

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 528**

(By Senators Snyder, Kessler (Mr. President), Unger,  
Palumbo, Browning, Laird, D. Facemire, Edgell, Miller, K.  
Facemyer, Jenkins, Kirkendoll, Foster and Beach)

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[Originating in the Committee on the Judiciary;  
reported February 24, 2012.]

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A BILL to amend and reenact §61-3-49 of the Code of West Virginia, 1931, as amended, relating to scrap metal dealers and scrap metal generally; providing definitions; requiring scrap metal dealers to obtain business licenses; requiring certain information to be obtained and kept for each scrap metal transaction; requiring scrap metal dealer and seller to sign a purchase ticket; requiring signed statements of ownership; providing that scrap metal dealer must produce certain information upon request of law-enforcement officers; prohibiting the possession of stolen or unlawfully obtained scrap

metal; requiring the obtaining of a thumb print of the seller in transactions making catalytic converters; prohibiting purchase of certain items of scrap metal without proof of lawful possession; and establishing offenses and penalties.

*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 or used auto parts, any salvage yard  
8 owner or operator, or any public or commercial recycling  
9 facility owner or operator, or any agent or employee thereof,  
10 who purchases any form of scrap metal or used auto parts.

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

15 (b) In addition to any requirement necessary to do  
16 business in this state:

17 (1) a scrap metal dealer must have a current valid  
18 business registration certificate from the Tax Commissioner;

19 (2) a scrap metal dealer must register any scales used for  
20 weighing scrap metal with the Division of Labor Weights  
21 and Measures office; and

22 (3) a scrap metal dealer must provide a notice of recy-  
23 cling activity to the Department of Environmental Protec-  
24 tion.

25 (4) a scrap metal dealer shall register as such with the  
26 Secretary of State, who is hereby directed to maintain such  
27 list, and make it publically available. The list shall include  
28 the dealer's business address, hours of operation, physical  
29 address, phone number, facsimile number, if any, and the  
30 name of the owners or principal officers.

31 ~~(b)~~ (c) Any purchaser of scrap metal shall make a record  
32 of such purchase that shall contain the following information  
33 for each transaction:

34 (1) The full name, permanent home and business ad-  
35 dresses and telephone number, if available, of the seller;

36 (2) A description and the motor vehicle license number  
37 of any vehicle used to transport the purchased scrap metal to  
38 the place of purchase;

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

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

42 (5) A statement of whether the scrap metal was pur-  
43 chased, taken as collateral for a loan or taken on consign-  
44 ment.

45 ~~(c)~~ (d) A purchaser also shall require and retain from the  
46 seller of the scrap metal the following:

47 (1) A signed certificate of ownership of the scrap metal  
48 being sold or a signed authorization from the owner of the  
49 scrap metal to sell said scrap metal; and

50 (2) A photocopy of a valid driver's license or identifica-  
51 tion card issued by the West Virginia Division of Motor  
52 Vehicles of the person delivering the scrap metal, or in lieu  
53 thereof, any other valid photo identification of the seller  
54 issued by any other state or the federal government: *Pro-*  
55 *vided*, That, if the purchaser has a copy of the seller's valid

56 photo identification on file, the purchaser may reference the  
57 identification that is on file, without making a separate  
58 photocopy for each transaction.

59 ~~(d)~~ (e) It is unlawful for any purchaser to purchase any  
60 scrap metal without obtaining and recording the information  
61 required under subsections (b) and (c) of this section. The  
62 provisions of this subsection do not apply to purchases made  
63 at wholesale under contract or as a result of a bidding  
64 process: *Provided*, That the purchaser retains and makes  
65 available for review consistent with subsection (g) of this  
66 section the contract, bill of sale or similar documentation of  
67 the purchase made at wholesale under contract or as a result  
68 of a bidding process: *Provided, however*, That the purchaser  
69 may redact any pricing or other commercially sensitive  
70 information from said contract, bill of sale or similar  
71 documentation before making it available for inspection.

72 ~~(e)~~ (f) No purchaser of scrap metal may knowingly  
73 purchase or possess a stainless steel or aluminum beer keg,  
74 whether damaged or undamaged, or any reasonably recog-  
75 nizable part thereof, for the intended purpose of reselling as  
76 scrap metal unless the purchaser receives the keg or keg

77 parts from the beer manufacturer or its authorized represen-  
78 tative.

79 ~~(f) Within thirty days of the effective date of the amend-~~  
80 ~~ment and reenactment of this section during the second~~  
81 ~~extraordinary session of the Legislature in two thousand~~  
82 ~~seven, the West Virginia State Police shall make available a~~  
83 ~~standard form purchasers of scrap metal may use to record~~  
84 ~~all the information required under subsections (b) and (c) of~~  
85 ~~this section.~~

86 (g) Using the form authorized under subsection (f) above  
87 a form provided by the West Virginia State Police, or his or  
88 her own form, a purchaser of scrap metal shall retain the  
89 records required by this section at his or her place of busi-  
90 ness for not less than three years after the date of the  
91 purchase. Upon completion of a purchase, the records  
92 required to be retained at a purchaser's place of business  
93 shall be available for inspection by any law-enforcement  
94 officer or, upon written request and during the purchaser's  
95 regular business hours, by any investigator employed by a  
96 public utility or railroad to investigate the theft of public  
97 utility or railroad property: *Provided*, That in lieu of the  
98 purchaser keeping the records at their place of business, the

99 purchaser shall file the records with the local detachment of  
100 the State Police and with the chief of police of the municipi-  
101 pality or the sheriff of the county wherein he or she is  
102 transacting business within seventy-two hours of completion  
103 of the purchase. The records shall be retained by the State  
104 Police and the chief of police of the municipality or the  
105 sheriff for a period of not less than three years.

