

Amendment No. 642

Senate Amendment to Assembly Bill No. 233 First Reprint (BDR 54-53)

Proposed by: Senate Committee on Judiciary**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date	
Adopted	☐	Lost	☐	_____		Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____		Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____		Receded	☐	Not	☐	_____

EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) ***green bold italic underlining*** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) ~~orange double underlining~~ is deleted language in the original bill that is proposed to be retained in this amendment; and (6) ***green bold dashed underlining*** is newly added transitory language.

BAW



Date: 5/10/2009

A.B. No. 233—Makes various changes concerning scrap metal. (BDR 54-53)



ASSEMBLY BILL NO. 233—ASSEMBLYMEN OCEGUERA, KOIVISTO, OHRENSCHALL, BOBZIEN, CONKLIN; AIZLEY, ANDERSON, ARBERRY, ATKINSON, BUCKLEY, CARPENTER, CLABORN, DENIS, DONDERO LOOP, GOICOECHEA, HOGAN, HORNE, KIHUEN, LESLIE, MANENDO, MCCLAIN, SMITH AND SPIEGEL

MARCH 4, 2009

JOINT SPONSORS: SENATORS CEGAVSKE AND PARKS

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning scrap metal. (BDR 54-53)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to scrap metal; enacting various requirements for transactions involving scrap metal and for persons involved in such transactions; providing that a person who removes, damages or destroys certain property to obtain scrap metal is guilty of a crime; increasing the penalty for stealing scrap metal under certain circumstances; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Sections 2 and 3 of this bill define the terms “scrap metal” and “scrap metal processor.”

Section 4 of this bill requires purchasers of scrap metal to hold current business licenses from both the State and the appropriate city or county and to have authorization to operate from the appropriate solid waste management authority.

Section 5 of this bill requires scrap metal processors to maintain certain records of all purchases of scrap metal by the scrap metal processors.

Section 6 of this bill allows peace officers or investigators to place a hold on certain property in the possession of a scrap metal processor alleged to be related to criminal activity for a specified period during the investigation or prosecution.

Section 7 of this bill requires that payments for purchases of scrap metal with a value of \$150 or more by a scrap metal processor must be made by certain means and that a receipt containing certain specified information must be provided to the seller of the scrap metal.

Section 7 also allows only a single cash transaction of less than \$150 each day between a scrap metal processor and a seller.

Section 7.5 of this bill provides that a person who ~~intentionally and willfully fails to comply with the provisions of sections 5, 6 and 7 is:~~ ***violates any provision of section 5, 6 or 7 of this bill is*** guilty of a misdemeanor. ~~with varying terms of imprisonment and fines; and (2) for a third or subsequent offense within a period of 5 years, guilty of a category E felony.~~

Section 9 of this bill excludes scrap metal from the definition of “junk” under chapter 647 of NRS. (NRS 647.015) **Section 11** of this bill expands the crime of receiving property stolen from certain utilities and political subdivisions of the State, a category D felony, to include transactions involving scrap metal. (NRS 647.145)

Section 10 of this bill provides that chapter 647 of NRS does not prevent counties from licensing, taxing and regulating dealers in junk or scrap metal. (NRS 647.080)

Section 12 of this bill provides that a person who willfully or maliciously removes, damages or destroys utility property, agricultural infrastructure, construction sites or certain other property to obtain scrap metal is guilty of a misdemeanor if the value of the removal or damage of property is less than \$500 or a felony if the removal or damage is greater than \$500 or interrupts a service provided by utility property.

Existing law generally provides that a person commits petit larceny and is guilty of a misdemeanor if he steals property with a value of less than \$250. (NRS 205.240) Existing law also generally provides that a person commits grand larceny if he steals property with a value of \$250 or more. (NRS 205.220) A person who commits grand larceny is guilty of a category C felony if the value of the property is less than \$2,500 and is guilty of a category B felony if the value of the property is \$2,500 or more. (NRS 205.222)

Section 13 of this bill: (1) provides that, if the value of the scrap metal stolen within a period of 90 days is less than \$250, the person is guilty of a misdemeanor; (2) provides that, if the value of the scrap metal stolen within a period of 90 days is \$250 or more, the person is guilty of a category C or B felony with varying terms of imprisonment and fines, depending upon the value of the scrap metal stolen within the 90-day period; (3) requires the court to order a person who steals scrap metal to pay restitution; and (4) provides that the cost of repairing or replacing property damaged by the theft of scrap metal must be included in the value of the property that was stolen.

