

Senate Bill No. 528

(By Senators Snyder, Kessler (Mr, President), Unger, Palumbo,
Browning, Laird, D. Facemire, Edgell, Miller, K. Facemyer,
Jenkins, Kirkendoll, Foster and Beach)

[Introduced February 7, 2012; referred to the Committee on the
Judiciary.]

**FISCAL
NOTE**

9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §61-14-1, §61-14-2,
12 §61-14-3, §61-14-4, §61-14-5, §61-14-6 and §61-14-7, all
13 relating to scrap metal; providing definitions; requiring
14 scrap metal dealers to obtain business licenses; requiring
15 certain information to be obtained and kept for each scrap
16 metal transaction; requiring scrap metal dealer and seller to
17 sign a purchase ticket; requiring signed statements of
18 ownership; providing that scrap metal dealer must produce
19 certain information upon request of law-enforcement officers;
20 prohibiting the possession of stolen or unlawfully obtained
21 scrap metal; prohibiting purchase of certain items of scrap
22 metal without proof of lawful possession; providing that
23 payment for scrap metal must be made by check; providing
24 circumstances when scrap metal dealers are to notify law
25 enforcement; increasing criminal penalties; authorizing
26 suspension or revocation of business license for failure to

1 properly register or obtain information; providing exemptions;
2 and providing purchase ticket information is not a public
3 record.

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

5 That the Code of West Virginia, 1931, as amended, be amended
6 by adding thereto a new article, designated §61-14-1, §61-14-2,
7 §61-14-3, §61-14-4, §61-14-5, §61-14-6 and §61-14-7, all to read as
8 follows:

9 **ARTICLE 14. SCRAP METAL THEFT PREVENTION ACT.**

10 **§61-14-1. Definitions.**

11 For the purposes of this section, the following terms have the
12 following meanings.

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

16 (2) "Purchase ticket" means the written record of any
17 transaction involving scrap metal. Purchase tickets shall be
18 serially numbered for the purpose of identification.

19 (3) "Scrap metal dealer" means any person or entity that is in
20 the business of purchasing scrap metal, any salvage yard owner or
21 operator, or any public or commercial recycling facility owner or
22 operator, or any agent or employee thereof, who purchases any form
23 of scrap metal.

24 (4) "Scrap metal" means any ferrous or nonferrous metal that
25 is no longer used for its original purpose and is capable of being
26 processed for reuse by a metal recycling facility, including, but

1 not limited to, iron, brass, wire, cable, copper, bronze, aluminum,
2 platinum, lead, solder, steel, stainless steel, catalytic
3 converters or other similar ferrous or nonferrous metals, but shall
4 not include recyclable aluminum cans.

5 (5) "Seller" means the person that enters into a transaction
6 involving scrap metal with a scrap metal dealer.

7 **§61-14-2. Registration with Tax Commissioner.**

8 No scrap metal dealer may participate in a transaction
9 involving scrap metal without first obtaining a business
10 registration certificate from the Tax Commissioner.

11 §61-14-3. Records required for purchasing scrap metal.

12 (a) A scrap metal dealer shall make a complete and accurate
13 purchase ticket for every transaction involving scrap metal. The
14 purchase ticket shall include:

15 (1) The seller's full name, permanent home address, business
16 address, E-mail address, and telephone or cellular phone number;

17 (2) The seller's date of birth;

18 (3) The seller's driver's license number;

19 (4) The description and the motor vehicle license number of
20 vehicle used to transport the scrap metal to the scrap metal
21 dealer;

22 (5) The description of the kind, character and weight of the
23 scrap metal involved in the transaction, including the gauge of the
24 scrap metal and whether it is stripped, smelted or burned; and

25 (6) The time and date of the transaction.

