

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 563**

4 (By Senators Palumbo and Snyder)

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6 [Originating in the Committee on the Judiciary;

7 reported March 26, 2013.]

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11 A BILL to amend and reenact §61-3-49 of the Code of West Virginia,
12 1931, as amended, relating to the purchase of scrap metal by
13 scrap metal dealers; and excluding jewelry platinum, gold,
14 silver and palladium from the definition of "scrap metal".

15 *Be it enacted by the Legislature of West Virginia:*

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

18 **ARTICLE 3. CRIMES AGAINST PROPERTY.**

19 **§61-3-49. Purchase of scrap metal by scrap metal purchasing**
20 **businesses, salvage yards or recycling facilities;**
21 **certificates, records and reports of such**
22 **purchases; criminal penalties.**

23 (a) For the purposes of this section, the following terms have
24 the following meanings.

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

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

9 (3) "Scrap metal" means any form of copper, aluminum, brass,
10 lead or other nonferrous metal of any kind other than jewelry
11 platinum, gold, silver or palladium, a catalytic converter or any
12 materials derived from a catalytic converter, or steel railroad
13 track and track material.

14 (b) In addition to any requirement necessary to do business in
15 this state, a scrap metal dealer shall:

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

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

20 (3) Provide a notice of recycling activity to the Department
21 of Environmental Protection; and

22 (4) Register as a scrap metal dealer with the Secretary of
23 State, who is hereby directed to maintain a list of scrap metal
24 dealers and make it publically available. The list shall include

1 the dealer's business address, hours of operation, physical
2 address, phone number, facsimile number, if any, and the name of
3 the owners or principal officers of the business.

4 (c) Any purchaser of scrap metal shall make a record of such
5 purchase that shall contain the following information for each
6 transaction:

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

9 (2) A description and the motor vehicle license number of any
10 vehicle used to transport the purchased scrap metal to the place of
11 purchase;

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

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

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

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

19 (1) A signed certificate of ownership of the scrap metal being
20 sold or a signed authorization from the owner of the scrap metal to
21 sell said scrap metal; and

22 (2) A photocopy of a valid driver's license or identification
23 card issued by the West Virginia Division of Motor Vehicles of the
24 person delivering the scrap metal, or in lieu thereof, any other

1 valid photo identification of the seller issued by any other state
2 or the federal government: *Provided, That, if the purchaser has a*
3 *copy of the seller's valid photo identification on file, the*
4 *purchaser may reference the identification that is on file, without*
5 *making a separate photocopy for each transaction.*

6 (e) It is unlawful for any purchaser to purchase any scrap
7 metal without obtaining and recording the information required
8 under subsections (c) and (d) of this section. The provisions of
9 this subsection do not apply to purchases made at wholesale under
10 contract or as a result of a bidding process: *Provided, That the*
11 *purchaser retains and makes available for review consistent with*
12 *subsection (g) of this section the contract, bill of sale or*
13 *similar documentation of the purchase made at wholesale under*
14 *contract or as a result of a bidding process: Provided, however,*
15 *That the purchaser may redact any pricing or other commercially*
16 *sensitive information from said contract, bill of sale or similar*
17 *documentation before making it available for inspection.*

18 (f) No purchaser of scrap metal may knowingly purchase or
19 possess a stainless steel or aluminum beer keg, whether damaged or
20 undamaged, or any reasonably recognizable part thereof, for the
21 intended purpose of reselling as scrap metal unless the purchaser
22 receives the keg or keg parts from the beer manufacturer or its
23 authorized representative.

24 (g) Using a form provided by the West Virginia State Police,

1 or his or her own form, a purchaser of scrap metal shall retain the
2 records required by this section at his or her place of business
3 for not less than three years after the date of the purchase. Upon
4 completion of a purchase, the records required to be retained at a
5 purchaser's place of business shall be available for inspection by
6 any law-enforcement officer or, upon written request and during the
7 purchaser's regular business hours, by any investigator employed by
8 a public utility or railroad to investigate the theft of public
9 utility or railroad property: *Provided*, That in lieu of the
10 purchaser keeping the records at their place of business, the
11 purchaser shall file the records with the local detachment of the
12 State Police and with the chief of police of the municipality or
13 the sheriff of the county wherein he or she is transacting business
14 within seventy-two hours of completion of the purchase. The
15 records shall be retained by the State Police and the chief of
16 police of the municipality or the sheriff for a period of not less
17 than three years.

