

ESSB 5312 - CONF REPT
By Conference Committee

ADOPTED 04/19/2007

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** DEFINITIONS. The definitions in this
4 section apply throughout this chapter unless the context clearly
5 requires otherwise.

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

9 (2) "Commercial enterprise" means a corporation, partnership,
10 limited liability company, association, state agency, political
11 subdivision of the state, public corporation, or any other legal or
12 commercial entity.

13 (3) "Commercial metal property" means: Utility access covers;
14 street light poles and fixtures; road and bridge guardrails; highway or
15 street signs; water meter covers; traffic directional and control
16 signs; traffic light signals; any metal property marked with the name
17 of a commercial enterprise, including but not limited to a telephone,
18 commercial mobile radio services, cable, electric, water, natural gas,
19 or other utility, or railroad; unused or undamaged building
20 construction materials consisting of copper pipe, tubing, or wiring, or
21 aluminum wire, siding, downspouts, or gutters; aluminum or stainless
22 steel fence panels made from one inch tubing, forty-two inches high
23 with four inch gaps; aluminum decking, bleachers, or risers; historical
24 markers; statue plaques; grave markers and funeral vases; or
25 agricultural irrigation wheels, sprinkler heads, and pipes.

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

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

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

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

5 (8) "Scrap metal processor" means a person with a current business
6 license that conducts business from a permanent location, that is
7 engaged in the business of purchasing or receiving nonferrous metal
8 property and commercial metal property for the purpose of altering the
9 metal in preparation for its use as feedstock in the manufacture of new
10 products, and that maintains a hydraulic bailer, shearing device, or
11 shredding device for recycling.

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

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

22 (11) "Transaction" means a pledge, or the purchase of, or the trade
23 of any item of nonferrous metal property by a scrap metal business
24 from a member of the general public. "Transaction" does not include
25 donations or the purchase or receipt of nonferrous metal property by a
26 scrap metal business from a commercial enterprise, from another scrap
27 metal business, or from a duly authorized employee or agent of the
28 commercial enterprise or scrap metal business.

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

37 (a) The signature of the person with whom the transaction is made;

1 (b) The time, date, location, and value of the transaction;

2 (c) The name of the employee representing the scrap metal business
3 in the transaction;

4 (d) The name, street address, and telephone number of the person
5 with whom the transaction is made;

6 (e) The license plate number and state of issuance of the license
7 plate on the motor vehicle used to deliver the nonferrous metal
8 property subject to the transaction;

9 (f) A description of the motor vehicle used to deliver the
10 nonferrous metal property subject to the transaction;

11 (g) The current driver's license number or other government-issued
12 picture identification card number of the seller or a copy of the
13 seller's government-issued picture identification card; and

14 (h) A description of the predominant types of nonferrous metal
15 property subject to the transaction, including the property's
16 classification code as provided in the institute of scrap recycling
17 industries scrap specifications circular, 2006, and weight, quantity,
18 or volume.

19 (2) For every transaction that involves nonferrous metal property,
20 every scrap metal business doing business in the state shall require
21 the person with whom a transaction is being made to sign a declaration.
22 The declaration may be included as part of the transactional record
23 required under subsection (1) of this section, or on a receipt for the
24 transaction. The declaration must state substantially the following:

25 "I, the undersigned, affirm under penalty of law that the property
26 that is subject to this transaction is not to the best of my knowledge
27 stolen property."

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

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

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

7 (2) No scrap metal business may purchase or receive commercial
8 metal property unless the seller: (a) Has a commercial account with
9 the scrap metal business; (b) can prove ownership of the property by
10 producing written documentation that the seller is the owner of the
11 property; or (c) can produce written documentation that the seller is
12 an employee or agent authorized to sell the property on behalf of a
13 commercial enterprise.

