



## West Virginia Metals Theft Statute

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*This document is provided as background information for ReMA members. It does not constitute legal advice. Recyclers should consult their attorneys / legal advisors regarding the application of each state's statutes and regulations to each company's individual circumstances. Other state laws governing precious metals, secondhand materials, vehicles, and other materials may apply.*

Current as of July 30, 2021

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**Please Note:** Amendments by [2021 West Virginia SB 626](#), effective July 7, 2021, are included and noted in this summary.

### Materials Covered and Other Definitions

"Scrap Metal" means any nonferrous metal of any kind, a catalytic converter or any materials derived from a catalytic converter, or steel railroad track and track material.

"Scrap Metal Dealer" is used but undefined. "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.

As used in [§ 31-2-17](#), "Railroad Scrap Metal" means any materials derived from railroad track, railroad track material, worn or used links, pins, journal bearings, or other worn, used, or detached appendages of railroad equipment or railroad track.

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### Exemptions

The following are exempted:

- Purchases by manufacturing facilities that melt, or otherwise alter the form of scrap metal and transform it into a new product;
- Food and beverage containers or other nonindustrial materials having a marginal value per individual unit;
- Purchasers of catalytic converters when the catalytic converter is:
  - Installed on a vehicle;
  - (added by SB 626) Purchased by a scrap metal dealer purchasing a detached catalytic converter(s) accompanying the motor vehicle(s) from which it was removed;
  - Intended for installation on a vehicle owned or leased by the purchaser; or
  - Purchased for personal, family, household, or business use and not for resale.

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## Registration

A "scrap metal dealer" (undefined) must do all of the following:

- Have a current valid business registration certificate from the Tax Commissioner;
  - Under [§ 11-12-5a](#), the Tax Commissioner shall require an applicant for a registration to own, conduct, or operate any business involving the purchase of scrap metal or the operation of any salvage yard or recycling facility to state that to the best of his or her knowledge and belief no person convicted in the previous 2 years of a 3rd or subsequent offense under §61-3-49 will hold a financial interest, be employed, or otherwise be involved in the day-to-day operations of said business.
- Register any scales used for weighing scrap metal with the Division of Labor Weights and Measures office;
- Provide a notice of recycling activity to the Department of Environmental Protection; and
- Register as a scrap metal dealer with the Secretary of State. The Secretary of State will make a list of registered Dealers publicly available with a Dealer's business address, hours of operation, physical address, phone number, fax number, and the names of the owners or principal officers.

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## Recordkeeping

Purchasers of scrap metal must record the following for each transaction:

- Seller's full name, permanent home and business addresses, and telephone number, if available;
- A description and the license number of any vehicle used to transport the metal;
- Time and Date of the transaction;
- Description of the kind, character, and weight of the scrap metal purchased;
- Statement of whether the metal was purchased, taken as collateral for a loan, or taken on consignment.
- A signed certificate of ownership or a signed authorization to sell from the owner;
  - For Railroad Scrap Metal, the Seller's written evidence of authorization to sell (see [Railroad Scrap Metal](#) provision)
- A copy of the Deliverer's government-issued photo ID; or the Purchaser may reference an existing copy of the ID on file.

For any purchases made at wholesale under a contract or as a result of a bidding process, instead of the record requirements above a Purchaser may retain the contract, bill of sale, or similar documentation of the purchase. The Purchaser may redact any pricing or other commercially sensitive information before making it available for inspection.

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*Catalytic Converters - Additional Requirements (SB 626 changes threshold for additional recordkeeping from 5 or more catalytic converters to 1 or more and adds italicized text).*

For deliveries of any non-exempt catalytic converters, a scrap metal dealer must also record:

- A document signed by the deliverer *containing the name of the person or entity from whom the catalytic converter(s) was received and affirming* that the deliverer is the lawful owner or is authorized by the lawful owner to sell;
- Fingerprint: provide a clear impression of the deliverer's index finger or thumb next to their signature. *A scrap metal dealer may elect to obtain the fingerprint electronically; and*
- *Any identifying information on a catalytic converter received or purchased and shall not purchase or take possession if the identifying information has been manually altered.*

*Payment must be by check payable to the Seller.*

*Automatic 14 day hold, or 5 days if, within the first consecutive 5 day period, the scrap metal dealer provides all documentation required for the catalytic converter to local detachment of the State Police and the chief of police of the municipality or the sheriff of the county in which they are transacting business.*

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### **Purchase Restriction - Beer Kegs**

A Purchaser may only purchase a stainless steel or aluminum beer keg or parts for reselling as scrap metal from the beer manufacturer or its authorized representative.