106 (h) To the extent otherwise permitted by law, any  
107 investigator employed by a public utility or railroad to  
108 investigate the theft of public utility or railroad property  
109 may accompany a law-enforcement officer upon the premises  
110 of a purchaser in the execution of a valid warrant or assist  
111 law enforcement in the review of records required to be  
112 retained pursuant to this section.

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

117 (j) Nothing in this section applies to scrap purchases by  
118 manufacturing facilities that melt, or otherwise alter the  
119 form of scrap metal and transform it into a new product or to  
120 the purchase or transportation of food and beverage contain-

121 ers or other nonindustrial materials having a marginal value  
122 per individual unit.

123 (k) (1) Nothing in this section applies to a purchaser of a  
124 vehicle on which a catalytic converter is installed, a pur-  
125 chaser of a catalytic converter intended for installation on a  
126 vehicle owned or leased by the purchaser, or any person who  
127 purchases, other than for purposes of resale, a catalytic  
128 converter or a motor vehicle on which a catalytic converter  
129 is installed, for personal, family, household or business use.

130 (2) In transactions not exempted by subdivision (1) of this  
131 subsection any person delivering five or more automobile  
132 catalytic converters to a scrap metal dealer, in addition to  
133 the requirements set forth in subsection (c) of this section,  
134 shall execute a document stating he or she is the lawful  
135 owner of the catalytic converters or authorized by the lawful  
136 owner to sell the catalytic converters. Next to his or her  
137 signature he or she shall be required to place a clear impres-  
138 sion of his or her index finger or thumb that is in ink and  
139 free of smearing. This documentation shall be maintained  
140 consistent with subsection (c) of this section.

141 (l) Any person who knowingly or with fraudulent intent  
142 violates any provision of this section for which no penalty is



143 specifically set forth, including the knowing failure to make  
144 a report or the knowing falsification of any required infor-  
145 mation, is guilty of a misdemeanor and, upon conviction of  
146 a first offense thereof, shall be fined not less than \$1,000 nor  
147 more than \$3,000; upon conviction of a second offense  
148 thereof, shall be fined not less than \$2,000 and not more than  
149 \$4,000 and, notwithstanding the provisions of section five,  
150 article twelve, chapter eleven of this code, the court in which  
151 the conviction occurred shall issue an order directing the  
152 Tax Commissioner to suspend for a period of six months any  
153 business registration certificate held by that person; and  
154 upon conviction of a third or subsequent offense thereof shall  
155 be fined not less than \$3,000 and not more than \$5,000 and,  
156 notwithstanding the provisions of section five, article twelve,  
157 chapter eleven of this code, the court in which the conviction  
158 occurred shall issue an order directing the Tax Commissioner  
159 to cancel any business registration certificate held by that  
160 person and state the date said cancellation shall take effect.

161 (m) No person shall have or take possession of any scrap  
162 metal that he or she knows, or has reason to know, has been  
163 stolen or unlawfully obtained. Any person violating this  
164 subsection shall be deemed guilty of larceny.

165 (n) No scrap metal dealer may purchase, possess or  
166 receive scrap metal that the scrap metal dealer knows, or has  
167 reason to know, has been stolen or unlawfully obtained by  
168 the seller. Any person violating this subsection shall be  
169 deemed guilty of larceny.

170 (o) No scrap metal dealer may purchase, possess or  
171 receive any of the following items of scrap metal, or any  
172 reasonably recognizable part thereof, without obtaining  
173 written documentation which reflects that the seller is  
174 authorized to possess and sell the item or items that the  
175 seller is in lawful possession of the item of scrap metal:

176 (1) Utility access covers;

177 (2) Street light poles or fixtures;

178 (3) Road or bridge guard rails;

179 (4) Water meter covers;

180 (5) Highway or street signs;

181 (6) Traffic directional or traffic control signs;

182 (7) Traffic light signals;

183 (8) Any metal marked with any form of the name or  
184 initials of a governmental entity;

185 (9) Property marked as or readily identifiable as owned  
186 by a telephone, cable, electric, water or other utility pro-  
187 vider;

- 188 (10) Property owned and marked by a railroad;  
189 (11) Cemetery markers or vases;  
190 (12) Historical markers;  
191 (13) Utility manhole covers and storm water grates; and  
192 (14) Fire hydrant or fire hydrant caps; or  
193 (15) Twisted pair copper telecommunications wiring of  
194 twenty-five pair or greater in nineteen, twenty-two, twenty-  
195 four or twenty-six gauge.
- 196 (p) Nothing in this section shall prohibit a scrap dealer  
197 from purchasing or taking possession of scrap metal knowing  
198 or have reason to know that it is stolen or obtained illegally  
199 if it is done pursuant to a written agreement with law  
200 enforcement.