

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4342

BY DELEGATES ROHRBACH, SOBONYA, BATES,
ELLINGTON, MILLER, PERDUE, SHOTT, STANSBURY,
WAXMAN AND B. WHITE.

[Introduced February 1, 2016; 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, relating
2 to the purchase of scrap metal.

Be it enacted by the Legislature of West Virginia:

1 That §61-3-49 of the Code of West Virginia, 1931, as amended, be amended and
2 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 have the following meanings.

2 (1) "Business registration certificate" has the same meaning ascribed to it in section two,
3 article twelve, chapter eleven of 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 available. The list shall include the
20 dealers 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 drivers 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 sellers 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) A purchaser shall not enter into any cash transaction for the purchase of any scrap

44 metal. Payment by a purchaser for the purchase of scrap metal shall be made by check issued
45 to the seller and payable to the seller. Each check for payment shall be mailed by the purchaser
46 directly to the street address of the seller. Payment shall not be mailed to a post office box. Each
47 check shall be mailed by the purchaser within two working days of the purchase.

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

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

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

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

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

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

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

83 ~~(k)~~ (l)(1) Nothing in this section applies to a purchaser of a vehicle on which a catalytic
84 converter is installed, a purchaser of a catalytic converter intended for installation on a vehicle
85 owned or leased by the purchaser, or any person who purchases, other than for purposes of
86 resale, a catalytic converter or a motor vehicle on which a catalytic converter is installed, for
87 personal, family, household or business use.

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

95 ~~(l)~~ (m) Any person who knowingly or with fraudulent intent violates any provision of this

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

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

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

114 ~~(o)~~ (p) No scrap metal dealer may purchase, possess or receive any of the following items
115 of scrap metal, or any reasonably recognizable part thereof, without obtaining written
116 documentation which reflects that the seller is authorized to possess and sell the item or items
117 and that the seller is in lawful possession of the item of scrap metal:

- 118 (1) Utility access covers;
119 (2) Street light poles or fixtures;
120 (3) Road or bridge guard rails;
121 (4) Water meter covers;

- 122 (5) Highway or street signs;
- 123 (6) Traffic directional or traffic control signs;
- 124 (7) Traffic light signals;
- 125 (8) Any metal marked with any form of the name or initials of a governmental entity;
- 126 (9) Property marked as or readily identifiable as owned by a telephone, cable, electric,
127 water or other utility provider;
- 128 (10) Property owned and marked by a railroad;
- 129 (11) Cemetery markers or vases;
- 130 (12) Historical markers;
- 131 (13) Utility manhole covers and storm water grates; and
- 132 (14) Fire hydrant or fire hydrant caps; or
- 133 (15) Twisted pair copper telecommunications wiring of twenty-five pair or greater in
134 nineteen, twenty-two, twenty-four or twenty-six gauge.
- 135 ~~(p)~~ (q) Nothing in this section prohibits a scrap dealer from purchasing or taking
136 possession of scrap metal knowing or have reason to know that it is stolen or obtained illegally if
137 it is done pursuant to a written agreement with law-enforcement officials.

NOTE: The purpose of this bill is to prohibit cash payments for scrap metal and require scrap metal dealers to pay only by check for deliveries.

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