ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2748

(By Delegates DeLong, Webster, Craig, Amores and Mahan)

Passed March 7, 2007

In Effect Ninety Days from Passage
AN ACT to amend and reenact §61-3-49 of the Code of West Virginia, 1931, as amended; relating to the receipt and transfer of scrap metal; imposing additional reporting and record retention requirements for certain purchasers of copper, aluminum, brass, lead or other nonferrous metal or steel railroad track and track material; clarifying procedure by which law enforcement officers may take custody of materials made of such metals; providing for the inspection of records and materials by investigators employed by public utilities and railroads; 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 § 61-3-49 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:
ARTICLE 3. CRIMES AGAINST PROPERTY

§61-3-49. Purchase of nonferrous metals or steel railroad track and track materials by scrap metal purchasing businesses, salvage yards, or recycling facilities; certificates, records and reports of such purchases; criminal penalties.

(a) 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 copper, aluminum, brass, lead or other nonferrous metal of any kind, or steel railroad track and track material, shall comply with the provisions of this section.

(b) The purchaser of such metals shall make and maintain a record of each transaction which shall contain the following information:

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

2. (2) A description and the motor vehicle license number of any vehicle used to transport any form of copper, aluminum, brass, lead or other nonferrous metal or steel to the place of purchase;

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

4. (4) A complete description of the kind, character and weight of the copper, aluminum, brass, lead or other nonferrous metal or steel railroad track and track material purchased; and

5. (5) A statement whether the copper, aluminum, brass, lead or other nonferrous metal or steel railroad track and track material was purchased, taken as collateral for a loan, or taken on consignment.
(c) The person purchasing the copper, aluminum, brass, lead or other nonferrous metal or steel railroad track and track material shall also require and retain from the seller the following information:

(1) A signed certificate of ownership of the copper, aluminum, brass, lead or other nonferrous metal or steel railroad track and track material being sold or signed authorization from the owner to sell; 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 copper, aluminum, brass, lead or other nonferrous metal or steel railroad track and track material, or in lieu thereof, any other identification card containing a photograph of the seller as issued by any state or federal agency of the United States: Provided, That, if the buyer has a copy of the seller’s photo identification on file, the buyer may reference the identification that is on file, without making a separate photocopy for each transaction.

(d) A law-enforcement officer may at any time during an investigation require the purchaser of any copper, aluminum, brass, lead or other nonferrous metal or steel railroad track and track material to present such items for inspection, upon demand. A law-enforcement officer may obtain a warrant to take into custody a representative sample of any copper, aluminum, brass, lead or other nonferrous metal or steel railroad track or track material which he or she has probable cause to believe may have been misappropriated, stolen, or taken under false pretenses. Upon the entry of a final determination and order by a court of competent jurisdiction, copper, aluminum, brass, lead or other nonferrous metal or steel railroad track or track material found to have been misappropriated, stolen or taken under false pretenses may be returned to the proper owner of such material.
(e) Any person employed by a public utility or railroad to investigate the theft of utility or railroad property shall be permitted to inspect the purchased copper, aluminum, brass, lead or other nonferrous metal or steel railroad track or track material that is in the possession of the buyer, for the purpose of detecting and identifying stolen utility or railroad property.

(f) It shall be unlawful for any of the aforementioned persons to purchase any copper, aluminum, brass, lead or other nonferrous metal or steel railroad track and track material without obtaining the information set forth in subsections (b) and (c) of this section. Such information shall be available for inspection by any law-enforcement officer or any investigator employed by a public utility or railroad to investigate the theft of public utility or railroad property, and must be maintained by the purchaser for not less than one year after the date of the purchase.

(g) 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.

(h) 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 any business license held by that person shall be suspended for six months; 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, any business licenses held by that person shall be revoked. Any person convicted for a third or
subsequent offense under this section and any member of his
or her immediate family shall be prohibited from applying
for, holding or obtaining any business license which would
permit them to own, conduct or operate any business which
would involve the purchase of scrap metal or the operation of
any salvage yard or recycling facility for a period of two
years.

For purposes of this section the term “immediate family”
means the spouse, child, step-child, parents, mother-in-law
and father-in-law of any person convicted pursuant to this
section.
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 bill disapproved this the 20th day of March, 2007.

Governor