

112TH CONGRESS
2^D SESSION

S. 3631

To prohibit and deter the theft of metal, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 15, 2012

Ms. KLOBUCHAR (for herself and Mr. GRAHAM) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To prohibit and deter the theft of metal, and for other
purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Metal Theft Prevention
5 Act of 2012”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

8 (1) the term “critical infrastructure” has the
9 meaning given the term in section 1016(e) of the
10 Uniting and Strengthening America by Providing
11 Appropriate Tools Required to Intercept and Ob-

1 struct Terrorism (USA PATRIOT ACT) Act of
2 2001 (42 U.S.C. 5195c(e));

3 (2) the term “specified metal” means metal
4 that—

5 (A)(i) is marked with the name, logo, or
6 initials of a city, county, State, or Federal gov-
7 ernment entity, a railroad, an electric, gas, or
8 water company, a telephone company, a cable
9 company, a retail establishment, or a public
10 utility; or

11 (ii) has been altered in such a manner that
12 a recycling agent would have a reasonable basis
13 to believe that such alteration was made for the
14 purpose of removing, concealing, or obliterating
15 a name, logo, or initials described in clause (i)
16 through burning or cutting of wire sheathing or
17 other means; or

18 (B) is part of—

19 (i) a street light pole or fixture;

20 (ii) a road or bridge guard rail;

21 (iii) a highway or street sign;

22 (iv) a water meter cover;

23 (v) a storm water grate;

24 (vi) unused or undamaged building
25 construction or utility material;

- 1 (vii) a historical marker;
 2 (viii) a grave marker or cemetery urn;
 3 (ix) a utility access cover; or
 4 (x) a container used to transport or
 5 store beer with a capacity of 7.75 gallons
 6 or more;

7 (C) is a wire or cable commonly used by
 8 communications and electrical utilities; or

9 (D) is copper, aluminum, and other metal
 10 (including any metal combined with other mate-
 11 rials) that is valuable for recycling or reuse as
 12 raw metal, except for aluminum cans; and

13 (3) the term “recycling agent” means any per-
 14 son engaged in the business of purchasing specified
 15 metal for reuse or recycling, without regard to
 16 whether that person is engaged in the business of re-
 17 cycling or otherwise processing the purchased speci-
 18 fied metal for reuse.

19 **SEC. 3. THEFT OF SPECIFIED METAL.**

20 (a) OFFENSE.—It shall be unlawful to steal specified
 21 metal—

22 (1) being used in or affecting interstate or for-
 23 eign commerce; and

24 (2) the theft of which harms critical infrastruc-
 25 ture, including metal used as part of an electrical

1 substation, power line, cellular tower, telephone land
2 line, highway equipment and facilities, railroad
3 equipment and facilities, water well, reservoir, or
4 sewage line.

5 (b) PENALTY.—Any person who commits an offense
6 described in subsection (a) shall be fined under title 18,
7 United States Code, imprisoned not more than 10 years,
8 or both.

9 **SEC. 4. DOCUMENTATION OF OWNERSHIP OR AUTHORITY**
10 **TO SELL.**

11 (a) OFFENSES.—

12 (1) IN GENERAL.—Except as provided in para-
13 graph (2), it shall be unlawful for a recycling agent
14 to purchase specified metal described in subpara-
15 graph (A) or (B) of section 2(2), unless—

16 (A) the seller, at the time of the trans-
17 action, provides documentation of ownership of,
18 or other proof of the authority of the seller to
19 sell, the specified metal; and

20 (B) there is a reasonable basis to believe
21 that the documentation or other proof of au-
22 thority provided under subparagraph (A) is
23 valid.

24 (2) EXCEPTION.—Paragraph (1) shall not
25 apply to a recycling agent that is subject to a State

1 or local law that sets forth a requirement on recy-
2 cling agents to obtain documentation of ownership
3 or proof of authority to sell specified metal before
4 purchasing specified metal.

5 (3) RESPONSIBILITY OF RECYCLING AGENT.—A
6 recycling agent is not required to independently
7 verify the validity of the documentation or other
8 proof of authority described in paragraph (1).

9 (4) PURCHASE OF STOLEN METAL.—It shall be
10 unlawful for a recycling agent to purchase any speci-
11 fied metal that the recycling agent knows, or has a
12 reasonable basis to believe, to be stolen.

