

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 528

(SENATORS SNYDER, KESSLER (MR. PRESIDENT),
UNGER, PALUMBO, BROWNING, LAIRD, D. FACEMIRE,
EDGELL, MILLER, K. FACEMYER, JENKINS,
KIRKENDOLL, FOSTER AND BEACH, *original sponsors*)

[Passed March 10, 2012; 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 scrap metal; providing definitions; requiring scrap metal dealers to obtain business licenses; requiring scrap metal dealers to register scales with the Division of Labor; requiring scrap metal dealers to provide a notice of recycling activity to the Department of Environmental Protection; requiring scrap metal dealers to register with the Secretary of State; requiring the Secretary of State to maintain a list of scrap metal dealers and make the list publically available; requiring documentation of transactions involving five or more catalytic converters; requiring print of index finger or thumb on documentation of transactions involving five or more catalytic converters; prohibiting the possession, sale or purchase of stolen or unlawfully obtained scrap metal; prohibiting purchase of certain items of scrap metal without proof of lawful possession; and establishing criminal offenses.

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, a scrap metal dealer shall:

17 (1) Have a current valid business registration certificate
18 from the Tax Commissioner;

19 (2) Register any scales used for weighing scrap metal
20 with the Division of Labor Weights and Measures office;

21 (3) Provide a notice of recycling activity to the Depart-
22 ment of Environmental Protection; and

23 (4) Register as a scrap metal dealer with the Secretary of
24 State, who is hereby directed to maintain a list of scrap

25 metal dealers and make it publically available. The list shall
26 include the dealer's business address, hours of operation,
27 physical address, phone number, facsimile number, if any,
28 and the name of the owners or principal officers of the
29 business.

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

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

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

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

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

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

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

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

49 (2) A photocopy of a valid driver's license or identifica-
50 tion card issued by the West Virginia Division of Motor
51 Vehicles of the person delivering the scrap metal, or in lieu
52 thereof, any other valid photo identification of the seller
53 issued by any other state or the federal government: *Pro-*
54 *vided*, That, if the purchaser has a copy of the seller's valid
55 photo identification on file, the purchaser may reference the
56 identification that is on file, without making a separate
57 photocopy for each transaction.

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

71 (f) No purchaser of scrap metal may knowingly purchase
72 or possess a stainless steel or aluminum beer keg, whether
73 damaged or undamaged, or any reasonably recognizable part
74 thereof, for the intended purpose of reselling as scrap metal
75 unless the purchaser receives the keg or keg parts from the
76 beer manufacturer or its authorized representative.

77 (g) Using a form provided by the West Virginia State
78 Police, or his or her own form, a purchaser of scrap metal
79 shall retain the records required by this section at his or her
80 place of business for not less than three years after the date
81 of the purchase. Upon completion of a purchase, the records
82 required to be retained at a purchaser's place of business
83 shall be available for inspection by any law-enforcement
84 officer or, upon written request and during the purchaser's
85 regular business hours, by any investigator employed by a
86 public utility or railroad to investigate the theft of public
87 utility or railroad property: *Provided*, That in lieu of the
88 purchaser keeping the records at their place of business, the
89 purchaser shall file the records with the local detachment of
90 the State Police and with the chief of police of the munici-
91 pality or the sheriff of the county wherein he or she is
92 transacting business within seventy-two hours of completion
93 of the purchase. The records shall be retained by the State
94 Police and the chief of police of the municipality or the
95 sheriff for a period of not less than three years.

96 (h) To the extent otherwise permitted by law, any
97 investigator employed by a public utility or railroad to
98 investigate the theft of public utility or railroad property
99 may accompany a law-enforcement officer upon the premises
100 of a purchaser in the execution of a valid warrant or assist
101 law enforcement in the review of records required to be
102 retained pursuant to this section.

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

107 (j) Nothing in this section applies to scrap purchases by
108 manufacturing facilities that melt, or otherwise alter the
109 form of scrap metal and transform it into a new product or to
110 the purchase or transportation of food and beverage contain-
111 ers or other nonindustrial materials having a marginal value
112 per individual unit.

