

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 626

BY SENATORS TRUMP, WELD, WOELFEL, PHILLIPS,

ROMANO, BALDWIN, AND LINDSAY

[Passed April 8, 2021; in effect 90 days from passage (July 7, 2021)]

1 AN ACT 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; requiring scrap metal dealer
8 to make a good faith effort to record identifying information on a catalytic converter;
9 creating the criminal offense of possession of a catalytic converter without proof of
10 ownership or authority to possess; requiring that persons charged with possession of a
11 single catalytic converter are to be charged by citation and not be subject to arrest;
12 establishing an absolute defense to the criminal action; creating the criminal offense of a
13 person making an Internet-based ad soliciting the sale or purchase of a catalytic converter
14 under certain conditions; 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
10 steel 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;

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 shall maintain a list
19 of scrap metal dealers and make it publicly available. The list shall include the dealer's business
20 address, hours of operation, physical address, phone number, facsimile number, if any, and the
21 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 the 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
48 purchase made at wholesale under contract or as a result of a bidding process: *Provided*,
49 *however*, That the purchaser may redact any pricing or other commercially sensitive information
50 from the contract, bill of sale, or similar documentation before making it available for inspection.

51 (f) A purchaser of scrap metal may not knowingly purchase or possess a stainless steel
52 or 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 his or her place of business, the purchaser shall file the records with the local
63 detachment of the State Police and with the chief of police of the municipality or the sheriff of the
64 county he or she is transacting business within 72 hours of completion of the purchase. The
65 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 the 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 motor vehicle on which a catalytic
79 converter is installed, a scrap metal dealer purchasing a detached catalytic converter or
80 converters accompanying the motor vehicle or motor vehicles from which it or they were removed,
81 a purchaser of a catalytic converter intended for installation on a vehicle owned or leased by the
82 purchaser, or any person who purchases, other than for purposes of resale, a catalytic converter,
83 or a motor vehicle on which a catalytic converter is installed, for personal, family, household, or
84 business use.

85 (2) In transactions not exempted by subdivision (1) of this subsection, any person
86 delivering one or more automobile catalytic converters to a scrap metal dealer shall, in addition
87 to the requirements set forth in subsection (c) of this section, execute a document containing the
88 name of the person or entity from whom or which the catalytic converter or converters being
89 delivered was received and affirming that he or she is the lawful owner of the catalytic converters
90 or is authorized by the lawful owner to sell the catalytic converters. Next to his or her signature
91 the person delivering the catalytic converter or converters shall place a clear impression of his or
92 her index finger or thumb that is in ink and free of smearing, or the scrap metal dealer may elect
93 to obtain the fingerprint electronically. This documentation shall be maintained consistent with
94 subsection (c) of this section. Payment shall be made by check payable to the seller. No scrap
95 metal dealer may process, sell, or remove a catalytic converter from its premises for at least 14
96 days after its acquisition: *Provided*, That the 14-day retention requirement may be reduced to five
97 days if, within the first consecutive five-day period, the scrap dealer provides all documentation
98 required under this section to the local detachment of the State Police and: (A) The chief of police
99 of the municipality; or (B) the sheriff of the county in which he or she is transacting business. A
100 scrap metal dealer shall make a good faith effort to record any identifying information on a catalytic
101 converter received or purchased and shall not purchase or take possession of a catalytic
102 converter if the identifying information on it has been manually altered.

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

111 offense, shall be fined not less than \$3,000 and not more than \$5,000 and, notwithstanding the
112 provisions of §11-12-5 of this code, the court in which the conviction occurred shall issue an order
113 directing the Tax Commissioner to cancel any business registration certificate held by that person
114 and state the date the cancellation takes effect.

115 (m) A person may not have or take possession of any scrap metal that he or she knows,
116 or has reason to know, has been stolen or unlawfully obtained. Any person violating this
117 subsection is guilty of larceny.

118 (n) A scrap metal dealer may not purchase, possess, or receive scrap metal that the scrap
119 metal dealer knows, or has reason to know, has been stolen or unlawfully obtained by the seller.
120 Any person violating this subsection is guilty of larceny.

121 (o) A scrap metal dealer may not purchase, possess, or receive any of the following items
122 of scrap metal, or any reasonably recognizable part thereof, without obtaining written
123 documentation which reflects that the seller is authorized to possess and sell the item or items
124 and that the seller is in lawful possession of the item of scrap metal:

125 (1) Utility access covers;

126 (2) Street light poles or fixtures;

127 (3) Road or bridge guard rails;

128 (4) Water meter covers;

129 (5) Highway or street signs;

130 (6) Traffic directional or traffic control signs;

131 (7) Traffic light signals;

132 (8) Any metal marked with any form of the name or initials of a governmental entity;

133 (9) Property marked as or readily identifiable as owned by a telephone, cable, electric,
134 water, or other utility provider;

135 (10) Property owned and marked by a railroad;

136 (11) Cemetery markers or vases;

- 137 (12) Historical markers;
- 138 (13) Utility manhole covers and storm water grates;
- 139 (14) Fire hydrant or fire hydrant caps; or
- 140 (15) Twisted pair copper telecommunications wiring of 25 pair or greater in 19, 22, 24, or
- 141 26 gauge.

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

**§61-3-49c. Possession of a catalytic converter without documentation of ownership or
authority to possess; advertising the sale or purchase of a catalytic converter.**

1 (a) As used in this section, catalytic converter means a motor vehicle exhaust emission
2 control that reduces toxic gases and pollutants from an internal combustion engine.

3 (b) Any person in possession of a catalytic converter which had previously been installed
4 on a motor vehicle, or parts thereof, shall have in his or her possession written documentation of
5 ownership or authorization to possess the catalytic converter. Any person who violates this
6 subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than
7 \$1,000 or confined in jail not more than one year, or both fined and confined.

8 (1) Each catalytic converter possessed in violation of this subsection shall constitute a
9 separate offense.

10 (2) Any catalytic converter possessed in violation of this subsection is subject to seizure
11 at the time of arrest.

12 (3) A person possessing a single catalytic converter in violation of this subsection shall for
13 the offense be charged by citation and not subject to arrest for that offense.

14 (4) Notwithstanding the provisions of this subsection, presentation to the court in which
15 charges alleging a violation of said subsection are pending sufficient evidence to show lawful
16 ownership or authority to possess constitutes an absolute defense to the charge or charges.

17 (c) Any person placing an advertisement on an Internet-based platform, including, but not
18 limited to, Facebook or Twitter, soliciting the sale or purchase of a catalytic converter in this state
19 must have completed the requirements to be a scrap metal recycler in §61-3-49(b) of this code,
20 including any other business requirements. Any person who violates this subsection shall be guilty
21 of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined
22 in jail not more than one year, or both fined and confined.

23 (1) Each catalytic converter possessed in violation of this subsection shall constitute a
24 separate offense.

25 (2) Any catalytic converter possessed in violation of this subsection is subject to seizure
26 at the time of arrest.

27 (3) Notwithstanding the provisions of this subsection, presentation to the court in which
28 charges alleging a violation of said subsection are pending sufficient evidence to show lawful
29 ownership or authority to possess constitutes an absolute defense to the charge or charges.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman, Senate Committee

.....
Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

.....
Clerk of the Senate

.....
Clerk of the House of Delegates

.....
President of the Senate

.....
Speaker of the House of Delegates

The within this the.....
Day of, 2021.

.....
Governor