WEST VIRGINIA LEGISLATURE
SECOND EXTRAORDINARY SESSION, 2007

ENROLLED

House Bill No. 202
(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

Passed August 21, 2007
In Effect Ninety Days from Passage
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-12-5a; and to amend and reenact §61-3-49 of said code, all relating to the receipt and transfer of any form of copper, aluminum, brass, lead or other nonferrous metal, stainless steel kegs or steel railroad track and track material; providing definitions; providing restrictions on applying for and grounds for cancelling business registration certificates; imposing additional reporting and record retention requirements for certain purchasers of such metals; requiring the State Police to develop a standard form for reporting purchase information; providing for the inspection of records by law enforcement and investigators employed by public utilities and railroads; permitting investigators employed by public utilities and railroads to assist law enforcement investigations; providing for the return of such metals under certain conditions; and increasing criminal penalties for violations.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-12-5a; and that §61-3-49 of said code be amended and reenacted, all to read as follows:
CHAPTER 11. TAXATION.

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-5a. Prohibition on certificate being obtained by person connected to illegal activities involving scrap metal.

(a) For the purposes of this section, the term “scrap metal” shall have the same meaning ascribed to it in section forty-nine, article three, chapter sixty-one of this code.

(b) No person that has had a previous business registration certificate cancelled pursuant to subsection (j), section forty-nine, article three, chapter sixty-one of this code may apply for a subsequent business registration certificate that would permit them to own, conduct, or operate any business involving the purchase of scrap metal or the operation or any salvage yard or recycling facility.

(c) No person may apply for a business registration certificate that would permit them to own, conduct, or operate any business involving the purchase of scrap metal or the operation or any salvage yard or recycling facility in which a person convicted in the previous two years of a third or subsequent offense under section forty-nine, article three, chapter sixty-one of this code will hold a financial interest, be employed, or otherwise be involved in the day-to-day operations of said business.

(d) Upon applying for a business registration certificate, pursuant to section four of this article, that would permit the applicant to own, conduct, or operate any business involving the purchase of scrap metal or the operation of any salvage yard or recycling facility, the Tax Commissioner shall require as part of the application a statement by the applicant that to the best of his or her knowledge and belief no person that has been convicted in the previous two years of a third or subsequent offense under section forty-nine, article three, chapter sixty-one of this code will hold a financial interest, be employed, or otherwise be involved in the day-to-day operations of said business.
CHAPTER 61. CRIMES AND PUNISHMENT.

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.

(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 section two, article twelve, chapter eleven of this code.

(2) “Purchaser” means any person in the business of purchasing scrap metal, 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.

(3) “Scrap metal” means any form of copper, aluminum, brass, lead or other nonferrous metal of any kind, stainless steel kegs or steel railroad track and track material.

(b) 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;

(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.

(c) 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 said 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.

(d) It shall be unlawful for any purchaser to purchase any scrap metal without obtaining and recording the information required under subsections (b) and (c) 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 (f) 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 said contract, bill of sale, or similar documentation before making it available for inspection.

(e) Within thirty days of the effective date of the amendment and reenactment of this section during the second extraordinary session of the Legislature in two thousand seven, the West Virginia State Police shall make available a standard form purchasers of scrap metal may use to record all the information required under subsections (b) and (c) of this section.
(f) Using the form authorized under subsection (e) above, 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 their 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 wherein he or she is transacting business within seventy-two 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.

(g) 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 valid warrant or assist law enforcement in the review of records required to be retained pursuant to this section.

(h) 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 such material.

(i) 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.

(j) Any person who knowingly or with fraudulent intent violates any provision of this section, including the knowing
failure to make a report or the knowing falsification of any required information, is guilty of a misdemeanor and, upon conviction of a first offense thereof, shall be fined not less than one thousand dollars nor more than three thousand dollars; upon conviction of a second offense thereof, shall be fined not less than two thousand dollars and not more than four thousand dollars and, notwithstanding the provisions of section five, article twelve, chapter eleven 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 thereof shall be fined not less than three thousand dollars and not more than five thousand dollars and, notwithstanding the provisions of section five, article twelve, chapter eleven 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 said cancellation shall take effect.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety 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 is approved this the 6th day of September, 2007.

Governor
PRESENTED TO THE GOVERNOR

Date 8/27/07

Time 11:55 AM