26 (b) The seller shall attest to the following statement, which

1 shall appear on the purchase ticket in bold face type: "All
2 information contained within this purchase ticket is complete and
3 accurate. I am the owner of the scrap metal described in this
4 purchase ticket or I am authorized to enter into this transaction
5 on behalf of the owner of the scrap metal described in this
6 purchase ticket. I understand that I will face criminal penalties
7 if: (1) The information in this purchase ticket is incorrect; (2)
8 I am not the owner of the scrap metal described herein; or (3) I am
9 not authorized to enter into this transaction on behalf of the
10 owner of the scrap metal."

11 (c) Both the seller and the scrap metal dealer shall sign the
12 purchase ticket.

13 (d) The scrap metal dealer shall also require the seller to
14 produce a valid driver's license or government issued
15 identification card. The scrap metal dealer shall verify the
16 seller's identity and make a photocopy of the license or
17 identification card and attach it to the purchase ticket.

18 (e) The scrap metal dealer shall immediately produce the
19 purchase ticket to a law-enforcement officer upon the law-
20 enforcement officer's request.

21 (f) The information required to be collected by a scrap metal
22 dealer pursuant to this section is confidential, is not public
23 record, and should only be disclosed as allowed in this article or
24 otherwise allowed by law: *Provided*, That to the extent otherwise
25 permitted by law, any investigator employed by a public utility or
26 railroad to investigate the theft of public utility or railroad

1 property may accompany a law-enforcement officer upon the premises
2 of a scrap metal dealer in the execution of a valid warrant or
3 assist law enforcement in the review of records required to be
4 retained pursuant to this section.

5 **§61-14-4. Requirements and restrictions for scrap metal**
6 **transactions.**

7 (a) No person shall have or take possession of any scrap metal
8 that he or she knows, or reasonably should know, has been stolen or
9 unlawfully obtained.

10 (b) No scrap metal dealer may purchase, possess or receive
11 scrap metal that the scrap metal dealer knows, or should reasonably
12 know, has been stolen or unlawfully obtained by the seller.

13 (c) No scrap metal dealer may enter into a transaction to
14 purchase or receive nonferrous wire that is burned, stripped or
15 smelted, in whole or in part, to remove insulation unless the
16 seller produces a written statement of the origin to the scrap
17 metal dealer that the wire was lawfully burned, stripped or
18 smelted.

19 (d) No scrap metal dealer may purchase, possess or receive any
20 of the following items of scrap metal, or any reasonably
21 recognizable part thereof, without obtaining proof that the seller
22 is in lawful possession of the item of scrap metal:

- 23 (1) Utility access covers;
- 24 (2) Street light poles or fixtures;
- 25 (3) Road or bridge guard rails;
- 26 (4) Water meter covers;

- 1 (5) Highway or street signs;
 - 2 (6) Traffic directional or traffic control signs;
 - 3 (7) Traffic light signals;
 - 4 (8) Any metal marked with any form of the name or initials of
5 a governmental entity;
 - 6 (9) Property owned and marked by a telephone, cable, electric,
7 water or other utility provider or any such wire or cable that has
8 had the sheathing removed, making ownership identification
9 impossible;
 - 10 (10) Property owned and marked by a railroad;
 - 11 (11) Cemetery markers or vases;
 - 12 (12) Historical markers;
 - 13 (13) Utility manhole covers and storm water grates;
 - 14 (14) Fire hydrant or fire hydrant caps; and
 - 15 (15) Twisted pair copper telecommunications wiring of 25 pair
16 or greater existing in 19, 22, 24 or 26 gauge.
- 17 (e) No scrap metal dealer may knowingly purchase, possess or
18 receive a stainless steel or aluminum beer keg, whether damaged or
19 undamaged, or any reasonably recognized part thereof, for the
20 intended purpose of reselling it as scrap metal unless the scrap
21 metal dealer receives the keg or keg parts from the beer
22 manufacturer or its authorized representative.
- 23 (f) Any payment made by a scrap metal dealer to a seller for
24 scrap metal must be made by a prenumbered check drawn on a regular
25 bank account in the name of the scrap metal dealer and with such
26 check made payable to the person documented as the seller. The

1 scrap metal dealer shall record the check number on the
2 corresponding purchase ticket.