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

18 (4) No transaction involving nonferrous metal property valued at
19 greater than thirty dollars may be made in cash or with any person who
20 does not provide a street address under the requirements of section 2
21 of this act. For transactions valued at greater than thirty dollars,
22 the person with whom the transaction is being made may only be paid by
23 a nontransferable check, mailed by the scrap metal business to a street
24 address provided under section 2 of this act, no earlier than ten days
25 after the transaction was made. A transaction occurs on the date
26 provided in the record required under section 2 of this act.

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

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

34 (a) The full name of the commercial enterprise or commercial
35 account;

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

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

4 (2) The record maintained by a scrap metal business for a
5 commercial account must document every purchase or receipt of
6 nonferrous metal property and commercial metal property from the
7 commercial enterprise. The documentation must include, at a minimum,
8 the following information:

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

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

13 (c) The signature of the person delivering the property to the
14 scrap metal business.

15 NEW SECTION. **Sec. 5.** REPORTING TO LAW ENFORCEMENT. (1) Upon
16 request by any commissioned law enforcement officer of the state or any
17 of its political subdivisions, every scrap metal business shall furnish
18 a full, true, and correct transcript of the records from the purchase
19 or receipt of nonferrous metal property and commercial metal property
20 involving a specific individual, vehicle, or item of nonferrous metal
21 property or commercial metal property. This information may be
22 transmitted within a specified time of not less than two business days
23 to the applicable law enforcement agency electronically, by facsimile
24 transmission, or by modem or similar device, or by delivery of computer
25 disk subject to the requirements of, and approval by, the chief of
26 police or the county's chief law enforcement officer.

27 (2) If the scrap metal business has good cause to believe that any
28 nonferrous metal property or commercial metal property in his or her
29 possession has been previously lost or stolen, the scrap metal business
30 shall promptly report that fact to the applicable commissioned law
31 enforcement officer of the state, the chief of police, or the county's
32 chief law enforcement officer, together with the name of the owner, if
33 known, and the date when and the name of the person from whom it was
34 received.

35 NEW SECTION. **Sec. 6.** PRESERVING EVIDENCE OF METAL THEFT. (1)
36 Following notification, either verbally or in writing, from a

1 commissioned law enforcement officer of the state or any of its
2 political subdivisions that an item of nonferrous metal property or
3 commercial metal property has been reported as stolen, a scrap metal
4 business shall hold that property intact and safe from alteration,
5 damage, or commingling, and shall place an identifying tag or other
6 suitable identification upon the property. The scrap metal business
7 shall hold the property for a period of time as directed by the
8 applicable law enforcement agency up to a maximum of ten business days.

9 (2) A commissioned law enforcement officer of the state or any of
10 its political subdivisions shall not place on hold any item of
11 nonferrous metal property or commercial metal property unless that law
12 enforcement agency reasonably suspects that the property is a lost or
13 stolen item. Any hold that is placed on the property must be removed
14 within ten business days after the property on hold is determined not
15 to be stolen or lost and the property must be returned to the owner or
16 released.

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

19 (1) Any person to deliberately remove, alter, or obliterate any
20 manufacturer's make, model, or serial number, personal identification
21 number, or identifying marks engraved or etched upon an item of
22 nonferrous metal property or commercial metal property in order to
23 deceive a scrap metal business;

24 (2) Any scrap metal business to enter into a transaction to
25 purchase or receive any nonferrous metal property or commercial metal
26 property where the manufacturer's make, model, or serial number,
27 personal identification number, or identifying marks engraved or etched
28 upon the property have been deliberately and conspicuously removed,
29 altered, or obliterated;

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

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

1 (5) Any scrap metal business to enter into a transaction to
2 purchase or receive nonferrous metal property or commercial metal
3 property with anyone whom the scrap metal business has been informed by
4 a law enforcement agency to have been convicted of a crime involving
5 drugs, burglary, robbery, theft, or possession of or receiving stolen
6 property, manufacturing, delivering, or possessing with intent to
7 deliver methamphetamine, or possession of ephedrine or any of its salts
8 or isomers or salts of isomers, pseudoephedrine or any of its salts or
9 isomers or salts of isomers, or anhydrous ammonia with intent to
10 manufacture methamphetamine within the past ten years whether the
11 person is acting in his or her own behalf or as the agent of another;

