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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND EXTRAORDINARY SESSION, 2007



ENROLLED

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House Bill No. 202

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]



Passed August 21, 2007

In Effect Ninety Days from Passage

ENROLLED

FILED

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H. B. 202

OFFICE WEST VIRGINIA
SECRETARY OF STATE

(BY MR. SPEAKER, MR. THOMPSON, AND DELEGATE ARMSTEAD)
[BY REQUEST OF THE EXECUTIVE]

[Passed August 21, 2007; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-12-5a; and to amend and reenact §61-3-49 of said code, all relating to the receipt and transfer of any form of copper, aluminum, brass, lead or other nonferrous metal, stainless steel kegs or steel railroad track and track material; providing definitions; providing restrictions on applying for and grounds for cancelling business registration certificates; imposing additional reporting and record retention requirements for certain purchasers of such metals; requiring the State Police to develop a standard form for reporting purchase information; providing for the inspection of records by law enforcement and investigators employed by public utilities and railroads; permitting investigators employed by public utilities and railroads to assist law enforcement investigations; providing for the return of such metals under certain conditions; and increasing criminal penalties for violations.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-12-5a; and that §61-3-49 of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-5a. Prohibition on certificate being obtained by person connected to illegal activities involving scrap metal.

1 (a) For the purposes of this section, the term “scrap
2 metal” shall have the same meaning ascribed to it in section
3 forty-nine, article three, chapter sixty-one of this code.

4 (b) No person that has had a previous business
5 registration certificate cancelled pursuant to subsection (j),
6 section forty-nine, article three, chapter sixty-one of this code
7 may apply for a subsequent business registration certificate
8 that would permit them to own, conduct, or operate any
9 business involving the purchase of scrap metal or the
10 operation or any salvage yard or recycling facility.

11 (c) No person may apply for a business registration
12 certificate that would permit them to own, conduct, or operate
13 any business involving the purchase of scrap metal or the
14 operation or any salvage yard or recycling facility in which
15 a person convicted in the previous two years of a third or
16 subsequent offense under section forty-nine, article three,
17 chapter sixty-one of this code will hold a financial interest, be
18 employed, or otherwise be involved in the day-to-day
19 operations of said business.

20 (d) Upon applying for a business registration certificate,
21 pursuant to section four of this article, that would permit the
22 applicant to own, conduct, or operate any business involving
23 the purchase of scrap metal or the operation of any salvage
24 yard or recycling facility, the Tax Commissioner shall require
25 as part of the application a statement by the applicant that to
26 the best of his or her knowledge and belief no person that has
27 been convicted in the previous two years of a third or
28 subsequent offense under section forty-nine, article three,
29 chapter sixty-one of this code will hold a financial interest, be
30 employed, or otherwise be involved in the day-to-day
31 operations of said business.

CHAPTER 61. CRIMES AND PUNISHMENT.**ARTICLE 3. CRIMES AGAINST PROPERTY.****§61-3-49. Purchase of scrap metal by scrap metal purchasing businesses, salvage yards, or recycling facilities; certificates, records and reports of such purchases; criminal penalties.**

1 (a) For the purposes of this section, the following terms
2 have the following meanings.

3 (1) "Business registration certificate" has the same
4 meaning ascribed to it in section two, article twelve, chapter
5 eleven of this code.

6 (2) "Purchaser" means any person in the business of
7 purchasing scrap metal, any salvage yard owner or operator,
8 or any public or commercial recycling facility owner or
9 operator, or any agent or employee thereof, who purchases
10 any form of scrap metal.

11 (3) "Scrap metal" means any form of copper, aluminum,
12 brass, lead or other nonferrous metal of any kind, stainless
13 steel kegs or steel railroad track and track material.

14 (b) Any purchaser of scrap metal shall make a record of
15 such purchase that shall contain the following information for
16 each transaction:

17 (1) The full name, permanent home and business
18 addresses, and telephone number, if available, of the seller;

19 (2) A description and the motor vehicle license number
20 of any vehicle used to transport the purchased scrap metal to
21 the place of purchase;

22 (3) The time and date of the transaction;

23 (4) A complete description of the kind, character and
24 weight of the scrap metal purchased; and

25 (5) A statement of whether the scrap metal was
26 purchased, taken as collateral for a loan, or taken on
27 consignment.

