

HB 4423

FILED

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2008



ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 4423**

(By Delegates DeLong, Fragale, Varner, Yost,
Caputo and Webster)



Passed March 6, 2008

In Effect Ninety Days from Passage

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SECRETARY OF STATE

FOR

H. B. 4423

(BY DELEGATES DELONG, FRAGALE, VARNER, YOST,
CAPUTO AND WEBSTER)

[Passed March 6, 2008; in effect ninety days from passage.]

AN ACT to amend and reenact §61-3-49 of the Code of West Virginia, 1931, as amended, relating to providing that beer kegs are not considered scrap metal unless the purchaser received the keg or keg parts directly from a beer manufacturer or its authorized representative.

Be it enacted by the Legislature of West Virginia:

That §61-3-49 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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, or steel
13 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) No purchaser of scrap metal shall knowingly purchase
56 or possess a stainless steel or aluminum beer keg, whether
57 damaged or undamaged, or any reasonably recognizable part
58 thereof, for the intended purpose of reselling as scrap metal
59 unless the purchaser receives the keg or keg parts from the
60 beer manufacturer or its authorized representative.

61 (f) Within thirty days of the effective date of the
62 amendment and reenactment of this section during the second
63 extraordinary session of the Legislature in two thousand
64 seven, the West Virginia State Police shall make available a
65 standard form purchasers of scrap metal may use to record all
66 the information required under subsections (b) and (c) of this
67 section.

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

87 (h) To the extent otherwise permitted by law, any
88 investigator employed by a public utility or railroad to
89 investigate the theft of public utility or railroad property may
90 accompany a law-enforcement officer upon the premises of
91 a purchaser in the execution of valid warrant or assist law
92 enforcement in the review of records required to be retained
93 pursuant to this section.

94 (i) Upon the entry of a final determination and order by
95 a court of competent jurisdiction, scrap metal found to have
96 been misappropriated, stolen or taken under false pretenses
97 may be returned to the proper owner of such material.

98 (j) Nothing in this section applies to scrap purchases by
99 manufacturing facilities that melt, or otherwise alter the form
100 of scrap metal and transform it into a new product or to the
101 purchase or transportation of food and beverage containers or
102 other nonindustrial materials having a marginal value per
103 individual unit.

104 (k) Any person who knowingly or with fraudulent intent
105 violates any provision of this section, including the knowing
106 failure to make a report or the knowing falsification of any
107 required information, is guilty of a misdemeanor and, upon
108 conviction of a first offense thereof, shall be fined not less
109 than one thousand dollars nor more than three thousand
110 dollars; upon conviction of a second offense thereof, shall be
111 fined not less than two thousand dollars and not more than
112 four thousand dollars and, notwithstanding the provisions of
113 section five, article twelve, chapter eleven of this code, the
114 court in which the conviction occurred shall issue an order
115 directing the tax commissioner to suspend for a period of six
116 months any business registration certificate held by that
117 person; and upon conviction of a third or subsequent offense
118 thereof shall be fined not less than three thousand dollars and
119 not more than five thousand dollars and, notwithstanding the
120 provisions of section five, article twelve, chapter eleven of
121 this code, the court in which the conviction occurred shall
122 issue an order directing the tax commissioner to cancel any
123 business registration certificate held by that person and state
124 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

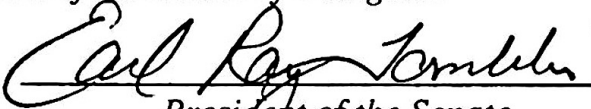

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

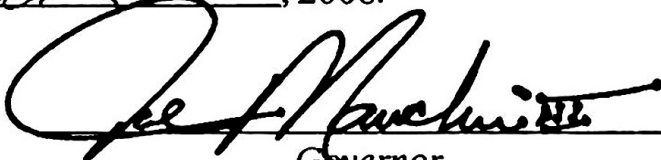

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 15th
day of March, 2008.


Governor

PRESENTED TO THE
GOVERNOR

MAR 11 2008

Time 1:55pm