12 (6) Any person to sign the declaration required under section 2 of
13 this act knowing that the nonferrous metal property subject to the
14 transaction is stolen. The signature of a person on the declaration
15 required under section 2 of this act constitutes evidence of intent to
16 defraud a scrap metal business if that person is found to have known
17 that the nonferrous metal property subject to the transaction was
18 stolen;

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

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

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

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

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

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

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

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

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

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

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

15 Whenever a sentence outside the standard sentence range is imposed,
16 the court shall set forth the reasons for its decision in written
17 findings of fact and conclusions of law. A sentence outside the
18 standard sentence range shall be a determinate sentence.

19 If the sentencing court finds that an exceptional sentence outside
20 the standard sentence range should be imposed, the sentence is subject
21 to review only as provided for in RCW 9.94A.585(4).

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

27 (1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

6 (e) The defendant's capacity to appreciate the wrongfulness of his
7 or her conduct, or to conform his or her conduct to the requirements of
8 the law, was significantly impaired. Voluntary use of drugs or alcohol
9 is excluded.

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

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

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

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

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

22 (a) The defendant and the state both stipulate that justice is best
23 served by the imposition of an exceptional sentence outside the
24 standard range, and the court finds the exceptional sentence to be
25 consistent with and in furtherance of the interests of justice and the
26 purposes of the sentencing reform act.

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

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

34 (d) The failure to consider the defendant's prior criminal history
35 which was omitted from the offender score calculation pursuant to RCW
36 9.94A.525 results in a presumptive sentence that is clearly too
37 lenient.

1 (3) Aggravating Circumstances - Considered by a Jury -Imposed by
2 the Court

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

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

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

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

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

16 (i) The current offense involved multiple victims or multiple
17 incidents per victim;

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

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

22 (iv) The defendant used his or her position of trust, confidence,
23 or fiduciary responsibility to facilitate the commission of the current
24 offense.

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

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

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

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

1 (iv) The circumstances of the current offense reveal the offender
2 to have occupied a high position in the drug distribution hierarchy;
3 (v) The current offense involved a high degree of sophistication or
4 planning, occurred over a lengthy period of time, or involved a broad
5 geographic area of disbursement; or
6 (vi) The offender used his or her position or status to facilitate
7 the commission of the current offense, including positions of trust,
8 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
9 other medical professional).

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

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

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

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

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

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

24 (i) The offense resulted in the pregnancy of a child victim of
25 rape.

26 (j) The defendant knew that the victim of the current offense was
27 a youth who was not residing with a legal custodian and the defendant
28 established or promoted the relationship for the primary purpose of
29 victimization.

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

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

36 (m) The offense involved a high degree of sophistication or
37 planning.

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

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

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

7 (q) The defendant demonstrated or displayed an egregious lack of
8 remorse.

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

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

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

16 (u) The current offense is a burglary and the victim of the
17 burglary was present in the building or residence when the crime was
18 committed.

19 (v) The offense was committed against a law enforcement officer who
20 was performing his or her official duties at the time of the offense,
21 the offender knew that the victim was a law enforcement officer, and
22 the victim's status as a law enforcement officer is not an element of
23 the offense.

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

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

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

32 (z)(i)(A) The current offense is theft in the first degree, theft
33 in the second degree, possession of stolen property in the first
34 degree, or possession of stolen property in the second degree; (B) the
35 stolen property involved is metal property; and (C) the property damage
36 to the victim caused in the course of the theft of metal property is
37 more than three times the value of the stolen metal property, or the
38 theft of the metal property creates a public hazard.

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

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

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

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

10 NEW SECTION. Sec. 14. If any provision of this act or its
11 application to any person or circumstance is held invalid, the
12 remainder of the act or the application of the provision to other
13 persons or circumstances is not affected."

14 Correct the title.

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