

SENATE BILL REPORT

ESHB 1552

As Reported by Senate Committee On:
Law & Justice, April 1, 2013

Title: An act relating to the reduction of metal theft.

Brief Description: Reducing scrap metal theft.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Goodman, Klippert, Freeman, Kirby, Morrell, Seaquist, Sullivan, Appleton, Ryu, Hunt, Stanford, Kochmar, Maxwell, Takko, Bergquist, Warnick, Manweller, Green and Fey).

Brief History: Passed House: 3/09/13, 93-4.

Committee Activity: Law & Justice: 3/25/13, 4/01/13 [DPA-WM].

Brief Summary of Engrossed Substitute Bill (As Amended by Senate)

- Creates a scrap metal license for scrap metal businesses.
- Expands criminal penalties for metal theft and malicious mischief.
- Allows for civil forfeiture for any property used in the commission of a crime involving the Theft, Trafficking, or Unlawful Possession of Commercial Metal Property.
- Creates a database by which scrap metal businesses may determine if a potential customer has a criminal conviction which makes him or her ineligible to sell property to a licensed business.
- Establishes a grant program to support special law enforcement emphasis targeting metal theft.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Padden, Chair; Kline, Ranking Member; Darneille, Kohl-Welles, Pearson and Roach.

Staff: Aldo Melchiori (786-7439)

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.

Background: A person commits malicious mischief if they knowingly and maliciously cause physical damage to another's property or interrupt, or risk interruption of, a service to the public, such as a utility, through physical damage. The degree of malicious mischief is calculated based on the amount of physical damage. The amount of physical damage is calculated based on the diminution in the value of property as the result of an act.

It is theft in the first degree if a person commits theft of, among other things, metal wire taken from a public service company or a consumer-owned utility and the costs of the damage exceed \$5,000. Theft in the first degree is a class B felony ranked at level II on the sentencing grid – up to 90 days incarceration for a first offense. A person is guilty of theft in the second degree if they commit theft of, among other things, metal wire taken from a public service company or a consumer-owned utility, and the costs of the damage to the public service company's or consumer-owned utility's property exceed \$750 but does not exceed \$5,000 in value. Theft in the second degree is a class C felony ranked at level I on the sentencing grid – up to 60 days for a first offense.

Civil forfeiture is an action brought against assets that are either the alleged proceeds of a crime or the alleged instrumentalities of a crime. Washington has a number of civil forfeiture provisions. Civil forfeiture statutes typically require notice and an opportunity for the property owner to be heard, and protections for innocent owners and holders of security interests. Civil forfeiture may proceed without a criminal conviction. The standard of proof in a civil forfeiture proceeding is less than in a criminal proceeding.

Businesses that are engaged in the business of purchasing or receiving private metal property, nonferrous metal property or commercial metal property, are subject to certain requirements. Scrap metal businesses include scrap metal processors, scrap metal recycling centers, and scrap metal suppliers.

No scrap metal business may purchase or receive private metal property or 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.

Transactions involving private metal property or nonferrous metal property valued at greater than \$30 may not be made in cash or with anyone who does not provide a street address. Payment must be by nontransferable check by mail no earlier than ten days after the transaction.

For transactions between a scrap metal business and a member of the general public, specific records containing identifying details of the seller and the transaction must be kept and maintained for one year. For sales between a scrap metal business and any other commercial enterprise, the scrap metal business must establish a commercial account for the commercial enterprise. For each commercial account, the scrap metal business must keep a record that includes identifying information and a record of every purchase or receipt of metal property and commercial metal property from the commercial enterprise.

If requested by law enforcement, a scrap metal business must provide the transcript of records of the purchase or receipt of private metal property, nonferrous metal property, or commercial metal property involving a specific individual, vehicle, or item of nonferrous metal property or commercial metal property. The information may be transmitted electronically, subject to approval by law enforcement. If the scrap metal business has good cause to believe that the metal property in its possession is lost or stolen, the scrap metal business must report that fact to law enforcement.

After written or verbal notice from law enforcement that an item of private, nonferrous, or commercial metal property is 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 ten business days. Law enforcement is prohibited from placing a hold unless law enforcement reasonably suspects that the property is a lost or stolen item.

