

HOUSE BILL REPORT

ESHB 1552

As Passed House:
March 9, 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:

Committee Activity:

Public Safety: 2/5/13, 2/12/13, 2/21/13 [DPS];

Appropriations Subcommittee on General Government: 2/25/13 [DPS(PS)].

Floor Activity:

Passed House: 3/9/13, 93-4.

Brief Summary of Engrossed Substitute Bill

- Creates a licensing scheme 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 client has a criminal conviction which makes him or her ineligible to sell property to a licensed business.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Goodman, Chair; Roberts, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Holy, Hope, Moscoso, Pettigrew, Ross and Takko.

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.

Staff: Sarah Koster (786-7303).

HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT

Majority Report: The substitute bill by Committee on Public Safety be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Hudgins, Chair; Parker, Ranking Minority Member; Buys, Chandler, Dunshee, Hunt, Pedersen and Springer.

Minority Report: Do not pass. Signed by 1 member: Representative Taylor.

Staff: Danielle Cruver (786-7157).

Background:

Criminal Provisions.

Malicious Mischief.

The definition of the criminal offense of Malicious Mischief includes a person knowingly and maliciously causing physical damage to another's property or interrupting (or risking 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.

Theft in the First Degree.

A person is guilty of Theft in the first degree if he or she commits theft of:

- property or services which exceed(s) \$5,000 in value other than a firearm;
- property of any value, other than a firearm or a motor vehicle, taken from the person of another;
- a search and rescue dog, while the search and rescue dog is on duty; or
- 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 \$5,000 in value.

Theft in the first degree is a class B felony.

Theft in the Second Degree.

A person is guilty of Theft in the second degree if he or she commits theft of:

- property or services which exceed(s) \$750 in value but does not exceed \$5,000 in value, other than a firearm or a motor vehicle;
- a public record, writing, or instrument kept, filed, or deposited according to law with or in the keeping of any public office or public servant;
- 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; or
- an access device.

Theft in the second degree is a class C felony.

Requirements for Scrap Metal Transactions.

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.

Definitions.

Scrap metal businesses include scrap metal processors, scrap metal recycling centers, and scrap metal suppliers.

1. A "scrap metal processor" is a person with a current business license that conducts business from a permanent location, that is engaged in the business of purchasing or receiving private metal property, nonferrous 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.
2. A "scrap metal recycling center" is a person with a current business license that is engaged in the business of purchasing or receiving private metal property, nonferrous 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.
3. A "scrap metal supplier" means a person with a current business license that is engaged in the business of purchasing or receiving private metal property or nonferrous 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.

"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, downspouts, or gutters; aluminum or stainless steel fence panels made from 1-inch tubing, 42 inches high with 4-inch gaps; aluminum decking, bleachers, or risers; historical markers; statue plaques; grave markers and funeral vases; or agricultural irrigation wheels, sprinkler heads, and pipes.

"Nonferrous 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. "Nonferrous metal property" does not include precious metals.

"Private metal property" means: catalytic converters, either singly or in bundles, bales, or bulk, that have been removed from vehicles for sale as a specific commodity.

Transaction Requirements.

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 10 days after the transaction.

Recordkeeping Requirements.

For transactions between a scrap metal business and a member of the general public, the following records must be kept and maintained for one year:

- 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 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;
- a description of the predominant types of private or nonferrous metal property subject to the transaction, including the property's classification code; and
- a signed declaration by the seller that the transacted property is not, to the best of his or her knowledge, stolen.

These records must be open to inspection by law enforcement during ordinary hours of business, or at reasonable times, if ordinary hours of business are not kept.

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 which indicates 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.

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 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 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 the metal property in his or her possession is lost or stolen, the scrap metal business must report that fact to law enforcement, together with the name of the owner, if known, and the transaction information.

Preserving Evidence of Metal Theft.

After written or verbal notice from law enforcement that an item of private, nonferrous, 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. Any hold must be removed within 10 business days after the property is determined not to be stolen or lost.

Criminal Penalties.

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 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 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 have been convicted of a crime involving drugs, burglary, robbery, theft, or possession of or receiving stolen property, 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 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.

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.

Civil Forfeiture.

Civil forfeiture is an action brought against assets which are either the alleged proceeds of a crime or the alleged instrumentalities of a crime. Washington has a number of civil forfeiture provisions, including in the Uniform Controlled Substances Act and for crime victim compensation. Civil forfeiture statutes typically require notice and an opportunity for the property owner to be heard. The standard of proof in a civil forfeiture proceeding is less than in a criminal proceeding.

Summary of Engrossed Substitute Bill:

Criminal Penalties.

For the purposes of the offense of Malicious Mischief in the first, second, or third degrees, the amount of physical damage includes any diminution in the value of any property as the consequence of an act, as well as the cost to repair any physical damage.

Theft in the first degree includes theft of commercial metal property, nonferrous metal property or private metal property, when the costs of the damage to the owner's property exceeds \$5,000.

Theft in the second degree includes theft of commercial metal property, nonferrous metal property or private metal property, when the costs of the damage to the owner's property exceeds \$750, but does not exceed \$5,000.

Requirements for Scrap Metal Transactions.

Records must be maintained for five years from the date of transaction between a scrap metal business and a member of the general public or from the date of purchase or receipt, for a commercial account.

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 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 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 have been convicted of a crime involving drugs, burglary, robbery, theft, or possession of or receiving stolen property, within the past four 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 private or nonferrous metal property subject to the transaction is stolen;
- to possess commercial metal property that was not lawfully purchased or received;

- to engage in a series of transactions valued at less than \$30 with the same seller to avoid the cash payment limitations; or
- 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.