28 (c) A purchaser also shall require and retain from the
29 seller of the scrap metal the following:

30 (1) A signed certificate of ownership of the scrap metal
31 being sold or a signed authorization from the owner of the
32 scrap metal to sell said scrap metal; and

33 (2) A photocopy of a valid driver's license or
34 identification card issued by the West Virginia Division of
35 Motor Vehicles of the person delivering the scrap metal, or
36 in lieu thereof, any other valid photo identification of the
37 seller issued by any other state or the federal government:
38 *Provided*, That, if the purchaser has a copy of the seller's
39 valid photo identification on file, the purchaser may reference
40 the identification that is on file, without making a separate
41 photocopy for each transaction.

42 (d) It shall be unlawful for any purchaser to purchase any
43 scrap metal without obtaining and recording the information
44 required under subsections (b) and (c) of this section. The
45 provisions of this subsection do not apply to purchases made
46 at wholesale under contract or as a result of a bidding
47 process: *Provided*, That the purchaser retains and makes
48 available for review consistent with subsection (f) of this
49 section the contract, bill of sale, or similar documentation of
50 the purchase made at wholesale under contract or as a result
51 of a bidding process: *Provided, however*, that the purchaser
52 may redact any pricing or other commercially sensitive
53 information from said contract, bill of sale, or similar
54 documentation before making it available for inspection.

55 (e) Within thirty days of the effective date of the
56 amendment and reenactment of this section during the second
57 extraordinary session of the Legislature in two thousand
58 seven, the West Virginia State Police shall make available a
59 standard form purchasers of scrap metal may use to record all
60 the information required under subsections (b) and (c) of this
61 section.

62 (f) Using the form authorized under subsection (e) above,
63 or his or her own form, a purchaser of scrap metal shall retain
64 the records required by this section at his or her place of
65 business for not less than three years after the date of the
66 purchase. Upon completion of a purchase, the records
67 required to be retained at a purchaser's place of business shall
68 be available for inspection by any law-enforcement officer
69 or, upon written request and during the purchaser's regular
70 business hours, by any investigator employed by a public
71 utility or railroad to investigate the theft of public utility or
72 railroad property: *Provided*, That in lieu of the purchaser
73 keeping the records at their place of business, the purchaser
74 shall file the records with the local detachment of the State
75 Police and with the chief of police of the municipality or the
76 sheriff of the county wherein he or she is transacting business
77 within seventy-two hours of completion of the purchase. The
78 records shall be retained by the State Police and the chief of
79 police of the municipality or the sheriff for a period of not
80 less than three years.

81 (g) To the extent otherwise permitted by law, any
82 investigator employed by a public utility or railroad to
83 investigate the theft of public utility or railroad property may
84 accompany a law enforcement officer upon the premises of
85 a purchaser in the execution of valid warrant or assist law
86 enforcement in the review of records required to be retained
87 pursuant to this section.

88 (h) Upon the entry of a final determination and order by
89 a court of competent jurisdiction, scrap metal found to have
90 been misappropriated, stolen or taken under false pretenses
91 may be returned to the proper owner of such material.

92 (i) Nothing in this section applies to scrap purchases by
93 manufacturing facilities that melt, or otherwise alter the form
94 of scrap metal and transform it into a new product or to the
95 purchase or transportation of food and beverage containers or
96 other nonindustrial materials having a marginal value per
97 individual unit.

98 (j) Any person who knowingly or with fraudulent intent
99 violates any provision of this section, including the knowing

100 failure to make a report or the knowing falsification of any
101 required information, is guilty of a misdemeanor and, upon
102 conviction of a first offense thereof, shall be fined not less
103 than one thousand dollars nor more than three thousand
104 dollars; upon conviction of a second offense thereof, shall be
105 fined not less than two thousand dollars and not more than
106 four thousand dollars and, notwithstanding the provisions of
107 section five, article twelve, chapter eleven of this code, the
108 court in which the conviction occurred shall issue an order
109 directing the Tax Commissioner to suspend for a period of
110 six months any business registration certificate held by that
111 person; and upon conviction of a third or subsequent offense
112 thereof shall be fined not less than three thousand dollars and
113 not more than five thousand dollars and, notwithstanding the
114 provisions of section five, article twelve, chapter eleven of
115 this code, the court in which the conviction occurred shall
116 issue an order directing the Tax Commissioner to cancel any
117 business registration certificate held by that person and state
118 the date said cancellation shall take effect.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee



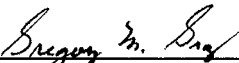
Chairman House Committee

Originating in the House.

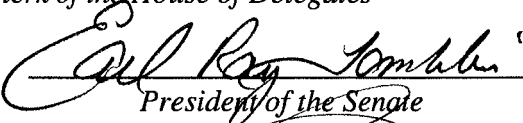
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is approved this the 6th
day of September, 2007.



Governor

PRESENTED TO THE
GOVERNOR

Date 8/27/07

Time 11:15 am