
21 geographic area of disbursement; or

22 (vi) The offender used his or her position or status to facilitate
23 the commission of the current offense, including positions of trust,
24 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
25 other medical professional).

26 (f) The current offense included a finding of sexual motivation
27 pursuant to RCW 9.94A.835.

28 (g) The offense was part of an ongoing pattern of sexual abuse of
29 the same victim under the age of eighteen years manifested by multiple
30 incidents over a prolonged period of time.

31 (h) The current offense involved domestic violence, as defined in
32 RCW 10.99.020, and one or more of the following was present:

33 (i) The offense was part of an ongoing pattern of psychological,
34 physical, or sexual abuse of the victim manifested by multiple
35 incidents over a prolonged period of time;

36 (ii) The offense occurred within sight or sound of the victim's or
37 the offender's minor children under the age of eighteen years; or

1 (iii) The offender's conduct during the commission of the current
2 offense manifested deliberate cruelty or intimidation of the victim.

3 (i) The offense resulted in the pregnancy of a child victim of
4 rape.

5 (j) The defendant knew that the victim of the current offense was
6 a youth who was not residing with a legal custodian and the defendant
7 established or promoted the relationship for the primary purpose of
8 victimization.

9 (k) The offense was committed with the intent to obstruct or impair
10 human or animal health care or agricultural or forestry research or
11 commercial production.

12 (l) The current offense is trafficking in the first degree or
13 trafficking in the second degree and any victim was a minor at the time
14 of the offense.

15 (m) The offense involved a high degree of sophistication or
16 planning.

17 (n) The defendant used his or her position of trust, confidence, or
18 fiduciary responsibility to facilitate the commission of the current
19 offense.

20 (o) The defendant committed a current sex offense, has a history of
21 sex offenses, and is not amenable to treatment.

22 (p) The offense involved an invasion of the victim's privacy.

23 (q) The defendant demonstrated or displayed an egregious lack of
24 remorse.

25 (r) The offense involved a destructive and foreseeable impact on
26 persons other than the victim.

27 (s) The defendant committed the offense to obtain or maintain his
28 or her membership or to advance his or her position in the hierarchy of
29 an organization, association, or identifiable group.

30 (t) The defendant committed the current offense shortly after being
31 released from incarceration.

32 (u) The current offense is a burglary and the victim of the
33 burglary was present in the building or residence when the crime was
34 committed.

35 (v) The offense was committed against a law enforcement officer who
36 was performing his or her official duties at the time of the offense,
37 the offender knew that the victim was a law enforcement officer, and

1 the victim's status as a law enforcement officer is not an element of
2 the offense.

3 (w) The defendant committed the offense against a victim who was
4 acting as a good samaritan.

5 (x) The defendant committed the offense against a public official
6 or officer of the court in retaliation of the public official's
7 performance of his or her duty to the criminal justice system.

8 (y) The victim's injuries substantially exceed the level of bodily
9 harm necessary to satisfy the elements of the offense. This aggravator
10 is not an exception to RCW 9.94A.530(2).

11 (z)(i)(A) The current offense is theft in the first degree, theft
12 in the second degree, possession of stolen property in the first
13 degree, or possession of stolen property in the second degree; (B) the
14 stolen property involved is metal property; and (C) the property damage
15 to the victim caused in the course of the theft of metal property is
16 more than three times the value of the stolen metal property, or the
17 theft of the metal property creates a public hazard.

18 (ii) For purposes of this subsection, "metal property" means
19 commercial metal property or nonferrous metal property, as defined in
20 section 1 of this act.

21 NEW SECTION. Sec. 11. Sections 1 through 9 of this act constitute
22 a new chapter in Title 19 RCW.

23 NEW SECTION. Sec. 12. RCW 9.91.110 (Metal buyers--Records of
24 purchases--Penalty) and 1971 ex.s. c 302 s 18 are each repealed.

25 NEW SECTION. Sec. 13. Captions used in this act are not any part
26 of the law.

27 NEW SECTION. Sec. 14. If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected.

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