STATE OF WEST VIRGINIA

OFFICE OF THE GOVERNOR

CHARLESTON

March 31, 2008

The Honorable Betty Ireland

Secretary of State

State Capitol

Charleston, West Virginia

Dear Secretary Ireland:

Pursuant to the provisions of Section 14, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for Senate Bill No. 638 ("SB638").

SB638 would amend the Code of West Virginia by adding thereto a new section, §61-3-59, which would impose various record-keeping requirements on purchasers of catalytic converters and impose criminal penalties for violations of these new requirements. Unfortunately, SB638 makes additional amendments that would impermissibly infringe on the civil liberties of such purchasers under the Constitutions of the State of West Virginia and of the United States.

Specifically, SB638 provides that "[a]ny law enforcement officer investigating the theft of catalytic converters . . . shall be permitted to inspect the purchased catalytic converter . . . that is in the possession of the buyer or person trading for a catalytic converter for the purpose of detecting and identifying

stolen property." The Fourth Amendment to the U. S. Constitution and Article III, Section 6 of the West Virginia Constitution, however, give citizens the right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . . and no warrants shall issue, but upon probable cause . . . ." Absent special circumstances not applicable in this context, the courts have applied this language to require that the state may search a citizen's person, home or business only when it has probable cause to believe the search will uncover criminal activity or contraband. The aforementioned provision of SB638 would violate this protection against unreasonable searches by permitting law enforcement to demand entry to a purchaser's premises even without probable cause having been established.

For the foregoing reason, I must veto this legislation. However, I would encourage the Legislature to consider the measure again in the near future. Indeed, one potential approach would be to follow the example in a similar piece of legislation imposing nearly identical record-keeping requirements on scrap metal dealers. Following the 2007 Regular Session, I vetoed Enrolled Committee Substitute for House Bill No. 2748 on similar constitutional concerns. During a subsequent legislative session, however, the Legislature passed a revised version of the scrap metal bill that adequately addressed these constitutional issues. I would urge the Legislature to revise Enrolled Committee Substitute for Senate Bill No. 638 to similarly comply with

applicable search and seizure constitutional safeguards.

With warmest regards,

Joe Manchin III,

Governor.

cc: The Honorable Earl Ray Tomblin

The Honorable Richard Thompson