

# HOUSE BILL REPORT

## ESSB 5312

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### As Passed House - Amended:

April 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:** 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).

### Brief History:

#### Committee Activity:

Public Safety & Emergency Preparedness: 3/26/07, 3/28/07 [DPA].

#### Floor Activity:

Passed House - Amended: 4/4/07, 94-0.

### Brief Summary of Engrossed Substitute Bill (As Amended by House)

- 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.
- 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.

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*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.*

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## HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

**Majority Report:** Do pass as amended. Signed by 7 members: Representatives O'Brien, Chair; Hurst, Vice Chair; Pearson, Ranking Minority Member; Ross, Assistant Ranking Minority Member; Ahern, Goodman and Lovick.

**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 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).

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## **Summary of Amended 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 non-ferrous 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 and commercial 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 non-ferrous metal property and commercial 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.

#### 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, commercial mobile radio services, 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 and commercial 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.

### 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.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

### **Staff Summary of Public Testimony:**

(In support) The primary thing that this bill does is take away the cash nature of the transaction. Contractors, schools, utilities, and other entities have difficulties with stolen metal. This is a safety issue. This is also a liability issue for businesses. Businesses all across the state are impacted, including farmers. This bill attempts to create a barrier for criminals engaging in these types of transactions.

The House version of this bill was stronger because it contained provisions related to enhancing the sentence for theft and possession of stolen property where damages to the victim greatly exceed the value of the stolen property. Enhanced punishment for the thieves would make this bill better and the language from House Bill 1986 should be added to this bill. Without enhancements, it will still pay to do the crime.

Utilities have been drastically impacted by repeated metal thefts and, when these thefts occur, the value stolen pales in comparison to the replacement costs. Stealing wire has an effect on reliable electric service and also makes a utility's system dangerous. These are expensive losses and eliminating the instant cash gratification of these metal sales will help stop the losses.

These metal thefts also cause a business' insurance rates to be very high. If the thefts continue to occur, insurance rates will continue getting higher, which will have an effect on businesses and their employees. Businesses will have to close and employees will be left without jobs.

Wire theft related to irrigation is particularly dangerous because electricity and water do not mix. Stealing wire in these situations causes significant safety concerns.

(In support with amendment) With the increase in scrap metal prices, there has been an increase in corresponding metal theft. Scrap metal businesses do help provide law enforcement the tools they need to prosecute these claims. The problem is that the current penalties on thieves are not a deterrent. For example, in Grant County in March of 2006, there were four individuals that stole \$190,000 worth of wire from a railroad company and caused \$280,000 in damages. Three of the persons only got suspended sentences of 30 days and community service and the ringleader only got four months.

Sentencing enhancements should be added to this bill. When damages exceed the value of the property, there should be enhanced penalties. It is difficult to prosecute these claims, and the bill should give prosecutors the ability to ask for enhancement of penalties.

The penalties section should be reworded and should include the term "intent" which would be easier to use and enforce than the term "deliberately."

The definition of commercial metal property should include a reference to material marked with the name of a commercial mobile radio services entity.

(With concerns) People have been re-selling unwanted materials since the beginning of the 20th century. The second largest industry of export in this state is recycling. The recycling industry contributed more than \$65 billion to the United States economy in 2006, employed more than 60,000 people, and between 60 and 80 percent of all new metals in the United States come from recycled sources.

Pawnshop laws have existed since 1909, but in 1984 transactions involving metal junk were exempt from the pawnshop laws. That was because in 1971, RCW 9.91.110 was enacted requiring all buyers of metal to keep records of name, address, phone number, driver's license number, and description of the vehicle.



This bill does the same thing as existing law with some enhancements. But unless legislation works with victims to prevent theft, this bill does not work. Fixing the issue of stolen metal property is a three-part fix involving prevention, information to police, and prosecuting people. There needs to be more security from people who actually own these metals, there needs to be aid to police departments, and there needs to be higher penalties for stealing the property. Police departments are not enforcing current law.

This bill describes items that can be visually identified and essentially requires a letter of authority to buy those items. Administering this law will be difficult. The section that prohibits obliterating marks on the material prohibits exactly what scrap metal businesses do and is therefore a concern.

The metals that this bill addresses are broader than the metals that are stolen. Most of the problem is with copper.

The limit on paying cash for transactions valued at more than \$30 is a concern. Not all people who are involved in the scrap metal business are thieves. Scrap metal businesses should be able to immediately write those customers checks and the dollar amount for the cash transactions should be raised to \$50.

The reference to "unwanted electronic product" should be deleted from the definition of non-ferrous metal property.

(Opposed) I am a self-employed small appliance recycler and I recycled 361,000 pounds of appliances in 2006. From those appliances, I extracted more than 13,000 pounds of non-ferrous metals, which generated 59 percent of my income for the year. This bill affects that portion of my income and will hold it up by at least three weeks after the 10-day hold, mailing time, and the time it takes to get the check to the bank. It would be easier for me to haul my metal down to Portland instead. I oppose the part of this bill that puts a 10-day hold on payment.

Even worse, under this bill metal thieves can just observe who is selling metal to a scrap metal business, get that person's address, and steal the check out the mailbox. Also paying a metal thief with a check is not a good idea because checks have a legitimate business corporate bank account number on the check and the bank routing number. That information should not be in the hands of criminals.

**Persons Testifying:** (In support) Senator Tom, prime sponsor; Senator Holmquist; Dan Brooks, Elmhurst Mutual Power and Light; Larry Williamson, Williamson Farms; Rex Calloway, Calloway Farms; and Brad Tower, Schnitzer Steel Incorporated.

(In support with amendment) John Knodell, Grant County Prosecutor and Washington Association of Prosecuting Attorneys; Chris Newbry, Institute for Scrap Recycling Industries; and Steve Gano, Cingular Wireless.

(With concerns) Jay Sternoff, Institute for Scrap Recycling Industries and Pacific Iron & Metal; Dan Coyne, Hewlett-Packard Company; and Jon Howe, Washington State Recycling Association and West Seattle Recycling.

(Opposed) Stephen Fitzgerald.

**Persons Signed In To Testify But Not Testifying:** None.