

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 563**

(By Senators Palumbo and Snyder)

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[Originating in the Committee on the Judiciary;  
reported March 26, 2013.]

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

*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 other than  
13 jewelry platinum, gold, silver or palladium, a catalytic  
14 converter or any materials derived from a catalytic converter,  
15 or steel railroad track and track material.

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

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

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

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

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

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

34 (1) The full name, permanent home and business  
35 addresses 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  
43 purchased, taken as collateral for a loan or taken on  
44 consignment.

45 (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  
51 identification card issued by the West Virginia Division of  
52 Motor Vehicles of the person delivering the scrap metal, or  
53 in lieu thereof, any other valid photo identification of the  
54 seller issued by any other state or the federal government:

55 *Provided*, That, if the purchaser has a copy of the seller's  
56 valid photo identification on file, the purchaser may reference  
57 the identification that is on file, without making a separate  
58 photocopy for each transaction.

59 (e) It is unlawful for any purchaser to purchase any scrap  
60 metal without obtaining and recording the information  
61 required under subsections (c) and (d) 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 (f) No purchaser of scrap metal may knowingly purchase  
73 or possess a stainless steel or aluminum beer keg, whether

74 damaged or undamaged, or any reasonably recognizable part  
75 thereof, for the intended purpose of reselling as scrap metal  
76 unless the purchaser receives the keg or keg parts from the  
77 beer manufacturer or its authorized representative.

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

93 transacting business within seventy-two hours of completion  
94 of the purchase. The records shall be retained by the State  
95 Police and the chief of police of the municipality or the  
96 sheriff for a period of not less than three years.

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

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

108 (j) Nothing in this section applies to scrap purchases by  
109 manufacturing facilities that melt, or otherwise alter the form  
110 of scrap metal and transform it into a new product or to the  
111 purchase or transportation of food and beverage containers or

112 other nonindustrial materials having a marginal value per  
113 individual unit.

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

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



130 This documentation shall be maintained consistent with  
131 subsection (c) of this section.

132 (l) Any person who knowingly or with fraudulent intent  
133 violates any provision of this section for which no penalty is  
134 specifically set forth, including the knowing failure to make  
135 a report or the knowing falsification of any required  
136 information, is guilty of a misdemeanor and, upon conviction  
137 of a first offense thereof, shall be fined not less than \$1,000  
138 nor more than \$3,000; upon conviction of a second offense  
139 thereof shall be fined not less than \$2,000 and not more than  
140 \$4,000 and, notwithstanding the provisions of section five,  
141 article twelve, chapter eleven of this code, the court in which  
142 the conviction occurred shall issue an order directing the Tax  
143 Commissioner to suspend for a period of six months any  
144 business registration certificate held by that person; and upon  
145 conviction of a third or subsequent offense thereof shall be  
146 fined not less than \$3,000 and not more than \$5,000 and,  
147 notwithstanding the provisions of section five, article twelve,  
148 chapter eleven of this code, the court in which the conviction

149 occurred shall issue an order directing the Tax Commissioner  
150 to cancel any business registration certificate held by that  
151 person and state the date said cancellation shall take effect.

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

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

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

167 (1) Utility access covers;

- 168 (2) Street light poles or fixtures;
- 169 (3) Road or bridge guard rails;
- 170 (4) Water meter covers;
- 171 (5) Highway or street signs;
- 172 (6) Traffic directional or traffic control signs;
- 173 (7) Traffic light signals;
- 174 (8) Any metal marked with any form of the name or  
175 initials of a governmental entity;
- 176 (9) Property marked as or readily identifiable as owned  
177 by a telephone, cable, electric, water or other utility provider;
- 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 it  
189 is done pursuant to a written agreement with law-  
190 enforcement officials.

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(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.)