13 (b) CIVIL PENALTY.—A person who knowingly vio-
14 lates subsection (a) shall be subject to a civil penalty of
15 not more than \$10,000 for each violation.

16 **SEC. 5. TRANSACTION REQUIREMENTS.**

17 (a) RECORDING REQUIREMENTS.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (2), a recycling agent shall maintain a written
20 or electronic record of each purchase of specified
21 metal.

22 (2) EXCEPTION.—Paragraph (1) shall not
23 apply to a recycling agent that is subject to a State
24 or local law that sets forth recording requirements
25 that are substantially similar to the requirements de-

1 scribed in paragraph (3) for the purchase of speci-
2 fied metal.

3 (3) CONTENTS.—A record under paragraph (1)
4 shall include—

5 (A) the name and address of the recycling
6 agent; and

7 (B) for each purchase of specified metal—

8 (i) the date of the transaction;

9 (ii) a description of the specified
10 metal purchased using widely used and ac-
11 cepted industry terminology;

12 (iii) the amount paid by the recycling
13 agent;

14 (iv) the name and address of the per-
15 son to which the payment was made;

16 (v) the name of the person delivering
17 the specified metal to the recycling agent,
18 including a distinctive number from a Fed-
19 eral or State government-issued photo
20 identification card and a description of the
21 type of the identification; and

22 (vi) the license plate number and
23 State-of-issue, make, and model, if avail-
24 able, of the vehicle used to deliver the spec-
25 ified metal to the recycling agent.

1 (4) REPEAT SELLERS.—A recycling agent may
2 comply with the requirements of this subsection with
3 respect to a purchase of specified metal from a per-
4 son from which the recycling agent has previously
5 purchased specified metal by—

6 (A) reference to the existing record relat-
7 ing to the seller; and

8 (B) recording any information for the
9 transaction that is different from the record re-
10 lating to the previous purchase from that per-
11 son.

12 (5) RECORD RETENTION PERIOD.—A recycling
13 agent shall maintain any record required under this
14 subsection for not less than 2 years after the date
15 of the transaction to which the record relates.

16 (6) CONFIDENTIALITY.—

17 (A) RECYCLING AGENTS.—A recycling
18 agent cannot be required to provide any infor-
19 mation collected or retained under this sub-
20 section to any person other than a law enforce-
21 ment agency with jurisdiction over the recycling
22 agent, unless acting pursuant a court order.

23 (B) OTHER PERSONS.—Any person other
24 than a recycling agent who receives information
25 collected or retained under this subsection from

1 a recycling agent may not provide such infor-
2 mation to any person other than a law enforce-
3 ment agency with jurisdiction over the recycling
4 agent, unless acting pursuant a court order.

5 (b) PURCHASES IN EXCESS OF \$100.—

6 (1) IN GENERAL.—Except as provided in para-
7 graph (2), a recycling agent may not pay cash for
8 a single purchase of specified metal of more than
9 \$100. For purposes of this paragraph, more than 1
10 purchase in any 48-hour period from the same seller
11 shall be considered to be a single purchase.

12 (2) EXCEPTION.—Paragraph (1) shall not
13 apply to a recycling agent that is subject to a State
14 or local law that sets forth a maximum amount for
15 cash payments for the purchase of specified metal.

16 (3) PAYMENT METHOD.—

17 (A) OCCASIONAL SELLERS.—Except as
18 provided in subparagraph (B), for any purchase
19 of specified metal of more than \$100 a recy-
20 cling agent shall make payment by check that—

21 (i) is payable to the seller; and

22 (ii) includes the name and address of
23 the seller.

24 (B) ESTABLISHED COMMERCIAL TRANS-
25 ACTIONS.—A recycling agent may make pay-

1 ments for a purchase of specified metal of more
2 than \$100 from a governmental or commercial
3 supplier of specified metal with which the recy-
4 cling agent has an established commercial rela-
5 tionship by electronic funds transfer or other
6 established commercial transaction payment
7 method through a commercial bank if the recy-
8 cling agent maintains a written record of the
9 payment that identifies the seller, the amount
10 paid, and the date of the purchase.

11 (c) CIVIL PENALTY.—A person who knowingly vio-
12 lates subsection (a) or (b) shall be subject to a civil penalty
13 of not more than \$10,000 for each violation.