Sections 17 and 19 of this bill amend existing law to apply certain provisions governing larceny to the new crime of larceny described in **section 13** of this bill involving scrap metal. (NRS 205.251, 205.980)

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 647 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 7.5, inclusive, of this act.

Sec. 2. 1. “Scrap metal” means:

(a) Nonferrous metals, scrap iron, stainless steel or other material or equipment which consists in whole or in part of metal and which is used in construction, agricultural operations, electrical power generation, transmission or distribution, cable, broadband or telecommunications transmission, railroad equipment, oil well rigs or any lights maintained by the State or a local government, including, without limitation, street lights, traffic-control devices, park lights or ballpark lights; and

(b) Catalytic converters.

2. The term does not include waste generated by a household, aluminum beverage containers, used construction scrap iron or materials consisting of a metal product in its original manufactured form which contains not more than 20 percent by weight nonferrous metal.

Sec. 3. “Scrap metal processor” means any person who:

1. Engages in the business of purchasing, trading, bartering or otherwise receiving scrap metal; or

2. Uses machinery and equipment for processing and manufacturing iron, steel or nonferrous scrap into prepared grades, and whose principal product is scrap iron, scrap steel or nonferrous metallic scrap, not including precious metals, for sale for remelting purposes.

1 **Sec. 4.** *A person shall not purchase scrap metal unless that person:*

2 1. *Possesses both a valid business license issued by the State pursuant to*
3 *NRS 360.780 and a valid business license from the city or county, as applicable,*
4 *in which the person purchases scrap metal; and*

5 2. *Has obtained all required authorizations to operate from, or is otherwise*
6 *registered with, the solid waste management authority for the area in which the*
7 *person purchases scrap metal.*

8 **Sec. 5.** 1. *Every scrap metal processor shall maintain in his place of*
9 *business a book or other permanent record in which must be made, at the time of*
10 *each purchase of scrap metal, a record of the purchase that contains:*

11 (a) *The date of the purchase.*

12 (b) *The name or other identification of the person or employee conducting*
13 *the transaction on behalf of the scrap metal processor.*

14 (c) *A copy of the seller's valid personal identification card or valid driver's*
15 *license issued by a state or a copy of the seller's valid United States military*
16 *identification card.*

17 (d) *The name, street, house number and date of birth listed on the*
18 *identification provided pursuant to paragraph (c) and a physical description of*
19 *the seller, including his gender, height, eye color and hair color.*

20 (e) *A photograph, video record or digital record of the seller.*

21 (f) *The fingerprint of the right index finger of the seller. If the seller's right*
22 *index finger is not available, the scrap metal processor must obtain the*
23 *fingerprint of one of the seller's remaining fingers and thumbs.*

24 (g) *The license number and general description of the vehicle delivering the*
25 *scrap metal that is being purchased.*

26 (h) *A description of the scrap metal that is being purchased which is*
27 *consistent with the standards published and commonly applied in the scrap metal*
28 *industry.*

29 (i) *The price paid by the scrap metal processor for the scrap metal.*

30 2. *All records kept pursuant to subsection 1 must be legibly written in the*
31 *English language, if applicable.*

32 3. *A scrap metal processor shall document each purchase of scrap metal*
33 *with a photograph or video recording which must be retained on-site for not less*
34 *than 60 days after the date of the purchase.*

35 4. *All scrap metal purchased by the scrap metal processor and the records*
36 *created in accordance with subsection 1, including, but not limited to, any*
37 *photographs or video recordings, must at all times during ordinary hours of*
38 *business be open to the inspection of a prosecuting attorney or any peace officer.*

39 **Sec. 6.** 1. *A peace officer or investigator who is involved in the*
40 *investigation or prosecution of criminal activity may place a written hold for not*
41 *more than 7 business days on any property in the possession of a scrap metal*
42 *processor that is related or allegedly related to the criminal activity. A hold*
43 *pursuant to this section may be extended for an additional period of not more*
44 *than 7 business days by a peace officer or investigator by providing written notice*
45 *to the scrap metal processor.*