Licensing.

Any businesses which engage 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 are required to obtain a scrap metal license through the Department of Licensing (Department). Only businesses which conduct more than five transactions per year are required to 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 must be accompanied by a fee, in an amount to be determined by the Department, adequate to allow the program to be self-supporting. Additionally, each scrap processor or scrap recycler applicant must file a surety bond with the Department in the amount of \$10,000. Licensees are also required to obtain a special set of license plates for each vehicle owned or operated by the licensee and 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 has been canceled for cause or to a person who the Department believes is acting on behalf of a person whose license has previously been 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 practice or 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 such a subpoena are exempt from the Public Records Act. Additionally, 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 which 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, and 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 has been 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 10-year period will expire. The creation of the program is contingent upon funding through a specific appropriation.

Scrap Theft Alert System.

Licensed scrap metal businesses are required to 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 as well.

Washington Metal Theft Enforcement Grant Program.

The WASPC shall administer a grant program to support additional enforcement efforts targeting metal theft in areas in which a significant metal theft problem has been shown. The grant recipients must collect data on performance. The WASPC may receive an administrative fee of up to 3 percent of appropriated funding.

Civil Forfeiture.

The following property is subject to civil forfeiture:

- 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.

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

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 12, 2013.

Effective Date: The bill takes effect 90 days after adjournment of the 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, and 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.

Staff Summary of Public Testimony (Public Safety):

(In support) Metal theft is an increasing problem. In Federal Way, copper wire was ripped out of the ball fields so the kids could not play. A large task force went through the various aspects of how to bring metal theft under control. This bill works in three areas: criminal penalties, information flow, and industry regulation. Recyclables is a renewable industry that provides green jobs. Property crimes are not a priority for law enforcement or prosecutors. Many new companies do not comply and some directly export. Enforcement is the necessary "fourth leg" of the stool. Remember that the actual problem is the theft or the property damage and this is one step removed. The change to property crimes is critical, as is the preemption to prevent death by 1,000 paper cuts. It bears repeating that our rate payers and the public currently pays for the metal theft. Over the last two years, there was \$600,000 spent by Puget Sound Energy and \$400,000 in property damage to Avista; these numbers do not include the costs of power outages or rate increases. Metal theft has a big impact on cities; it is costly for utility industries taxpayers and customers. This bill is important because it provides more tools in our tool box. The preemption language may impact land use regulations. Rural areas are often targeted for this crime. In rural areas, the jurisdiction is remote, forested and mountainous areas and it is hard for the utilities to restore and replace distribution lines and restore power. After last years' storm, theft of metal wire directly resulted in three additional days of power outages for customers.

(With concerns) This is a local jurisdictional concern; not under the jurisdiction of the Washington State Patrol.

(Opposed) This bill is a class war on people who do not have funds. It is sanctioning behavior that is already criminal. The \$10,000 bond requirement is overly burdensome on people. People post-conviction will have a hard time getting a bond. Mom and pop operations and independent people do not have enough money to get such a bond. We should allow those people to build up until they are able to support this level of business. When this law passes, these people will become criminals, but they are entrepreneurs and should be supported. The other problem is with the scope of the no-buy list: juveniles who shoplift and take a plea should not be prohibited from scrapping metal eight years later. The no-buy list should be targeted towards those who have been found to have committed offenses related to scrapping.

Staff Summary of Public Testimony (Appropriations Subcommittee on General Government):

(In support) The industry is supportive of this bill. The crime of metal theft needs prosecution. This issue has been before legislation five times in seven years. There is a need for better enforcement and funding for the crime prevention. Victims are the tax payers. There is a need for prevention and enforcement and prosecution of people. Rate payers could pay the costs for law enforcement. Metal theft has become a prevalent crime. It is a direct public hazard. There is a need for a task force modeled after the Car Theft Task Force.

There is still a funding gap. This bill should focus on the centerpiece, which is the prevention authority. Funding for that authority is essential. The committee can consider electrical rate payers who are already shouldering the burden for these costs. Thefts happen to private citizens. Stakeholder meetings have spent time looking for funding sources. Utility companies participated in the drafting of this legislation. There is a need for \$5 million for the prevention program. The bill, absent the funding piece regarding the prevention authority, should be moved forward. A number of people are impacted by these thefts.

(Opposed) None.

Persons Testifying (Public Safety): (In support) Representative Goodman, prime sponsor; Gary Smith, Director of Independent Business Association; Jay Sternoff, Institute of Scrap Recycling Industries, Pacific Northwest Chapter; Brad Tower, Schnitzer Steel; Kim Clauson, Puget Sound Energy; Christine Brewer, Avista; Candace Bock, Association of Washington Cities; Todd Lincoln, Washington Youth Soccer; Grant Nelson, Washington Rural Electric Co-Operation Association; Mitch Barker, Washington Association of Sheriffs and Police Chiefs; Skip Priest and Carrie Rowe, City of Federal Way; Robin Corak, Multi-Service Center; Jim Ferrel, City of Federal Way and King County Prosecutor's Office; and Doug Ruth, City of Auburn.

(With concerns) Rob Huss, Washington State Patrol.

(Opposed) Larry Jefferson, Washington Defender Association and Washington Association of Criminal Defense Lawyers.

Persons Testifying (Appropriations Subcommittee on General Government): Jay Sternoff, Institute of Scrap Recycling Industries; Martin Durkin, City of Federal Way; Brad Tower, Schnitzer Steel; Christine Brewer, Avista Corporation; and Kim Hoft.

Persons Signed In To Testify But Not Testifying (Public Safety): None.

Persons Signed In To Testify But Not Testifying (Appropriations Subcommittee on General Government): None.