

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 278**

(By Senator Palumbo)

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[Originating in the Committee on the Judiciary;  
reported January 15, 2014.]

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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 gold, silver, palladium and platinum in the form of jewelry, bullion, ingots or coins 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, a catalytic  
13 converter or any materials derived from a catalytic converter  
14 or steel railroad track and track material: Provided, That the  
15 provisions of this section are not applicable to gold, silver,  
16 palladium or platinum where the platinum is in the form of  
17 jewelry, bullion, ingots or coins.

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

20 (1) Have a current valid business registration certificate  
21 from the Tax Commissioner;

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

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

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

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

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

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

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

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

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

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

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

51 (2) A photocopy of a valid driver's license or  
52 identification card issued by the West Virginia Division of  
53 Motor Vehicles of the person delivering the scrap metal, or  
54 in lieu thereof, any other valid photo identification of the  
55 seller issued by any other state or the federal government:

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

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

73 (f) No purchaser of scrap metal may knowingly purchase  
74 or possess a stainless steel or aluminum beer keg, whether

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

- 169 (1) Utility access covers;
- 170 (2) Street light poles or fixtures;
- 171 (3) Road or bridge guard rails;
- 172 (4) Water meter covers;
- 173 (5) Highway or street signs;
- 174 (6) Traffic directional or traffic control signs;
- 175 (7) Traffic light signals;
- 176 (8) Any metal marked with any form of the name or  
177 initials of a governmental entity;
- 178 (9) Property marked as or readily identifiable as owned  
179 by a telephone, cable, electric, water or other utility provider;
- 180 (10) Property owned and marked by a railroad;
- 181 (11) Cemetery markers or vases;
- 182 (12) Historical markers;
- 183 (13) Utility manhole covers and storm water grates; and
- 184 (14) Fire hydrant or fire hydrant caps; or
- 185 (15) Twisted pair copper telecommunications wiring of  
186 twenty-five pair or greater in nineteen, twenty-two,  
187 twenty-four or twenty-six gauge.

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