14 **SEC. 6. ENFORCEMENT BY ATTORNEY GENERAL.**

15 The Attorney General may bring an enforcement ac-
16 tion in an appropriate United States district court against
17 any person that engages in conduct that violates this Act.

18 **SEC. 7. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

19 (a) IN GENERAL.—An attorney general or equivalent
20 regulator of a State may bring a civil action in the name
21 of the State, as *parens patriae* on behalf of natural per-
22 sons residing in the State, in any district court of the
23 United States or other competent court having jurisdiction
24 over the defendant, to secure monetary or equitable relief
25 for a violation of this Act.

1 (b) NOTICE REQUIRED.—Not later than 30 days be-
2 fore the date on which an action under subsection (a) is
3 filed, the attorney general or equivalent regulator of the
4 State involved shall provide to the Attorney General—

5 (1) written notice of the action; and

6 (2) a copy of the complaint for the action.

7 (c) ATTORNEY GENERAL ACTION.—Upon receiving
8 notice under subsection (b), the Attorney General shall
9 have the right—

10 (1) to intervene in the action;

11 (2) upon so intervening, to be heard on all mat-
12 ters arising therein;

13 (3) to remove the action to an appropriate dis-
14 trict court of the United States; and

15 (4) to file petitions for appeal.

16 (d) PENDING FEDERAL PROCEEDINGS.—If a civil ac-
17 tion has been instituted by the Attorney General for a vio-
18 lation of this Act, no State may, during the pendency of
19 the action instituted by the Attorney General, institute a
20 civil action under this Act against any defendant named
21 in the complaint in the civil action for any violation alleged
22 in the complaint.

23 (e) CONSTRUCTION.—For purposes of bringing a civil
24 action under subsection (a), nothing in this section regard-
25 ing notification shall be construed to prevent the attorney

1 general or equivalent regulator of the State from exer-
2 cising any powers conferred under the laws of that State
3 to—

- 4 (1) conduct investigations;
- 5 (2) administer oaths or affirmations; or
- 6 (3) compel the attendance of witnesses or the
7 production of documentary and other evidence.

8 **SEC. 8. DIRECTIVE TO SENTENCING COMMISSION.**

9 (a) IN GENERAL.—Pursuant to its authority under
10 section 994 of title 28, United States Code, and in accord-
11 ance with this section, the United States Sentencing Com-
12 mission, shall review and, if appropriate, amend the Fed-
13 eral Sentencing Guidelines and policy statements applica-
14 ble to a person convicted of a criminal violation of section
15 3 of this Act or any other Federal criminal law based on
16 the theft of specified metal by such person.

17 (b) CONSIDERATIONS.—In carrying out this section,
18 the Sentencing Commission shall—

19 (1) ensure that the sentencing guidelines and
20 policy statements reflect the—

21 (A) serious nature of the theft of specified
22 metal; and

23 (B) need for an effective deterrent and ap-
24 propriate punishment to prevent such theft;

1 (2) consider the extent to which the guidelines
2 and policy statements appropriately account for—

3 (A) the potential and actual harm to the
4 public from the offense, including any damage
5 to critical infrastructure;

6 (B) the amount of loss, or the costs associ-
7 ated with replacement or repair, attributable to
8 the offense;

9 (C) the level of sophistication and planning
10 involved in the offense; and

11 (D) whether the offense was intended to or
12 had the effect of creating a threat to public
13 health or safety, injury to another person, or
14 death;

15 (3) account for any additional aggravating or
16 mitigating circumstances that may justify exceptions
17 to the generally applicable sentencing ranges;

18 (4) assure reasonable consistency with other
19 relevant directives and with other sentencing guide-
20 lines and policy statements; and

21 (5) assure that the sentencing guidelines and
22 policy statements adequately meet the purposes of
23 sentencing as set forth in section 3553(a)(2) of title
24 18, United States Code.

1 **SEC. 9. STATE AND LOCAL LAW NOT PREEMPTED.**

2 Nothing in this Act shall be construed to preempt any
3 State or local law regulating the sale or purchase of speci-
4 fied metal.

5 **SEC. 10. EFFECTIVE DATE.**

6 This Act shall take effect 180 days after the date of
7 enactment of this Act.

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