

112TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

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

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IN THE SENATE OF THE UNITED STATES

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Ms. KLOBUCHAR introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To prohibit and deter the theft of secondary 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 “secondary metal” means metal  
4       that is—

5           (A) marked with—

6               (i) the name, logo, or initials of a rail-  
7               road, an electric, gas, or water company, a  
8               telephone company, cable company, or a  
9               public utility or that has been altered to  
10              remove, conceal, or obliterate such a name,  
11              logo, or initials through burning or cutting  
12              of wire sheathing or other means; or

13              (ii) the name of a city, county, State,  
14              or Federal government entity;

15           (B) part of—

16               (i) a street light pole or fixture;

17               (ii) a road or bridge guard rail;

18               (iii) a highway or street sign;

19               (iv) a water meter cover;

20               (v) a storm water grate;

21               (vi) unused or undamaged building  
22              construction or utility material;

23               (vii) a historical marker;

24               (viii) a grave marker or cemetery urn;

25               (ix) a utility access cover; or

1 (x) a container used to transport or  
2 store beer with a capacity of 7.75 gallons  
3 or more;

4 (C) a wire or cable commonly used by com-  
5 munications and electrical utilities; or

6 (D) copper, aluminum, and other metal  
7 (including any metal combined with other mate-  
8 rials) that is valuable for recycling or reuse as  
9 raw metal; and

10 (3) the term “recycling agent” means any per-  
11 son engaged in the business of purchasing secondary  
12 metal for reuse or recycling, without regard to  
13 whether that person is engaged in the business of re-  
14 cycling or otherwise processing the purchased sec-  
15 ondary metal for reuse.

16 **SEC. 3. THEFT OF SECONDARY METAL.**

17 (a) OFFENSE.—It shall be unlawful to steal sec-  
18 ondary metal—

19 (1) being used in or affecting interstate or for-  
20 eign commerce; and

21 (2) the theft of which harms critical infrastruc-  
22 ture, including metal used as part of an electrical  
23 substation, power line, cellular tower, telephone land  
24 line, highway equipment and facilities, railroad

1 equipment and facilities, water well, reservoir, or  
2 sewage line.

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

7 **SEC. 4. PROHIBITION OF THE PURCHASE OF SECONDARY**  
8 **METAL.**

9 (a) OFFENSES.—

10 (1) IN GENERAL.—It shall be unlawful for a re-  
11 cycling agent to purchase secondary metal described  
12 in subparagraph (A) or (B) of section 2(2), unless—

13 (A) the seller, at the time of the trans-  
14 action, provides documentation of ownership of,  
15 or other proof of the authority of the seller to  
16 sell, such secondary metal; and

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

21 (2) RESPONSIBILITY OF RECYCLING AGENT.—A  
22 recycling agent is not required to independently  
23 verify the validity of the documentation or other  
24 proof of authority described in paragraph (1).

(3) PURCHASE OF STOLEN METAL.—It shall be unlawful for a recycling agent to purchase any secondary metal that the recycling agent knows to be stolen.

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

## 8 SEC. 5. TRANSACTION REQUIREMENTS.

9 (a) RECORDING REQUIREMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), a recycling agent shall maintain a written or electronic record of each purchase of secondary metal.

(2) EXCEPTION.—Paragraph (1) shall not apply to a recycling agent that is subject to a State or local law that sets forth recording requirements for the purchase of secondary metal.

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

20 (A) the name and address of the recycling  
21 agent; and

22 (B) for each purchase of secondary  
23 metal—

24 (i) the date of the transaction;

1 (ii) a description of the secondary  
2 metal purchased, including—

3 (I) a general physical description;

4 (II) an identification of the type  
5 of product; and

6 (III) the weight, quantity, or vol-  
7 ume purchased;

8 (iii) the amount paid by the recycling  
9 agent;

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

12 (v) the name of the person delivering  
13 the secondary metal to the recycling agent,  
14 including a distinctive number from a Fed-  
15 eral or State government-issued photo  
16 identification card and a description of the  
17 type of the identification; and

18 (vi) the license plate number and  
19 State-of issue, make, and model, if avail-  
20 able, of the vehicle used to deliver the sec-  
21 ondary metal to the recycling agent.