It is a gross misdemeanor:

- to deliberately remove, alter, or obliterate any identifying marks on an item of private, nonferrous, or commercial metal property to deceive a scrap metal business;
- to purchase or receive any private, nonferrous, or commercial metal property where identifying marks engraved or etched upon the property are 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 record required to be kept;
- to enter into a transaction to purchase or receive private, nonferrous, or commercial 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 private, nonferrous, or commercial metal property with anyone whom the scrap business has been informed by a law enforcement agency to be convicted of a crime involving drugs, burglary, robbery, theft, or possession of or receiving stolen property, within the past ten years, whether the person is acting on their own behalf or as the agent of another;
- to sign the required declaration knowing that the private or 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.

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.

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.

Summary of Bill (Recommended Amendments): Criminal Penalties. For the purposes of the offense of malicious mischief in the first, second, or third degrees, the cost to repair any

physical damage is added to the calculation for the dollar amount of physical damage. Theft in the first or second degree includes theft of commercial metal property, nonferrous metal property, or private metal property from any owner, rather than just from a public service company or consumer-owned utility.

It is a gross misdemeanor to knowingly make a false oral or written statement or to furnish any false identification, intended or likely to deceive the scrap metal business as to the actual seller of the metal.

Civil Forfeiture. Property is subject to civil forfeiture includes the following:

- property knowingly or intentionally used in the commission of a crime involving theft, trafficking, or the unlawful possession of commercial metal property; and
- property acquired by proceeds traceable to the knowing or intentional commission of a crime, not less than a class C felony, involving theft, trafficking, or the unlawful possession of commercial metal property.

Of the proceeds for any property forfeited and sold, 50 percent must be remitted to the victim of the crime, with the remainder being used for law enforcement activity.

Requirements for Scrap Metal Transactions. Records of transactions between a scrap metal business and a member of the general public or a commercial enterprise must be maintained for five years from the date of transaction, purchase, or receipt. The scrap metal business is not civilly liable for complying with a written law enforcement request to transmit the records for inspection.

A transaction involving nonferrous metal property in the form of aluminum cans, bottles, or other small aluminum beverage or food containers valued at \$30 or less may be made in cash. A scrap metal business that digitally captures: (1) a copy of one piece of current government-issued picture identification; and (2) either a picture or video of either the material subject to the transaction in the form received or the material subject to the transaction within the vehicle which the material was transported to the scrap metal business, may pay up to a maximum of \$30 in cash. The balance of the value of the transaction may be made by nontransferable check at the time the transaction is made.

Licensing. Any businesses that engages in the business of purchasing or receiving metal property for the purpose of aggregation and resale or for the purpose of altering the metal in preparation for its use in the manufacture of new products must obtain a scrap metal license through the Department of Licensing (Department). Only businesses that conduct more than five transactions per year must be licensed.

The application for a license or renewal must include the name and address of the scrap metal business; the names and addresses of all persons having an interest in the business; or, if the business is a corporation, all corporate officers. An application or renewal form must also include certification from the chief of police or chief executive officer or, for an unincorporated area, the sheriff or county legislative authority that the applicant has an established place of business at the address shown on the application, has no known environmental, building code, zoning, or other land use regulation violations, and, in the case of a renewal, the applicant is in compliance with applicable requirements.

The application fee is determined by the Department in an amount adequate to allow the program to be self supporting. Additionally, each scrap processor or scrap recycler applicant must file a \$10,000 surety bond with the Department. Licensees also must obtain a special set of license plates for each vehicle, owned or operated by the licensee, used in the conduct of the business. The license plates may be obtained for a fee of \$5 for the original plate and \$2 for each additional set of plates.

The Department may refuse to issue a license to a person whose previous license was canceled for cause, or to a person who the Department believes is acting on behalf of a person whose license was previously canceled for cause. Unlicensed activity is punishable as a gross misdemeanor or, for a second or subsequent offense, a level II class C felony.

