

HB. 211

FILED

2008 JUL -9 PM 4: 15

OFFICE OF THE  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
SECOND EXTRAORDINARY SESSION, 2008



**ENROLLED**

**House Bill No. 211**

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)  
[By Request of the Executive]



Passed June 25, 2008

In Effect Ninety Days from Passage

ENROLLED FILE

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SECRET

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(BY MR. SPEAKER, MR. THOMPSON, AND DELEGATE ARMSTEAD)  
[BY REQUEST OF THE EXECUTIVE]

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[Passed June 25, 2008; 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 generally to records and reports of scrap metal purchasers; amending the definition of scrap metal to include catalytic converters; exempting certain purchasers of vehicles and replacement catalytic converters for vehicles from the reporting requirements of this section; and providing for criminal penalties.

*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 to read as follows:

**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  
2    have the following meanings.

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

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

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

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

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

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

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

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

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

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

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

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

43 (d) It is unlawful for any purchaser to purchase any scrap  
44 metal without obtaining and recording the information  
45 required under subsections (b) and (c) of this section. The  
46 provisions of this subsection do not apply to purchases made  
47 at wholesale under contract or as a result of a bidding  
48 process: *Provided*, That the purchaser retains and makes  
49 available for review consistent with subsection (f) of this  
50 section the contract, bill of sale, or similar documentation of  
51 the purchase made at wholesale under contract or as a result  
52 of a bidding process: *Provided, however*, That the purchaser  
53 may redact any pricing or other commercially sensitive  
54 information from said contract, bill of sale, or similar  
55 documentation before making it available for inspection.

56 (e) No purchaser of scrap metal may knowingly purchase  
57 or possess a stainless steel or aluminum beer keg, whether  
58 damaged or undamaged, or any reasonably recognizable part  
59 thereof, for the intended purpose of reselling as scrap metal

60 unless the purchaser receives the keg or keg parts from the  
61 beer manufacturer or its authorized representative.

62 (f) Within thirty days of the effective date of the  
63 amendment and reenactment of this section during the second  
64 extraordinary session of the Legislature in two thousand  
65 seven, the West Virginia State Police shall make available a  
66 standard form purchasers of scrap metal may use to record all  
67 the information required under subsections (b) and (c) of this  
68 section.

69 (g) Using the form authorized under subsection (f) above,  
70 or his or her own form, a purchaser of scrap metal shall retain  
71 the records required by this section at his or her place of  
72 business for not less than three years after the date of the  
73 purchase. Upon completion of a purchase, the records  
74 required to be retained at a purchaser's place of business shall  
75 be available for inspection by any law-enforcement officer  
76 or, upon written request and during the purchaser's regular  
77 business hours, by any investigator employed by a public  
78 utility or railroad to investigate the theft of public utility or  
79 railroad property: *Provided*, That in lieu of the purchaser  
80 keeping the records at their place of business, the purchaser  
81 shall file the records with the local detachment of the State  
82 Police and with the chief of police of the municipality or the  
83 sheriff of the county wherein he or she is transacting business  
84 within seventy-two hours of completion of the purchase. The  
85 records shall be retained by the State Police and the chief of  
86 police of the municipality or the sheriff for a period of not  
87 less than three years.

88 (h) To the extent otherwise permitted by law, any  
89 investigator employed by a public utility or railroad to  
90 investigate the theft of public utility or railroad property may  
91 accompany a law-enforcement officer upon the premises of

92 a purchaser in the execution of a valid warrant or assist law  
93 enforcement in the review of records required to be retained  
94 pursuant to this section.

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

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

105 (k) Nothing in this section applies to a purchaser of a  
106 vehicle on which a catalytic converter is installed, a  
107 purchaser of a catalytic converter intended for installation on  
108 a vehicle owned or leased by the purchaser, or any person  
109 who purchases, other than for purposes of resale, a catalytic  
110 converter or a motor vehicle on which a catalytic converter  
111 is installed, for personal, family, household, or business use.

112 (l) Any person who knowingly or with fraudulent intent  
113 violates any provision of this section, including the knowing  
114 failure to make a report or the knowing falsification of any  
115 required information, is guilty of a misdemeanor and, upon  
116 conviction of a first offense thereof, shall be fined not less  
117 than one thousand dollars nor more than three thousand  
118 dollars; upon conviction of a second offense thereof, shall be  
119 fined not less than two thousand dollars and not more than  
120 four thousand dollars and, notwithstanding the provisions of  
121 section five, article twelve, chapter eleven of this code, the  
122 court in which the conviction occurred shall issue an order

123 directing the Tax Commissioner to suspend for a period of  
124 six months any business registration certificate held by that  
125 person; and upon conviction of a third or subsequent offense  
126 thereof shall be fined not less than three thousand dollars and  
127 not more than five thousand dollars and, notwithstanding the  
128 provisions of section five, article twelve, chapter eleven of  
129 this code, the court in which the conviction occurred shall  
130 issue an order directing the Tax Commissioner to cancel any  
131 business registration certificate held by that person and state  
132 the date said cancellation shall take effect.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Chandy White*  
Chairman Senate Committee

*[Signature]*  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

*Daniel E. White*  
Clerk of the Senate

*Greg M. Sear*  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
President of the Senate

*[Signature]*  
Speaker of the House of Delegates

The within *is appended* this the *9<sup>th</sup>*  
day of *July*, 2008.

*[Signature]*  
Governor



PRESENTED TO THE  
GOVERNOR

JUN 28 2008

Time 1:39 pm