

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 528**

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

7 _____
8 [Originating in the Committee on the Judiciary;
9 reported February 24, 2012.]
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12 A BILL to amend and reenact §61-3-49 of the Code of West Virginia,
13 1931, as amended, relating to scrap metal dealers and scrap
14 metal generally; providing definitions; requiring scrap metal
15 dealers to obtain business licenses; requiring certain
16 information to be obtained and kept for each scrap metal
17 transaction; requiring scrap metal dealer and seller to sign
18 a purchase ticket; requiring signed statements of ownership;
19 providing that scrap metal dealer must produce certain
20 information upon request of law-enforcement officers;
21 prohibiting the possession of stolen or unlawfully obtained
22 scrap metal; requiring the obtaining of a thumb print of the
23 seller in transactions making catalytic converters;
24 prohibiting purchase of certain items of scrap metal without
25 proof of lawful possession; and establishing offenses and
26 penalties.

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

28 That §61-3-49 of the Code of West Virginia, 1931, as amended,

1 be amended and reenacted to read as follows:

2 **ARTICLE 3. CRIMES AGAINST PROPERTY.**

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

7 (a) For the purposes of this section, the following terms have
8 the following meanings.

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

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

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

21 (b) In addition to any requirement necessary to do business in
22 this state:

23 (1) A scrap metal dealer must have a current valid business
24 registration certificate from the Tax Commissioner;

25 (2) A scrap metal dealer must register any scales used for
26 weighing scrap metal with the Division of Labor Weights and
27 Measures office; and

28 (3) A scrap metal dealer must provide a notice of recycling

1 activity to the Department of Environmental Protection.

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

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

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

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

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

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

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

21 ~~(c)~~ (d) A purchaser also shall require and retain from the
22 seller of the scrap metal the following:

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

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

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

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

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

24 ~~(f) Within thirty days of the effective date of the amendment~~
25 ~~and reenactment of this section during the second extraordinary~~
26 ~~session of the Legislature in two thousand seven, the West Virginia~~
27 ~~State Police shall make available a standard form purchasers of~~
28 ~~scrap metal may use to record all the information required under~~

1 ~~subsections (b) and (c) of this section.~~

2 (g) Using ~~the form authorized under subsection (f) above a~~
3 form provided by the West Virginia State Police, or his or her own
4 form, a purchaser of scrap metal shall retain the records required
5 by this section at his or her place of business for not less than
6 three years after the date of the purchase. Upon completion of a
7 purchase, the records required to be retained at a purchaser's
8 place of business shall be available for inspection by any law-
9 enforcement officer or, upon written request and during the
10 purchaser's regular business hours, by any investigator employed by
11 a public utility or railroad to investigate the theft of public
12 utility or railroad property: *Provided*, That in lieu of the
13 purchaser keeping the records at their place of business, the
14 purchaser shall file the records with the local detachment of the
15 State Police and with the chief of police of the municipality or
16 the sheriff of the county wherein he or she is transacting business
17 within seventy-two hours of completion of the purchase. The
18 records shall be retained by the State Police and the chief of
19 police of the municipality or the sheriff for a period of not less
20 than three years.

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

27 (i) Upon the entry of a final determination and order by a
28 court of competent jurisdiction, scrap metal found to have been

1 misappropriated, stolen or taken under false pretenses may be
2 returned to the proper owner of such material.

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

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

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

26 (l) Any person who knowingly or with fraudulent intent
27 violates any provision of this section for which no penalty is
28 specifically set forth, including the knowing failure to make a

1 report or the knowing falsification of any required information, is
2 guilty of a misdemeanor and, upon conviction of a first offense
3 thereof, shall be fined not less than \$1,000 nor more than \$3,000;
4 upon conviction of a second offense thereof, shall be fined not
5 less than \$2,000 and not more than \$4,000 and, notwithstanding the
6 provisions of section five, article twelve, chapter eleven of this
7 code, the court in which the conviction occurred shall issue an
8 order directing the Tax Commissioner to suspend for a period of six
9 months any business registration certificate held by that person;
10 and upon conviction of a third or subsequent offense thereof shall
11 be fined not less than \$3,000 and not more than \$5,000 and,
12 notwithstanding the provisions of section five, article twelve,
13 chapter eleven of this code, the court in which the conviction
14 occurred shall issue an order directing the Tax Commissioner to
15 cancel any business registration certificate held by that person
16 and state the date said cancellation shall take effect.

17 (m) No person shall have or take possession of any scrap metal
18 that he or she knows, or has reason to know, has been stolen or
19 unlawfully obtained. Any person violating this subsection shall be
20 deemed guilty of larceny.

21 (n) No scrap metal dealer may purchase, possess or receive
22 scrap metal that the scrap metal dealer knows, or has reason to
23 know, has been stolen or unlawfully obtained by the seller. Any
24 person violating this subsection shall be deemed guilty of larceny.

25 (o) No scrap metal dealer may purchase, possess or receive any
26 of the following items of scrap metal, or any reasonably
27 recognizable part thereof, without obtaining written documentation
28 which reflects that the seller is authorized to possess and sell

1 the item or items that the seller is in lawful possession of the
2 item of scrap metal:

- 3 (1) Utility access covers;
- 4 (2) Street light poles or fixtures;
- 5 (3) Road or bridge guard rails;
- 6 (4) Water meter covers;
- 7 (5) Highway or street signs;
- 8 (6) Traffic directional or traffic control signs;
- 9 (7) Traffic light signals;
- 10 (8) Any metal marked with any form of the name or initials of
11 a governmental entity;
- 12 (9) Property marked as or readily identifiable as owned by a
13 telephone, cable, electric, water or other utility provider;
- 14 (10) Property owned and marked by a railroad;
- 15 (11) Cemetery markers or vases;
- 16 (12) Historical markers;
- 17 (13) Utility manhole covers and storm water grates; and
- 18 (14) Fire hydrant or fire hydrant caps; or
- 19 (15) Twisted pair copper telecommunications wiring of twenty-
20 five pair or greater in nineteen, twenty-two, twenty-four or
21 twenty-six gauge.

22 (p) Nothing in this section shall prohibit a scrap dealer from
23 purchasing or taking possession of scrap metal knowing or have
24 reason to know that it is stolen or obtained illegally if it is
25 done pursuant to a written agreement with law enforcement.