113 (k) (1) Nothing in this section applies to a purchaser of a
114 vehicle on which a catalytic converter is installed, a pur-
115 chaser of a catalytic converter intended for installation on a
116 vehicle owned or leased by the purchaser, or any person who
117 purchases, other than for purposes of resale, a catalytic
118 converter or a motor vehicle on which a catalytic converter
119 is installed, for personal, family, household or business use.

120 (2) In transactions not exempted by subdivision (1) of this
121 subsection, any person delivering five or more automobile
122 catalytic converters to a scrap metal dealer shall, in addition
123 to the requirements set forth in subsection (c) of this section,
124 execute a document stating he or she is the lawful owner of
125 the catalytic converters, or authorized by the lawful owner
126 to sell the catalytic converters. Next to his or her signature
127 he or she shall place a clear impression of his or her index
128 finger or thumb that is in ink and free of smearing. This
129 documentation shall be maintained consistent with subsec-
130 tion (c) of this section.

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

133 specifically set forth, including the knowing failure to make
134 a report or the knowing falsification of any required infor-
135 mation, is guilty of a misdemeanor and, upon conviction of
136 a first offense thereof, shall be fined not less than \$1,000 nor
137 more than \$3,000; upon conviction of a second offense
138 thereof, shall be fined not less than \$2,000 and not more than
139 \$4,000 and, notwithstanding the provisions of section five,
140 article twelve, chapter eleven of this code, the court in which
141 the conviction occurred shall issue an order directing the
142 Tax Commissioner to suspend for a period of six months any
143 business registration certificate held by that person; and
144 upon conviction of a third or subsequent offense thereof shall
145 be fined not less than \$3,000 and not more than \$5,000 and,
146 notwithstanding the provisions of section five, article twelve,
147 chapter eleven of this code, the court in which the conviction
148 occurred shall issue an order directing the Tax Commissioner
149 to cancel any business registration certificate held by that
150 person and state the date said cancellation shall take effect.

151 (m) No person may have or take possession of any scrap
152 metal that he or she knows, or has reason to know, has been
153 stolen or unlawfully obtained. Any person violating this
154 subsection is guilty of larceny.

155 (n) No scrap metal dealer may purchase, possess or
156 receive scrap metal that the scrap metal dealer knows, or has
157 reason to know, has been stolen or unlawfully obtained by
158 the seller. Any person violating this subsection is guilty of
159 larceny.

160 (o) No scrap metal dealer may purchase, possess or
161 receive any of the following items of scrap metal, or any
162 reasonably recognizable part thereof, without obtaining
163 written documentation which reflects that the seller is
164 authorized to possess and sell the item or items and that the
165 seller is in lawful possession of the item of scrap metal:

166 (1) Utility access covers;

167 (2) Street light poles or fixtures;

168 (3) Road or bridge guard rails;

- 169 (4) Water meter covers;
- 170 (5) Highway or street signs;
- 171 (6) Traffic directional or traffic control signs;
- 172 (7) Traffic light signals;
- 173 (8) Any metal marked with any form of the name or
174 initials of a governmental entity;
- 175 (9) Property marked as or readily identifiable as owned
176 by a telephone, cable, electric, water or other utility pro-
177 vider;
- 178 (10) Property owned and marked by a railroad;
- 179 (11) Cemetery markers or vases;
- 180 (12) Historical markers;
- 181 (13) Utility manhole covers and storm water grates; and
- 182 (14) Fire hydrant or fire hydrant caps; or
- 183 (15) Twisted pair copper telecommunications wiring of
184 twenty-five pair or greater in nineteen, twenty-two, twenty-
185 four or twenty-six gauge.
- 186 (p) Nothing in this section prohibits a scrap dealer from
187 purchasing or taking possession of scrap metal knowing or
188 have reason to know that it is stolen or obtained illegally if
189 it is done pursuant to a written agreement with law-enforce-
190 ment officials.

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

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the
Day of, 2012.

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Governor