

1 **criminal penalties.**

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

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

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

12 (3) "Scrap metal" means any form of copper, aluminum, brass,
13 lead or other nonferrous metal of any kind, a catalytic converter
14 or any materials derived from a catalytic converter, or steel
15 railroad track and track material.

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

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

21 (2) A description and the motor vehicle license number of any
22 vehicle used to transport the purchased scrap metal to the place of
23 purchase, including the make, model, color and year;

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

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

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

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

7 (1) A signed certificate of ownership of the scrap metal being
8 sold or a signed authorization from the owner of the scrap metal to
9 sell said scrap metal; and

10 (2) A photocopy of a valid driver's license or identification
11 card issued by the West Virginia Division of Motor Vehicles of the
12 person delivering the scrap metal, or in lieu thereof, any other
13 valid photo identification of the seller issued by any other state
14 or the federal government: *Provided, That, if the purchaser has a*
15 *copy of the seller's valid photo identification on file, the*
16 *purchaser may reference the identification that is on file, without*
17 *making a separate photocopy for each transaction.*

18 (d) It is unlawful for any purchaser to purchase any scrap
19 metal without obtaining and recording the information required
20 under subsections (b) and (c) of this section. The provisions of
21 this subsection do not apply to purchases made at wholesale under
22 contract or as a result of a bidding process: *Provided, That the*
23 *purchaser retains and makes available for review consistent with*
24 *subsection (f) of this section the contract, bill of sale, or*

1 similar documentation of the purchase made at wholesale under
2 contract or as a result of a bidding process: *Provided, however,*
3 That the purchaser may redact any pricing or other commercially
4 sensitive information from said contract, bill of sale, or similar
5 documentation before making it available for inspection.

6 (e) No purchaser of scrap metal may knowingly purchase or
7 possess a stainless steel or aluminum beer keg, whether damaged or
8 undamaged, or any reasonably recognizable part thereof, for the
9 intended purpose of reselling as scrap metal unless the purchaser
10 receives the keg or keg parts from the beer manufacturer or its
11 authorized representative.

12 (f) Within thirty days of the effective date of the amendment
13 and reenactment of this section during the second extraordinary
14 session of the Legislature in two thousand seven, the West Virginia
15 State Police shall make available a standard form purchasers of
16 scrap metal may use to record all the information required under
17 subsections (b) and (c) of this section.

18 (g) Using the form authorized under subsection (f) above, or
19 his or her own form, a purchaser of scrap metal shall retain the
20 records required by this section at his or her place of business
21 for not less than three years after the date of the purchase. Upon
22 completion of a purchase, the records required to be retained at a
23 purchaser's place of business shall be available for inspection by
24 any law-enforcement officer or, upon written request and during the

1 purchaser's regular business hours, by any investigator employed by
2 a public utility or railroad to investigate the theft of public
3 utility or railroad property: *Provided*, That ~~in lieu of the~~
4 ~~purchaser keeping the records at their place of business, the~~
5 ~~purchaser~~ if the transaction involves twenty-five or more pounds of
6 copper, steel railroad track, track material or aluminum in any
7 form, the purchaser, or his or her agent, shall file the records
8 with report in writing all information obtained pursuant to the
9 provisions of this section to the local detachment of the State
10 Police and with the chief of police of the municipality or the
11 sheriff of the county wherein he or she is transacting business
12 within seventy-two hours of completion of the purchase. ~~The~~
13 ~~records shall be retained by the State Police and the chief of~~
14 ~~police of the municipality or the sheriff for a period of not less~~
15 ~~than three years.~~

16 (h) A law-enforcement officer may at any time during an
17 investigation require a purchaser to present such items for
18 inspection, upon demand, and if the officer has reasonable belief
19 that said items had been misappropriated, stolen or taken under
20 false pretenses may confiscate the items, but must also show within
21 thirty days to a court of competent jurisdiction that there exists
22 a reasonable nexus to the item as evidence of a crime even though
23 the perpetrator may not be ascertained.

24 (I) To the extent otherwise permitted by law, any investigator

1 employed by a public utility or railroad to investigate the theft
2 of public utility or railroad property may accompany a
3 law-enforcement officer upon the premises of a purchaser in the
4 execution of a valid warrant or assist law enforcement in the
5 review of records required to be retained pursuant to this section.

6 ~~(i)~~ (j) Upon the entry of a final determination and order by
7 a court of competent jurisdiction, scrap metal found to have been
8 misappropriated, stolen or taken under false pretenses may be
9 returned to the proper owner of such material.

10 ~~(j)~~ (k) Nothing in this section applies to scrap purchases by
11 manufacturing facilities that melt, or otherwise alter the form of
12 scrap metal and transform it into a new product or to the purchase
13 or transportation of food and beverage containers or other
14 nonindustrial materials having a marginal value per individual
15 unit.

16 ~~(k)~~ (l) Nothing in this section applies to a purchaser of a
17 vehicle on which a catalytic converter is installed, a purchaser of
18 a catalytic converter intended for installation on a vehicle owned
19 or leased by the purchaser, or any person who purchases, other than
20 for purposes of resale, a catalytic converter or a motor vehicle on
21 which a catalytic converter is installed, for personal, family,
22 household, or business use.

23 ~~(l)~~ (m) (1) Any person who ~~knowingly or with fraudulent intent~~
24 violates any provision of this section, including the knowing

1 failure to make a report or the knowing falsification of any
2 required information, is guilty of a misdemeanor and, upon
3 conviction of a first offense thereof, shall be fined not less than
4 \$1,000 nor more than ~~\$3,000~~ \$5,000; and

5 (2) upon conviction Any person convicted of a second offense
6 thereof, shall be fined not less than ~~\$2,000~~ \$5,000 and not more
7 than ~~\$4,000~~ \$8,000 and, notwithstanding the provisions of section
8 five, article twelve, chapter eleven of this code, the court in
9 which the conviction occurred shall issue an order directing the
10 Tax Commissioner to suspend for a period of six months any business
11 registration certificate held by that person; and

12 (3) upon conviction Any person convicted of a third or
13 subsequent offense thereof shall be fined not less than ~~\$3,000~~
14 \$8,000 and not more than ~~\$5,000~~ \$15,000 and, notwithstanding the
15 provisions of section five, article twelve, chapter eleven of this
16 code, the court in which the conviction occurred shall issue an
17 order directing the Tax Commissioner to cancel any business
18 registration certificate held by that person and state the date
19 said cancellation shall take effect.

NOTE: The purpose of this bill is to require purchasers of scrap metal to collect and provide information relating to the sale of certain metals to law enforcement within seventy-two hours. This bill also increases the penalties for violations.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.