The Department may adopt rules and regulations for operation and enforcement of the licensing program or take any actions allowed under the Uniform Regulation of Business and Professions Act to govern unlicensed practices or to discipline licensees, including fines of up to \$5,000 per violation. The Department may also obtain a subpoena for any persons, books, records, vehicles, or metal property bearing on an investigation under the licensing program. Any records created or produced under a subpoena are exempt from the Public Records Act. The Department, local law enforcement, or the Washington State Patrol may make periodic unannounced inspections of a licensee's records or premises.

Preemption. The entire field of regulation of scrap metal businesses is preempted by the State of Washington. Political subdivisions in the state may only enforce those laws that are specifically authorized by state law and consistent with the chapter, and may not be more restrictive than state law or impose greater penalties or restrictions. Laws of general applicability, including zoning, land use, general business licensing, environmental, health and safety requirements, and general business taxes, are not preempted.

No-Buy List Database. The Washington Association of Sheriffs and Police Chiefs (WASPC) is directed to create and operate a statewide no-buy database, which will allow scrap metal businesses to determine if a potential customer was convicted in the past four years of burglary, robbery, theft, or possession of or receiving stolen goods, any of which make it illegal for the scrap metal business to purchase from the potential customer. A scrap metal business must search the database before completing any transaction. If the customer has a disqualifying conviction, the business will be notified that the transaction is prohibited and when the four-year period will expire. WASPC is not liable for civil damages for operation of the database unless an act or omission constitutes gross negligence or wanton misconduct. The creation of the program is contingent upon funding through a specific appropriation.

Scrap Theft Alert System. Licensed scrap metal businesses must sign up with the free scrap theft alert system operated by the Institute of Scrap Recycling Industries to receive alerts regarding thefts of metal property in their geographic area and use the alerts to identify potentially stolen metal property. Law enforcement agencies may, but need not, register with the free scrap theft alert system.

Washington Metal Theft Enforcement Grant Program. WASPC administers a grant program to support additional enforcement efforts targeting metal theft in areas where a significant

metal theft problem is shown. The grant recipients must collect data on performance. WASPC may receive an administrative fee of up to 3 percent of appropriated funding.

Sections 31 through 33 relating to the creation of a statewide no-buy list database, which are null and void unless specifically funded in the budget.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (Recommended Amendments): The scrap metal business may pay up to \$30 using a stored value device or electronic funds transfer as well as cash. The balance, if \$30 or more, may be made at the time of the transaction using a stored-value device or electronic funds transfer as well as by a nontransferable check. Records for commercial accounts must be maintained for three years instead of five years. A scrap metal business is not required to furnish bulk transcripts of all its transactions for a particular time period. Records of scrap metal transactions furnished to law enforcement are exempt from public disclosure. To recover from the bond, there must be a showing of fraud, gross negligence, or an intentional or reckless violation or misrepresentation on the part of the scrap metal business. Money received from the WASPC grant program may not be used to supplant preexisting funding sources for metal theft enforcement. Clarifies law enforcement-requested language.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which the bill is passed, except for sections 12 through 23 relating to a licensing scheme and state preemption of scrap metal recycling, which take effect January 1, 2014.

Staff Summary of Public Testimony on Engrossed Substitute House Bill: PRO: This activity is costing millions of dollars annually. There are some local ordinances, but we need a consistent statewide law. This is a comprehensive package that includes criminal penalties, licensing, and communication of enforcement information. The industry is committed to working with law enforcement. It is a public safety issue when people destroy infrastructure. Catching and prosecuting these criminals is challenging. The same individuals are committing multiple crimes. The cost to repair can be up to three times the cost of materials alone. Costs get shifted to ratepayers for repair and increased security measures. Inter-jurisdictional cooperation will be enhanced by the grant program.

Persons Testifying: PRO: Representative Goodman, prime sponsor; Jay Sternoff, Institute of Scrap Recycling Industries; Brad Tower, Schnitzer Steel; Candace Bock, Assn. of WA Cities; Mayor Skip Priest, City of Federal Way; Chief Brian Wilson, City of Federal Way Police Dept.; Christine Brewer, Avista; Kim Clauson, Puget Sound Energy; Don Pierce, WA Assn. of Sheriffs and Police Chiefs; Grant Nelson, WA Rural Electric CO-OP Assn.