WEST VIRGINIA CODE: §61-3-49

§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.

(a) For the purposes of this section, the following terms have the following meanings:

(1) “Business registration certificate” has the same meaning ascribed to it in §11-12-2 of this code.

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

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

(b) In addition to any requirement necessary to do business in this state, a scrap metal dealer shall:

(1) Have a current valid business registration certificate from the Tax Commissioner;

(2) Register any scales used for weighing scrap metal with the Division of Labor Weights and Measures;

(3) Provide a notice of recycling activity to the Department of Environmental Protection; and

(4) Register as a scrap metal dealer with the Secretary of State, who shall maintain a list of scrap metal dealers and make it publicly available. The list shall include the dealer’s business address, hours of operation, physical address, phone number, facsimile number, if any, and the name of the owners or principal officers of the business.

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

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

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

(3) The time and date of the transaction;

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

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

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

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

(2) A photocopy of a valid driver's license or identification card issued by the West Virginia Division of Motor Vehicles of the person delivering the scrap metal, or in lieu thereof, any other valid photo identification of the seller issued by any other state or the federal government: *Provided*, That, if the purchaser has a copy of the seller's valid photo identification on file, the purchaser may reference the identification that is on file, without making a separate photocopy for each transaction.

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

(f) A purchaser of scrap metal may not knowingly purchase or possess a stainless steel or aluminum beer keg, whether damaged or undamaged, or any reasonably recognizable part thereof, for the intended purpose of reselling as scrap metal unless the purchaser receives the keg or keg parts from the beer manufacturer or its authorized representative.

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

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

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

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

(k)(1) Nothing in this section applies to a purchaser of a motor vehicle on which a catalytic converter is installed, a scrap metal dealer purchasing a detached catalytic converter or converters accompanying the motor vehicle or motor vehicles from which it or they were removed, a purchaser of a catalytic converter intended for installation on a vehicle owned or leased by the purchaser, or any person who purchases, other than for purposes of resale, a catalytic converter, or a motor vehicle on which a catalytic converter is installed, for personal, family, household, or business use.

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

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

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or the knowing falsification of any required information, is guilty of a misdemeanor and, upon conviction of a first offense, shall be fined not less than $1,000 nor more than $3,000; upon conviction of a second offense, shall be fined not less than $2,000 and not more than $4,000 and, notwithstanding the provisions of §11-12-5 of this code, the court in which the conviction occurred shall issue an order directing the Tax Commissioner to suspend for a period of six months any business registration certificate held by that person; and upon conviction of a third or subsequent offense, shall be fined not less than $3,000 and not more than $5,000 and, notwithstanding the provisions of §11-12-5 of this code, the court in which the conviction occurred shall issue an order directing the Tax Commissioner to cancel any business registration certificate held by that person and state the date the cancellation takes effect.

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

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

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

(1) Utility access covers;

(2) Street light poles or fixtures;

(3) Road or bridge guard rails;

(4) Water meter covers;

(5) Highway or street signs;

(6) Traffic directional or traffic control signs;

(7) Traffic light signals;

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

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

(10) Property owned and marked by a railroad;

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(11) Cemetery markers or vases;

(12) Historical markers;

(13) Utility manhole covers and storm water grates;

(14) Fire hydrant or fire hydrant caps; or

(15) Twisted pair copper telecommunications wiring of 25 pair or greater in 19, 22, 24, or 26 gauge.

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

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