

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2571

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MANDT, WALKER AND LINVILLE

[Introduced January 21, 2019; Referred

to the Committee on Small Business,

Entrepreneurship and Economic Development then

Government Organization.]

1 A BILL to amend and reenact §61-3-49 of the Code of West Virginia, 1931, as amended, relating
 2 to providing that the sale and purchase of copper as scrap metal may not be completed
 3 with the payment of cash; and requiring a purchaser to pay only by check.

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 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 publicly available. The list shall include the
20 dealer's 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~~ the purchase that shall
23 contain 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 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) A purchaser may not enter into a cash transaction for the purchase of any copper scrap
44 metal. Payment by a purchaser for the purchase of copper scrap metal shall be made by check
45 issued to the seller and payable to the seller. Each check for payment shall be mailed by the

46 purchaser directly to the street address of the seller as shown on a valid proof of identification as
47 required by §61-3-49(d)(2) of this code. Payment may not be mailed to a post office box. Each
48 check shall be mailed by the purchaser within two working days of the purchase.

49 ~~(e)~~ (f) It is unlawful for any purchaser to purchase any scrap metal without obtaining and
50 recording the information required under §61-3-49(c) and §61-3-49(d) (2) of this code. The
51 provisions of this subsection do not apply to purchases made at wholesale under contract or as
52 a result of a bidding process: *Provided*, That the purchaser retains and makes available for review
53 consistent with §61-3-49(h) of this code the contract, bill of sale or similar documentation of the
54 purchase made at wholesale under contract or as a result of a bidding process: *Provided*,
55 *however*, That the purchaser may redact any pricing or other commercially sensitive information
56 from ~~said~~ the contract, bill of sale or similar documentation before making it available for
57 inspection.

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

62 ~~(g)~~ (h) Using a form provided by the West Virginia State Police, or his or her own form, a
63 purchaser of scrap metal shall retain the records required by this section at his or her place of
64 business for not less than three years after the date of the purchase. Upon completion of a
65 purchase, the records required to be retained at a purchaser's place of business shall be available
66 for inspection by any law-enforcement officer or, upon written request and during the purchaser's
67 regular business hours, by any investigator employed by a public utility or railroad to investigate
68 the theft of public utility or railroad property: *Provided*, That in lieu of the purchaser keeping the
69 records at their place of business, the purchaser shall file the records with the local detachment
70 of the State Police and with the chief of police of the municipality or the sheriff of the county
71 wherein he or she is transacting business within 72 hours of completion of the purchase. The
72 records shall be retained by the State Police and the chief of police of the municipality or the

73 sheriff for a period of not less than three years.

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

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

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

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

90 (2) In transactions not exempted by §61-3-49(l)(1) of this code, any person delivering five
91 or more automobile catalytic converters to a scrap metal dealer shall, in addition to the
92 requirements set forth in §61-3-49(c) of this code, execute a document stating he or she is the
93 lawful owner of the catalytic converters, or authorized by the lawful owner to sell the catalytic
94 converters. Next to his or her signature he or she shall place a clear impression of his or her index
95 finger or thumb that is in ink and free of smearing. This documentation shall be maintained
96 consistent with §61-3-49(c) of this code.

97 ~~(l)~~ (m) Any person who knowingly or with fraudulent intent violates any provision of this
98 section for which no penalty is specifically set forth, including the knowing failure to make a report
99 or the knowing falsification of any required information, is guilty of a misdemeanor and, upon

100 conviction of a first offense thereof, shall be fined not less than \$1,000 nor more than \$3,000;
101 upon conviction of a second offense thereof, shall be fined not less than \$2,000 and not more
102 than \$4,000 and, notwithstanding the provisions of §11-12-5 of this code, the court in which the
103 conviction occurred shall issue an order directing the Tax Commissioner to suspend for a period
104 of six months any business registration certificate held by that person; and upon conviction of a
105 third or subsequent offense thereof shall be fined not less than \$3,000 and not more than \$5,000
106 and, notwithstanding §11-12-5 of this code, the court in which the conviction occurred shall issue
107 an order directing the Tax Commissioner to cancel any business registration certificate held by
108 that person and state the date said cancellation shall take effect.

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

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

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

- 119 (1) Utility access covers;
- 120 (2) Street light poles or fixtures;
- 121 (3) Road or bridge guard rails;
- 122 (4) Water meter covers;
- 123 (5) Highway or street signs;
- 124 (6) Traffic directional or traffic control signs;
- 125 (7) Traffic light signals;
- 126 (8) Any metal marked with any form of the name or initials of a governmental entity;

- 127 (9) Property marked as or readily identifiable as owned by a telephone, cable, electric,
128 water or other utility provider;
- 129 (10) Property owned and marked by a railroad;
- 130 (11) Cemetery markers or vases;
- 131 (12) Historical markers;
- 132 (13) Utility manhole covers and storm water grates; and
- 133 (14) Fire hydrant or fire hydrant caps; or
- 134 (15) Twisted pair copper telecommunications wiring of 25 pair or greater in 19, 22, 24 or
135 26 gauge.
- 136 ~~(p)~~ (q) Nothing in this section prohibits a scrap dealer from purchasing or taking
137 possession of scrap metal knowing or have reason to know that it is stolen or obtained illegally if
138 it is done pursuant to a written agreement with law-enforcement officials.

NOTE: The purpose of this bill is to provide that the sale and purchase of copper as scrap metal may not be completed with the payment of cash, but by check paid to the seller at the address of the seller appearing on a valid driver's license or identification card issued by the West Virginia Division of Motor Vehicles, or any other valid photo identification of the seller issued by any other state or the federal government.

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