

FINAL BILL REPORT

ESHB 1552

PARTIAL VETO C 322 L 13 Synopsis as Enacted

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).

House Committee on Public Safety
House Committee on Appropriations Subcommittee on General Government
Senate Committee on Law & Justice

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 \$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.

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.

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 \$750 in value but do 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 do 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, nonferrous, 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.

- 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, nonferrous, 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.
- A "scrap metal recycling center" is a person with a current business license that is engaged in the business of purchasing or receiving private, nonferrous, 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.
- A "scrap metal supplier" means a person with a current business license that is engaged in the business of purchasing or receiving private 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 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 private, nonferrous, and commercial metal property, and a record of every purchase or receipt of private, nonferrous, 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, nonferrous, or commercial metal property involving a specific individual, vehicle, or item of nonferrous 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 its 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:

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 private, nonferrous, or commercial metal property, when the costs of the damage to the owner's property exceed \$5,000.

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

Requirements for Scrap Metal Transactions.

Transaction Requirements.

Transactions involving private or nonferrous metal property may only be paid by nontransferable check, mailed three days after the transaction, unless a scrap metal business digitally captures a photo identification and either a picture or video of the material sold. If that documentation is obtained, \$30 may be paid in cash, by stored value device, or by electronic funds transfer, with the remainder paid immediately by check, stored value device, or electronic funds transfer. The digital images must be stored for two years from the transaction, and any video must be available for 30 days.

Recordkeeping Requirements.

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 three years from the date of purchase or receipt for a commercial account.

Requests From Law Enforcement.

Law enforcement records requests must only be in regard to a specified individual. Records created or produced in response to a law enforcement request are exempt from disclosure under the Public Records Act. Compliance with law enforcement requests must not give rise to or form the basis of private civil liability on the part of a scrap metal business.

Preserving Evidence of Metal Theft.

A law enforcement officer's notification that an item of metal property has been reported as stolen must be in writing to require a scrap metal business to tag and hold that item.

Criminal Penalties.

It is a gross misdemeanor offense 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 must 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; and 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 offense.

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 Washington statute. 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 must 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 must be remitted to the victim of the crime, with the remainder being used for law enforcement activity.

Votes on Final Passage:

House	93	4	
Senate	46	1	(Senate amended)
House			(House refused to concur)
Senate			(Senate insisted on position)
House	92	5	(House concurred)

Effective: July 28, 2013
January 1, 2014 (Sections 12-23)

Partial Veto Summary: The provision that makes the act null and void unless funded in the Omnibus Appropriations Act is vetoed.