3 **§61-14-5. Preserving evidence of scrap metal theft.**

4 (a) Following notification, whether verbal, in writing or
5 electronically, from a law-enforcement officer that scrap metal has
6 been reported as stolen, a scrap dealer that is in possession of
7 the scrap metal in question shall hold that scrap metal intact and
8 safe from alteration, damage or commingling and shall place an
9 identifying tag or other suitable identification upon the scrap
10 metal.

11 (b) Upon being notified of stolen scrap metal by a law-
12 enforcement officer, a scrap metal dealer shall notify a law-
13 enforcement officer if scrap metal matching the law-enforcement
14 officer's description is on the premises.

15 **§61-14-6. Penalties.**

16 (a) Any scrap metal dealer who fails to properly obtain a
17 business registration, fails to obtain any of the seller's
18 information as required by section three of this article, or fails
19 to notify law enforcement in accordance with section five of this
20 article, is guilty of a misdemeanor and, upon conviction of a first
21 offense, shall be fined not less than \$1,000 nor more than \$3,000;
22 upon conviction of a second offense, shall be fined not less than
23 \$2,000 and not more than \$4,000 and, notwithstanding section five,
24 article twelve, chapter eleven of this code, the court in which the
25 conviction occurred shall issue an order directing the Tax
26 Commissioner to suspend for a period of six months any business

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

8 (b) Any person who purchases, takes possession or receives any
9 scrap metal that the person knows, or should reasonably know, has
10 been stolen or unlawfully obtained is guilty of a misdemeanor and,
11 upon conviction of a first offense, shall be confined in jail not
12 more than one year or fined not more than \$3,000, or both confined
13 and fined; and upon conviction of a second offense, is guilty of a
14 felony and shall be confined in a correctional facility not more
15 than three years or fined not more than \$5,000, or both confined
16 and fined.

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

21 **§61-14-7. Exemptions.**

22 This article does not apply to:

23 (1) Purchase by manufacturing facilities that melt, or
24 otherwise alter the form of scrap metal and transform it into a new
25 product;

26 (2) The purchase or transportation of food and beverage

1 containers or other nonindustrial materials having a marginal value
2 per individual unit;

3 (3) A purchaser of a vehicle on which a catalytic converter is
4 installed, a purchaser of a catalytic converter intended for
5 installation on a vehicle owned or leased by the purchaser, or any
6 person who purchases, other than for purposes of resale, a
7 catalytic converter or a motor vehicle on which a catalytic
8 converter is installed, for personal, family, household or business
9 use; or

10 (4) Purchases made by a scrap metal dealer at wholesale under
11 contract or as a result of a bidding process: *Provided*, That the
12 scrap metal dealer retains and makes available for review by law
13 enforcement the contract, bill of sale or similar documentation of
14 the purchase made at wholesale under contract or as a result of a
15 bidding process: *Provided, however*, That the scrap metal dealer may
16 redact any pricing or other commercially sensitive information from
17 said contract, bill of sale or similar documentation before making
18 it available for inspection.

NOTE: The purpose of this bill is to require scrap metal dealers to obtain a business license. The bill requires certain information to be obtained for each scrap metal transaction. The requiring scrap metal dealer and seller to sign purchase ticket. The bill requires signed statements of ownership. The bill provides that scrap metal dealers must produce information upon request of law-enforcement officer. The bill prohibits the possession of stolen or unlawfully obtained scrap metal. The bill prohibits the purchase of certain items of scrap metal without proof of lawful possession. The bill provides that payments for scrap metal must be made by check. The bill sets forth circumstances when scrap metal dealers must notify law enforcement. The bill increases criminal penalties. The bill authorizes suspension or revocation of business license for failure to

properly register or obtain information. The bill defines terms. The bill also provides that purchase ticket information are not public records. The bill also provides exemptions.

This article is new; therefore, strike-throughs and underscoring have been omitted.