

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 278**

4 (By Senator Palumbo)

5 _____
6 [Originating in the Committee on the Judiciary;

7 reported January 15, 2014.]

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9
10 A BILL to amend and reenact §61-3-49 of the Code of West Virginia,
11 1931, as amended, relating to the purchase of scrap metal by
12 scrap metal dealers; and excluding gold, silver, palladium and
13 platinum in the form of jewelry, bullion, ingots or coins from
14 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.

25 (1) "Business registration certificate" has the same meaning

1 ascribed to it in section two, article twelve, chapter eleven of
2 this code.

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

8 (3) "Scrap metal" means any form of copper, aluminum, brass,
9 lead or other nonferrous metal of any kind, a catalytic converter
10 or any materials derived from a catalytic converter or steel
11 railroad track and track material: Provided, That the provisions of
12 this section are not applicable to gold, silver, palladium or
13 platinum where the platinum is in the form of jewelry, bullion,
14 ingots or coins.

15 (b) In addition to any requirement necessary to do business in
16 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 with the
20 Division of Labor Weights and Measures office;

21 (3) Provide a notice of recycling activity to the Department
22 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 metal
25 dealers and make it publically available. The list shall include
26 the dealer's business address, hours of operation, physical

1 address, phone number, facsimile number, if any, and the name of
2 the owners or principal officers of the business.

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

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

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

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

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

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

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

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

21 (2) A photocopy of a valid driver's license or identification
22 card issued by the West Virginia Division of Motor Vehicles of the
23 person delivering the scrap metal, or in lieu thereof, any other
24 valid photo identification of the seller issued by any other state
25 or the federal government: *Provided*, That, if the purchaser has a
26 copy of the seller's valid photo identification on file, the

1 purchaser may reference the identification that is on file, without
2 making a separate photocopy for each transaction.

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

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

21 (g) Using a form provided by the West Virginia State Police,
22 or his or her own form, a purchaser of scrap metal shall retain the
23 records required by this section at his or her place of business
24 for not less than three years after the date of the purchase. Upon
25 completion of a purchase, the records required to be retained at a
26 purchaser's place of business shall be available for inspection by

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

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

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

23 (j) Nothing in this section applies to scrap purchases by
24 manufacturing facilities that melt or otherwise alter the form of
25 scrap metal and transform it into a new product or to the purchase
26 or transportation of food and beverage containers or other

1 nonindustrial materials having a marginal value per individual
2 unit.

3 (k) (1) Nothing in this section applies to a purchaser of a
4 vehicle on which a catalytic converter is installed, a purchaser of
5 a catalytic converter intended for installation on a vehicle owned
6 or leased by the purchaser, or any person who purchases, other than
7 for purposes of resale, a catalytic converter or a motor vehicle on
8 which a catalytic converter is installed, for personal, family,
9 household or business use.

10 (2) In transactions not exempted by subdivision (1) of this
11 subsection, any person delivering five or more automobile catalytic
12 converters to a scrap metal dealer shall, in addition to the
13 requirements set forth in subsection (c) of this section, execute
14 a document stating he or she is the lawful owner of the catalytic
15 converters, or authorized by the lawful owner to sell the catalytic
16 converters. Next to his or her signature he or she shall place a
17 clear impression of his or her index finger or thumb that is in ink
18 and free of smearing. This documentation shall be maintained
19 consistent with subsection (c) of this section.

20 (l) Any person who knowingly or with fraudulent intent
21 violates any provision of this section for which no penalty is
22 specifically set forth, including the knowing failure to make a
23 report or the knowing falsification of any required information, is
24 guilty of a misdemeanor and, upon conviction of a first offense
25 thereof, shall be fined not less than \$1,000 nor more than \$3,000;
26 upon conviction of a second offense thereof shall be fined not less

1 than \$2,000 and not more than \$4,000 and, notwithstanding the
2 provisions of section five, article twelve, chapter eleven of this
3 code, the court in which the conviction occurred shall issue an
4 order directing the Tax Commissioner to suspend for a period of six
5 months any business registration certificate held by that person;
6 and upon conviction of a third or subsequent offense thereof shall
7 be fined not less than \$3,000 and not more than \$5,000 and,
8 notwithstanding the provisions of section five, article twelve,
9 chapter eleven of this code, the court in which the conviction
10 occurred shall issue an order directing the Tax Commissioner to
11 cancel any business registration certificate held by that person
12 and state the date said cancellation ~~shall take~~ takes effect.

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

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

21 (o) No scrap metal dealer may purchase, possess or receive any
22 of the following items of scrap metal, or any reasonably
23 recognizable part thereof, without obtaining written documentation
24 which reflects that the seller is authorized to possess and sell
25 the item or items and that the seller is in lawful possession of
26 the item of scrap metal:

- 1 (1) Utility access covers;
- 2 (2) Street light poles or fixtures;
- 3 (3) Road or bridge guard rails;
- 4 (4) Water meter covers;
- 5 (5) Highway or street signs;
- 6 (6) Traffic directional or traffic control signs;
- 7 (7) Traffic light signals;
- 8 (8) Any metal marked with any form of the name or initials of
- 9 a governmental entity;
- 10 (9) Property marked as or readily identifiable as owned by a
- 11 telephone, cable, electric, water or other utility provider;
- 12 (10) Property owned and marked by a railroad;
- 13 (11) Cemetery markers or vases;
- 14 (12) Historical markers;
- 15 (13) Utility manhole covers and storm water grates; and
- 16 (14) Fire hydrant or fire hydrant caps; or
- 17 (15) Twisted pair copper telecommunications wiring of
- 18 twenty-five pair or greater in nineteen, twenty-two, twenty-four or
- 19 twenty-six gauge.
- 20 (p) Nothing in this section prohibits a scrap dealer from
- 21 purchasing or taking possession of scrap metal knowing or have
- 22 reason to know that it is stolen or obtained illegally if it is
- 23 done pursuant to a written agreement with law-enforcement
- 24 officials.