46 2. *While a hold is placed on property pursuant to this section, the scrap*
47 *metal processor shall not remove or dispose of the property to any person other*
48 *than the peace officer or investigator who placed the hold on the property. A*
49 *peace officer or investigator who placed a hold on property may obtain custody of*
50 *the property from the scrap metal processor if the peace officer or investigator:*

51 (a) *Has obtained written authorization from the prosecuting attorney which*
52 *includes, without limitation, a description of the property and an*
53 *acknowledgment of the scrap metal processor's interest in the property; and*

(b) Provides a copy of the written authorization to the scrap metal processor.
3. Property received by a peace officer or investigator pursuant to this section may be disposed of only in the manner set forth in NRS 52.385 or 179.125 to 179.165, inclusive.

4. A peace officer or investigator who places a hold on property pursuant to this section shall notify the scrap metal processor in writing when the investigation or prosecution has concluded or when the hold is no longer necessary, whichever occurs sooner.

Sec. 7. 1. For each purchase of scrap metal with a value of \$150 or more by a scrap metal processor, the scrap metal processor must pay the seller only by check or electronic transfer of money. For payments made by check to a seller who represents a business, the check must be made payable to the business using the name of the business. A scrap metal processor shall not conduct more than one cash transaction of less than \$150 with the same seller on the same day.

2. A scrap metal processor shall provide a receipt to the seller on-site at the time of the purchase of scrap metal by the scrap metal processor. The receipt must include, without limitation, the following information:

(a) The date, time and place of the purchase;

(b) An identifying description and weight of the scrap metal that is being purchased;

(c) The price paid by the scrap metal processor for the scrap metal;

(d) A copy of the personal identification provided pursuant to paragraph (c) of subsection 1 of section 5 of this act; and

(e) The license number of the vehicle delivering the scrap metal that is being purchased.

Sec. 7.5. Unless a greater penalty is provided pursuant to specific statute, a person who ~~knowingly and willfully~~ violates any provision of section 5, 6 or 7 of this act ~~is~~

~~1. For a first offense within a period of 5 years, is guilty of a misdemeanor and shall be punished by a fine of not more than \$500.~~

~~2. For a second offense within a period of 5 years, is guilty of a misdemeanor and shall be punished by imprisonment in the county jail for not more than 6 months and by a fine of not more than \$1,000.~~

~~3. For a third or subsequent offense within a period of 5 years, is guilty of a category E felony and shall be punished as provided in NRS 193.130.~~

Sec. 8. NRS 647.010 is hereby amended to read as follows:

647.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 647.011 to 647.018, inclusive, **and sections 2 and 3 of this act** have the meanings ascribed to them in those sections.

Sec. 9. NRS 647.015 is hereby amended to read as follows:

647.015 "Junk" includes old iron, copper, brass, lead, zinc, tin, steel and other metals, metallic cables, wires, ropes, cordage, bottles, bagging, rags, rubber, paper, and all other secondhand, used or castoff articles or material of any kind ~~+~~, **but does not include scrap metal.**

Sec. 10. NRS 647.080 is hereby amended to read as follows:

647.080 The provisions of this chapter do not impair the power of cities **and counties** in this State to license, tax and regulate any person, firm or corporation now engaged in or hereafter engaged in the buying and selling of junk ~~+~~ **or scrap metal.**

Sec. 11. NRS 647.145 is hereby amended to read as follows:

647.145 1. Any **person, including, but not limited to, any junk dealer, scrap metal processor** or secondhand dealer, or any agent, employee or representative of a junk dealer, **scrap metal processor** or secondhand dealer, who

1 buys or receives any junk **or scrap metal** which he knows or should reasonably
2 know is ordinarily used by and belongs to a **cable, broadband,**
3 **telecommunications,** telephone, telegraph, gas, water, electric or transportation
4 company or county, city or other political subdivision of this State engaged in
5 furnishing utility service, and who fails to use ordinary care in determining whether
6 the person selling or delivering such junk **or scrap metal** has a legal right to do so,
7 is guilty of criminally receiving such property.

8 2. A person convicted of criminally receiving junk **or scrap metal** is guilty of
9 a category D felony and shall be punished as provided in NRS 193.130.