22 (4) REPEAT SELLERS.—A recycling agent may  
23 comply with the requirements of this subsection with  
24 respect to a purchase of secondary metal from a per-

1 son from which the recycling agent has previously  
2 purchased secondary metal by—

3 (A) reference to the existing record relat-  
4 ing to the seller; and

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

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

13 (b) PURCHASES IN EXCESS OF \$100.—

14 (1) IN GENERAL.—A secondary metal recycling  
15 agent may not pay cash for a single purchase of sec-  
16 ondary metal of more than \$100. For purposes of  
17 this paragraph, more than 1 purchase in any 48-  
18 hour period from the same seller shall be considered  
19 to be a single purchase.

20 (2) PAYMENT METHOD.—

21 (A) OCCASIONAL SELLERS.—Except as  
22 provided in subparagraph (B), for any purchase  
23 of secondary metal of more than \$100 a recy-  
24 cling agent shall make payment by check that—

25 (i) is payable to the seller; and

1 (ii) includes the name and address of  
2 the seller.

3 (B) ESTABLISHED COMMERCIAL TRANS-  
4 ACTIONS.—A recycling agent may make pay-  
5 ments for a purchase of secondary metal of  
6 more than \$100 from a governmental or com-  
7 mercial supplier of secondary metal with which  
8 the recycling agent has an established commer-  
9 cial relationship by electronic funds transfer or  
10 other established commercial transaction pay-  
11 ment method through a commercial bank if the  
12 recycling agent maintains a written record of  
13 the payment that identifies the seller, the  
14 amount paid, and the date of the purchase.

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

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

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

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

23 (a) IN GENERAL.—An attorney general or equivalent  
24 regulator of a State may bring a civil action in the name  
25 of the State, as *parens patriae* on behalf of natural per-



1 sons residing in the State, in any district court of the  
2 United States or other competent court having jurisdiction  
3 over the defendant, to secure monetary or equitable relief  
4 for a violation of this Act.

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

9 (1) written notice of the action; and

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

11 (c) ATTORNEY GENERAL ACTION.—Upon receiving  
12 notice under subsection (b), the Attorney General shall  
13 have the right—

14 (1) to intervene in the action;

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

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

19 (4) to file petitions for appeal.

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

1 in the complaint in the civil action for any violation alleged  
2 in the complaint.

3 (e) CONSTRUCTION.—For purposes of bringing a civil  
4 action under subsection (a), nothing in this section regard-  
5 ing notification shall be construed to prevent the attorney  
6 general or equivalent regulator of the State from exer-  
7 cising any powers conferred under the laws of that State  
8 to—

- 9 (1) conduct investigations;  
10 (2) administer oaths or affirmations; or  
11 (3) compel the attendance of witnesses or the  
12 production of documentary and other evidence.

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

14 (a) IN GENERAL.—Pursuant to its authority under  
15 section 994 of title 28, United States Code, and in accord-  
16 ance with this section, the United States Sentencing Com-  
17 mission, shall review and, if appropriate, amend the Fed-  
18 eral Sentencing Guidelines and policy statements applica-  
19 ble to a person convicted of a criminal violation of section  
20 3 of this Act or any other Federal criminal law based on  
21 the theft of secondary metal by such person.

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

- 24 (1) ensure that the sentencing guidelines and  
25 policy statements reflect the—

1 (A) serious nature of the theft of sec-  
2 ondary metal; and

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

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

7 (A) the potential and actual harm to the  
8 public from the offense, including any damage  
9 to critical infrastructure;

10 (B) the amount of loss, or the costs associ-  
11 ated with replacement or repair, attributable to  
12 the offense;

13 (C) the level of sophistication and planning  
14 involved in the offense; and

15 (D) whether the offense was intended to or  
16 had the effect of creating a threat to public  
17 health or safety, injury to another person, or  
18 death;

19 (3) account for any additional aggravating or  
20 mitigating circumstances that may justify exceptions  
21 to the generally applicable sentencing ranges;

22 (4) assure reasonable consistency with other  
23 relevant directives and with other sentencing guide-  
24 lines and policy statements; and

1           (5) assure that the sentencing guidelines and  
2       policy statements adequately meet the purposes of  
3       sentencing as set forth in section 3553(a)(2) of title  
4       18, United States Code.

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

6       Nothing in this Act shall be construed to preempt any  
7   State or local law regulating the sale or purchase of sec-  
8   ondary metal.

9   **SEC. 10. EFFECTIVE DATE.**

10       This Act shall take effect 1 year after the date of  
11   enactment of this Act.