

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 528**

5 (SENATORS SNYDER, KESSLER (MR. PRESIDENT), UNGER, PALUMBO, BROWNING, LAIRD,  
6 D. FACEMIRE, EDGELL, MILLER, K. FACEMYER, JENKINS, KIRKENDOLL, FOSTER AND  
7 BEACH, *original sponsors*)

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9 [Passed March 10, 2012; in effect ninety days from passage.]  
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11  
12 AN ACT to amend and reenact §61-3-49 of the Code of West Virginia,  
13 1931, as amended, relating to scrap metal; providing  
14 definitions; requiring scrap metal dealers to obtain business  
15 licenses; requiring scrap metal dealers to register scales  
16 with the Division of Labor; requiring scrap metal dealers to  
17 provide a notice of recycling activity to the Department of  
18 Environmental Protection; requiring scrap metal dealers to  
19 register with the Secretary of State; requiring the Secretary  
20 of State to maintain a list of scrap metal dealers and make  
21 the list publically available; requiring documentation of  
22 transactions involving five or more catalytic converters;  
23 requiring print of index finger or thumb on documentation of  
24 transactions involving five or more catalytic converters;  
25 prohibiting the possession, sale or purchase of stolen or  
26 unlawfully obtained scrap metal; prohibiting purchase of  
27 certain items of scrap metal without proof of lawful  
28 possession; and establishing criminal offenses.

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

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

4 **ARTICLE 3.   CRIMES AGAINST PROPERTY.**

5 **§61-3-49.   Purchase of scrap metal by scrap metal purchasing**  
6                   **businesses, salvage yards or recycling facilities;**  
7                   **certificates, records and reports of such purchases;**  
8                   **criminal penalties.**

9       (a) For the purposes of this section, the following terms have  
10 the following meanings.

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

14       (2) "Purchaser" means any person in the business of purchasing  
15 scrap metal or used auto parts, any salvage yard owner or operator,  
16 or any public or commercial recycling facility owner or operator,  
17 or any agent or employee thereof, who purchases any form of scrap  
18 metal or used auto parts.

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

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

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

27       (2) Register any scales used for weighing scrap metal with the

1 Division of Labor Weights and Measures office;

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

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

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

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

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

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

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

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

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

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

28 (2) A photocopy of a valid driver's license or identification

1 card issued by the West Virginia Division of Motor Vehicles of the  
2 person delivering the scrap metal, or in lieu thereof, any other  
3 valid photo identification of the seller issued by any other state  
4 or the federal government: *Provided, That, if the purchaser has a*  
5 *copy of the seller's valid photo identification on file, the*  
6 *purchaser may reference the identification that is on file, without*  
7 *making a separate photocopy for each transaction.*

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

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

26 (g) Using a form provided by the West Virginia State Police,  
27 or his or her own form, a purchaser of scrap metal shall retain the  
28 records required by this section at his or her place of business

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

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

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

26 (j) Nothing in this section applies to scrap purchases by  
27 manufacturing facilities that melt, or otherwise alter the form of  
28 scrap metal and transform it into a new product or to the purchase

1 or transportation of food and beverage containers or other  
2 nonindustrial materials having a marginal value per individual  
3 unit.

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

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

21 (1) Any person who knowingly or with fraudulent intent  
22 violates any provision of this section for which no penalty is  
23 specifically set forth, including the knowing failure to make a  
24 report or the knowing falsification of any required information, is  
25 guilty of a misdemeanor and, upon conviction of a first offense  
26 thereof, shall be fined not less than \$1,000 nor more than \$3,000;  
27 upon conviction of a second offense thereof, shall be fined not  
28 less than \$2,000 and not more than \$4,000 and, notwithstanding the

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

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

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

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

- 26 (1) Utility access covers;
- 27 (2) Street light poles or fixtures;
- 28 (3) Road or bridge guard rails;

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