10 **Sec. 12.** Chapter 202 of NRS is hereby amended by adding thereto a new
11 section to read as follows:

12 1. **A person who willfully and maliciously removes, damages or destroys any**
13 **utility property, agricultural infrastructure or other agricultural property, lights**
14 **maintained by the State or a local government, construction site or existing**
15 **structure to obtain scrap metal shall be punished pursuant to the provisions of**
16 **this section.**

17 2. **Except as otherwise provided in subsection 3, if the value of the property**
18 **removed, damaged or destroyed as described in subsection 1 is:**

19 (a) **Less than \$500, a person who violates the provisions of subsection 1 is**
20 **guilty of a misdemeanor.**

21 (b) **Five hundred dollars or more, a person who violates the provisions of**
22 **subsection 1 is guilty of a category D felony and shall be punished as provided in**
23 **NRS 193.130.**

24 3. **If the removal, damage or destruction described in subsection 1 causes**
25 **an interruption in the service provided by any utility property, a person who**
26 **violates the provisions of subsection 1 is guilty of a category C felony and shall be**
27 **punished as provided in NRS 193.130.**

28 4. **In addition to any other penalty, the court may order a person who**
29 **violates the provisions of subsection 1 to pay restitution.**

30 5. **In determining the value of the property removed, damaged or destroyed**
31 **as described in subsection 1, the cost of replacing or repairing the property or**
32 **repairing the utility property, agricultural infrastructure, agricultural property,**
33 **lights, construction site or existing structure, if necessary, must be added to the**
34 **value of the property.**

35 6. **As used in this section:**

36 (a) **“Scrap metal” has the meaning ascribed to it in section 2 of this act.**

37 (b) **“Utility property” means any facility, equipment or other property owned,**
38 **maintained or used by a company or a city, county or other political subdivision**
39 **of this State to furnish cable television or other video service, broadband service,**
40 **telecommunication service, telephone service, telegraph service, natural gas**
41 **service, water service or electric service, regardless of whether the facility,**
42 **property or equipment is currently used to furnish such service.**

43 **Sec. 13.** Chapter 205 of NRS is hereby amended by adding thereto a new
44 section to read as follows:

45 1. **A person who intentionally steals, takes and carries away scrap metal**
46 **with a value of less than \$250 within a period of 90 days is guilty of a**
47 **misdemeanor.**

48 2. **A person who intentionally steals, takes and carries away scrap metal**
49 **with a value of \$250 or more within a period of 90 days is guilty of:**

50 (a) **If the value of the property taken is less than \$2,500, a category C felony**
51 **and shall be punished as provided in NRS 193.130; or**

52 (b) **If the value of the property taken is \$2,500 or more, a category B felony**
53 **and shall be punished by imprisonment in the state prison for a minimum term of**

1 *not less than 1 year and a maximum term of not more than 10 years, and by a*
2 *fine of not more than \$10,000.*

3 *3. In addition to any other penalty, the court shall order a person who*
4 *violates the provisions of subsection 1 or 2 to pay restitution.*

5 *4. In determining the value of the property taken, the cost of repairing and,*
6 *if necessary, replacing any property damaged by the theft of the scrap metal must*
7 *be added to the value of the property.*

8 *5. As used in this section, "scrap metal" has the meaning ascribed to it in*
9 *section 2 of this act.*

10 **Sec. 14.** NRS 205.2175 is hereby amended to read as follows:

11 205.2175 As used in NRS 205.2175 to 205.2707, inclusive, *and section 13 of*
12 *this act*, unless the context otherwise requires, the words and terms defined in NRS
13 205.218 to 205.2195, inclusive, have the meanings ascribed to them in those
14 sections.

15 **Sec. 15.** NRS 205.2195 is hereby amended to read as follows:

16 205.2195 "Property" means:

- 17 1. Personal goods, personal property and motor vehicles;
- 18 2. Money, negotiable instruments and other items listed in NRS 205.260;
- 19 3. Livestock, domesticated animals and domesticated birds; and
- 20 4. Any other item of value, whether or not the item is listed in NRS 205.2175
21 to 205.2707, inclusive ~~H~~, *or section 13 of this act.*

22 **Sec. 16.** NRS 205.240 is hereby amended to read as follows:

23 205.240 1. Except as otherwise provided in NRS 205.220, 205.226, 205.228
24 and 475.105, a person commits petit larceny if the person:

25 (a) Intentionally steals, takes and carries away, leads away or drives away:

26 (1) Personal goods or property, with a value of less than \$250, owned by
27 another person;

28 (2) Bedding, furniture or other property, with a value of less than \$250,
29 which the person, as a lodger, is to use in or with his lodging and which is owned
30 by another person; or

31 (3) Real property, with a value of less than \$250, that the person has
32 converted into personal property by severing it from real property owned by
33 another person.