18 (h) To the extent otherwise permitted by law, any investigator
19 employed by a public utility or railroad to investigate the theft
20 of public utility or railroad property may accompany a law-
21 enforcement officer upon the premises of a purchaser in the
22 execution of a valid warrant or assist law enforcement in the
23 review of records required to be retained pursuant to this section.

24 (i) Upon the entry of a final determination and order by a

1 court of competent jurisdiction, scrap metal found to have been
2 misappropriated, stolen or taken under false pretenses may be
3 returned to the proper owner of such material.

4 (j) Nothing in this section applies to scrap purchases by
5 manufacturing facilities that melt, or otherwise alter the form of
6 scrap metal and transform it into a new product or to the purchase
7 or transportation of food and beverage containers or other
8 nonindustrial materials having a marginal value per individual
9 unit.

10 (k) (1) Nothing in this section applies to a purchaser of a
11 vehicle on which a catalytic converter is installed, a purchaser of
12 a catalytic converter intended for installation on a vehicle owned
13 or leased by the purchaser, or any person who purchases, other than
14 for purposes of resale, a catalytic converter or a motor vehicle on
15 which a catalytic converter is installed, for personal, family,
16 household or business use.

17 (2) In transactions not exempted by subdivision (1) of this
18 subsection, any person delivering five or more automobile catalytic
19 converters to a scrap metal dealer shall, in addition to the
20 requirements set forth in subsection (c) of this section, execute
21 a document stating he or she is the lawful owner of the catalytic
22 converters, or authorized by the lawful owner to sell the catalytic
23 converters. Next to his or her signature he or she shall place a
24 clear impression of his or her index finger or thumb that is in ink

1 and free of smearing. This documentation shall be maintained
2 consistent with subsection (c) of this section.

3 (1) Any person who knowingly or with fraudulent intent
4 violates any provision of this section for which no penalty is
5 specifically set forth, including the knowing failure to make a
6 report or the knowing falsification of any required information, is
7 guilty of a misdemeanor and, upon conviction of a first offense
8 thereof, shall be fined not less than \$1,000 nor more than \$3,000;
9 upon conviction of a second offense thereof shall be fined not less
10 than \$2,000 and not more than \$4,000 and, notwithstanding the
11 provisions of section five, article twelve, chapter eleven of this
12 code, the court in which the conviction occurred shall issue an
13 order directing the Tax Commissioner to suspend for a period of six
14 months any business registration certificate held by that person;
15 and upon conviction of a third or subsequent offense thereof shall
16 be fined not less than \$3,000 and not more than \$5,000 and,
17 notwithstanding the provisions of section five, article twelve,
18 chapter eleven of this code, the court in which the conviction
19 occurred shall issue an order directing the Tax Commissioner to
20 cancel any business registration certificate held by that person
21 and state the date said cancellation shall take effect.

22 (m) No person may have or take possession of any scrap metal
23 that he or she knows, or has reason to know, has been stolen or
24 unlawfully obtained. Any person violating this subsection is

1 guilty of larceny.

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

6 (o) No scrap metal dealer may purchase, possess or receive any
7 of the following items of scrap metal, or any reasonably
8 recognizable part thereof, without obtaining written documentation
9 which reflects that the seller is authorized to possess and sell
10 the item or items and that the seller is in lawful possession of
11 the item of scrap metal:

12 (1) Utility access covers;

13 (2) Street light poles or fixtures;

14 (3) Road or bridge guard rails;

15 (4) Water meter covers;

16 (5) Highway or street signs;

17 (6) Traffic directional or traffic control signs;

18 (7) Traffic light signals;

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

21 (9) Property marked as or readily identifiable as owned by a
22 telephone, cable, electric, water or other utility provider;

23 (10) Property owned and marked by a railroad;

24 (11) Cemetery markers or vases;

1 (12) Historical markers;

2 (13) Utility manhole covers and storm water grates; and

3 (14) Fire hydrant or fire hydrant caps; or

4 (15) Twisted pair copper telecommunications wiring of twenty-
5 five pair or greater in nineteen, twenty-two, twenty-four or
6 twenty-six gauge.

7 (p) Nothing in this section prohibits a scrap dealer from
8 purchasing or taking possession of scrap metal knowing or have
9 reason to know that it is stolen or obtained illegally if it is
10 done pursuant to a written agreement with law-enforcement
11 officials.

(NOTE: The purpose of this bill is to exclude platinum, gold, silver and palladium from the definition of "scrap metal" as it relates to purchases of scrap metal by scrap metal dealers.

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