

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 626

BY SENATORS TRUMP, WELD, WOELFEL, AND PHILLIPS

[Introduced March 11, 2021; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §61-3-49 of the Code of West Virginia, 1931, as amended; and to
 2 amend said code by adding thereto a new section, designated §61-3-49c, all relating to
 3 the purchase and possession of certain scrap metal; updating the regulation of the
 4 purchase of automobile catalytic converters; requiring certain evidence and
 5 documentation from a seller of an automobile catalytic converter; placing restrictions on
 6 the payment for automobile catalytic converters; placing restrictions on the sale or transfer
 7 of an automobile catalytic converter by a scrap metal dealer; creating the criminal offense
 8 of possession of a catalytic converter without proof of ownership or authority to possess;
 9 and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

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 have the following meanings.

2 (1) "Business registration certificate" has the same meaning ascribed to it in §11-12-2 of
 3 this code.

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

8 (3) "Scrap metal" means any form of copper, aluminum, brass, lead or other nonferrous
 9 metal of any kind, a catalytic converter or any materials derived from a catalytic converter, or steel
 10 railroad track and track material.

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

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

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

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

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

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

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

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

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

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

30 and

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

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

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

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

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

43 (e) It is unlawful for any purchaser to purchase any scrap metal without obtaining and
44 recording the information required under subsections (c) and (d) of this section. The provisions of
45 this subsection do not apply to purchases made at wholesale under contract or as a result of a
46 bidding process: *Provided, That the purchaser retains and makes available for review consistent*
47 *with subsection (g) of this section the contract, bill of sale or similar documentation of the purchase*
48 *made at wholesale under contract or as a result of a bidding process: Provided, however, That*
49 *the purchaser may redact any pricing or other commercially sensitive information from said*
50 *contract, bill of sale or similar documentation before making it available for inspection.*

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

55 (g) Using a form provided by the West Virginia State Police, or his or her own form, a
56 purchaser of scrap metal shall retain the records required by this section at his or her place of
57 business for not less than three years after the date of the purchase. Upon completion of a
58 purchase, the records required to be retained at a purchaser's place of business shall be available
59 for inspection by any law-enforcement officer or, upon written request and during the purchaser's
60 regular business hours, by any investigator employed by a public utility or railroad to investigate
61 the theft of public utility or railroad property: *Provided, That in lieu of the purchaser keeping the*
62 *records at their place of business, the purchaser shall file the records with the local detachment*
63 *of the State Police and with the chief of police of the municipality or the sheriff of the county*
64 *wherein he or she is transacting business within seventy-two hours of completion of the purchase.*

65 The records shall be retained by the State Police and the chief of police of the municipality or the
66 sheriff for a period of not less than three years.

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

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

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

78 (k)(1) Nothing in this section applies to a purchaser of a vehicle on which a catalytic
79 converter is installed, a purchaser of a catalytic converter intended for installation on a vehicle
80 owned or leased by the purchaser, or any person who purchases, other than for purposes of
81 resale, a catalytic converter or a motor vehicle on which a catalytic converter is installed, for
82 personal, family, household or business use.

83 (2) In transactions not exempted by subdivision (1) of this subsection, any person
84 delivering ~~five~~ one or more automobile catalytic converters to a scrap metal dealer shall, in
85 addition to the requirements set forth in subsection (c) of this section, execute a document stating
86 he or she is the lawful owner of the catalytic converters, ~~or~~ authorized by the lawful owner to sell
87 the catalytic converters, a bona fide automobile repair shop or a bona fide automobile recycling
88 business. Next to his or her signature he or she shall place a clear impression of his or her index
89 finger or thumb that is in ink and free of smearing. This documentation shall be maintained
90 consistent with subsection (c) of this section. Payment for a catalytic converter may be made no

91 fewer than five days after sale to the scrap metal dealer. Payment shall be made by check mailed
92 to the seller's address or bank account in the seller's name. No scrap metal dealer may process,
93 sell, or remove a catalytic converter from its premises for at least 14 days after its acquisition. A
94 scrap metal dealer shall record any identifying information on a catalytic converter received or
95 purchased and shall not purchase or take possession of a catalytic converter if the identifying
96 information thereon has been altered or obliterated.

97 (l) Any person who knowingly or with fraudulent intent violates any provision of this section
98 for which no penalty is specifically set forth, including the knowing failure to make a report or the
99 knowing falsification of any required information, is guilty of a misdemeanor and, upon conviction
100 of a first offense thereof, shall be fined not less than \$1,000 nor more than \$3,000; upon conviction
101 of a second offense thereof, shall be fined not less than \$2,000 and not more than \$4,000 and,
102 notwithstanding the provisions of §11-12-5 of this code, the court in which the conviction occurred
103 shall issue an order directing the Tax Commissioner to suspend for a period of six months any
104 business registration certificate held by that person; and upon conviction of a third or subsequent
105 offense thereof shall be fined not less than \$3,000 and not more than \$5,000 and, notwithstanding
106 the provisions of §11-12-5 of this code, the court in which the conviction occurred shall issue an
107 order directing the Tax Commissioner to cancel any business registration certificate held by that
108 person and state the date said cancellation shall take effect.

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

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

115 (o) No scrap metal dealer may purchase, possess or receive any of the following items of
116 scrap metal, or any reasonably recognizable part thereof, without obtaining written documentation

117 which reflects that the seller is authorized to possess and sell the item or items and that the seller
118 is in lawful possession of the item of scrap metal:

- 119 (1) Utility access covers;
- 120 (2) Street light poles or fixtures;
- 121 (3) Road or bridge guard rails;
- 122 (4) Water meter covers;
- 123 (5) Highway or street signs;
- 124 (6) Traffic directional or traffic control signs;
- 125 (7) Traffic light signals;
- 126 (8) Any metal marked with any form of the name or initials of a governmental entity;
- 127 (9) Property marked as or readily identifiable as owned by a telephone, cable, electric,
128 water or other utility provider;
- 129 (10) Property owned and marked by a railroad;
- 130 (11) Cemetery markers or vases;
- 131 (12) Historical markers;
- 132 (13) Utility manhole covers and storm water grates; ~~and~~
- 133 (14) Fire hydrant or fire hydrant caps; ~~or~~
- 134 (15) Twisted pair copper telecommunications wiring of 25 pair or greater in 19, 22, 24 or
135 26 gauge; or
- 136 (16) Catalytic converters.

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

§61-3-49c. Possession of a catalytic converter without documentation of ownership.

- 1 (a) Any person possessing a catalytic converter who fails to have in his or her possession,
- 2 proof of ownership of the catalytic converter or documentation reflecting his or her right to possess

3 the catalytic converter is guilty of a misdemeanor and, upon conviction thereof, shall be fined not
4 more than \$1,000, confined in jail not more than one year, or both fined and confined.

5 (b) Each catalytic converter possessed in violation of subsection (a) of this section shall
6 constitute a separate offense.

NOTE: The purpose of this bill is to update the regulation of the purchase of automobile catalytic converters, to require that certain evidence and documentation from a seller of an automobile catalytic converter be provided, to place restrictions on the payment for automobile catalytic converters, to place restrictions on the sale or transfer of an automobile catalytic converter by a scrap metal dealer, to create the criminal offense of possession of a catalytic converter without proof of ownership or authority to possess, and to establish criminal penalties.

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