34 (b) Intentionally steals, takes and carries away, leads away, drives away or
35 entices away one or more domesticated animals or domesticated birds, with an
36 aggregate value of less than \$250, owned by another person.

37 2. ~~H~~ *Unless a greater penalty is provided pursuant to section 13 of this act,*
38 *a* person who commits petit larceny is guilty of a misdemeanor. In addition to any
39 other penalty, the court shall order the person to pay restitution.

40 **Sec. 17.** NRS 205.251 is hereby amended to read as follows:

41 205.251 For the purposes of NRS 205.2175 to 205.2707, inclusive ~~H~~, *and*
42 *section 13 of this act:*

43 1. The value of property involved in a larceny offense shall be deemed to be
44 the highest value attributable to the property by any reasonable standard.

45 2. The value of property involved in larceny offenses committed by one or
46 more persons pursuant to a scheme or continuing course of conduct may be
47 aggregated in determining the grade of the larceny offenses.

48 **Sec. 18.** NRS 205.940 is hereby amended to read as follows:

49 205.940 1. Any person who in renting or leasing any personal property
50 obtains or retains possession of such personal property by means of any false or
51 fraudulent representation, fraudulent concealment, false pretense or personation,
52 trick, artifice or device, including, but not limited to, a false representation as to his
53 name, residence, employment or operator's license, is guilty of larceny and shall be

1 punished as provided in NRS 205.2175 to 205.2707, inclusive **H**, and *section 13*
2 *of this act*. It is a complete defense to any civil action arising out of or involving the
3 arrest or detention of any person renting or leasing personal property that any
4 representation made by him in obtaining or retaining possession of the personal
5 property is contrary to the fact.

6 2. Any person who, after renting or leasing any personal property under an
7 agreement in writing which provides for the return of the personal property to a
8 particular place at a particular time fails to return the personal property to such
9 place within the time specified, and who, with the intent to defraud the lessor or to
10 retain possession of such property without the lessor's permission, thereafter fails to
11 return such property to any place of business of the lessor within 72 hours after a
12 written demand for the return of such property is made upon him by registered mail
13 addressed to his address as shown in the written agreement, or in the absence of
14 such address, to his last known place of residence, is guilty of larceny and shall be
15 punished as provided in NRS 205.2175 to 205.2707, inclusive **H**, and *section 13*
16 *of this act*. The failure to return the personal property to the place specified in the
17 agreement is prima facie evidence of an intent to defraud the lessor or to retain
18 possession of such property without the lessor's permission. It is a complete
19 defense to any civil action arising out of or involving the arrest or detention of any
20 person upon whom such demand was made that he failed to return the personal
21 property to any place of business of the lessor within 20 days after such demand.

22 **Sec. 19.** NRS 205.980 is hereby amended to read as follows:

23 205.980 1. A person who is convicted of violating any provision of NRS
24 205.060 or 205.2175 to 205.2707, inclusive, *or section 13 of this act* is civilly
25 liable for the value of any property stolen and not recovered in its original
26 condition. The value of the property must be determined by its retail value or fair
27 market value at the time the crime was committed, whichever is greater.

28 2. A person who is convicted of any other crime involving damage to
29 property is civilly liable for the amount of damage done to the property.

30 3. The prosecutor shall notify the victim concerning the disposition of the
31 criminal charges against the defendant within 30 days after the disposition. The
32 notice must be sent to the last known address of the victim.

33 4. An order of restitution signed by the judge in whose court the conviction
34 was entered shall be deemed a judgment against the defendant for the purpose of
35 collecting damages.

36 5. Nothing in this section prohibits a victim from recovering additional
37 damages from the defendant.

38 **Sec. 20.** This act becomes effective on July 1, 2009.