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### **Purchase Restrictions - Listed Items**

A scrap metal dealer may only purchase the following or any reasonably recognizable part thereof if the dealer obtains written documentation that the Seller is authorized to possess and sell the item or items and that the seller is in lawful possession of the item:

- Utility access covers;
- Street light poles or fixtures;
- Road or bridge guard rails;
- Water meter covers;
- Highway or street signs;
- Traffic directional or traffic control signs;
- Traffic light signals;
- Any metal marked with any form of the name or initials of a governmental entity;
- Property marked as or readily identifiable as owned by a telephone, cable, electric, water or other utility provider;
- Property owned and marked by a railroad;
- Cemetery markers or vases;
- Historical markers;
- Utility manhole covers and storm water grates; and
- Fire hydrant or fire hydrant caps; or
- Twisted pair copper telecommunications wiring of twenty- five pair or greater in nineteen, twenty-two, twenty-four or twenty-six gauge.

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### **Retention/Reporting**

Purchasers must either:

- Retain records at their place of business for 3 years after the date of purchase; or
- File records within 72 hours with the local detachment of the State Police and either the chief of police of the municipality or sheriff of the county where the Purchaser is transacting business. Law enforcement must retain for 3 years.

*(added by SB 626)* For catalytic converters, the automatic holding period is reduced from 14 days to 5 days if, within the first consecutive 5 day period, the scrap metal dealer provides all documentation required for the catalytic converter to local detachment of the State Police and the chief of police of the municipality or the sheriff of the county in which they are transacting business.

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### **Inspection**

If the Purchaser retains records, they must 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. Such investigators may accompany law enforcement upon the premises of a purchaser in the execution of a valid warrant or assist law enforcement in the review of transaction records.

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## *Return of Scrap Metal*

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.

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## *Catalytic Converter: Possession or Advertising (created by SB 626)*

Under § 61-3-49c., any person in possession of a catalytic converter which had previously been installed on a motor vehicle, or parts thereof, must have in their possession written documentation of ownership or authorization to possess the catalytic converter.

- Possession in violation is a misdemeanor subject to a fine of up to \$1,000 and/or confinement in jail for up to 1 year.
- Each catalytic converter possessed in violation is a separate offense.
- Any catalytic converter possessed in violation is subject to seizure at the time of arrest.
- A person possessing a single catalytic converter in violation shall be charged by citation and not subject to arrest.
- Presentation of sufficient evidence in court to show lawful ownership or authority to possess constitutes an absolute defense to the charge or charges.

Any person placing an advertisement on an Internet-based platform, including, but not limited to, Facebook or Twitter, soliciting the sale or purchase of a catalytic converter in this state must have completed the requirements to be a scrap metal recycler in § 61-3-49(b), including any other business requirements.

- Any person who violates is guilty of a misdemeanor and shall be fined not more than \$1,000 and/or confined in jail not more than one year.
- Each catalytic converter possessed in violation is a separate offense.
- Any catalytic converter possessed in violation is subject to seizure at the time of arrest.
- Presentation of sufficient evidence in court to show lawful ownership or authority to possess constitutes an absolute defense to the charge or charges.

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## *Penalties*

Violating the law with knowing or fraudulent intent, including knowingly failing to make a report or falsifying information, is a misdemeanor punishable by:

- 1st offense: \$1,000 to \$3,000 fine;
- 2nd offense: \$2,000 to \$4,000 fine and a 6 month suspension of any business registration certificate held by the person;
- 3rd or subsequent: \$3,000 to \$5,000 fine and cancellation of any business registration certificate held by the person.

[§ 11-12-5a](#) provides that 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 of any salvage yard or recycling facility if:

- The person had a previous registration cancelled by the penalties of § 61-3-49; or
- A person convicted in the previous 2 years of a 3rd or subsequent offense of § 61-3-49 will hold a financial interest, be employed, or otherwise be involved in the day-to-day operations of the business.

A person having or taking possession of scrap metal, or a scrap metal dealer purchasing, possessing, or receiving scrap metal from a seller, when the person or dealer knows or has reason to know the metal has been stolen or unlawfully obtained, is guilty of a larceny.

§ 61-3-49b provides the following penalties for a person who causes a disruption of communications or public utility services by the theft or intentional damaging of equipment and causes either: a disruption of communication or public utility services to 10 or more households or subscribers; or a loss in the value of property of \$1,000 or more:

- 1st offense: misdemeanor, subject to 2,000 hours of court approved community service and/or a maximum \$10,000 fine;
- 2nd offense: felony, subject to 1 to 5 years imprisonment in a state correctional facility and/or a maximum \$10,000 fine;
- 3rd or subsequent: felony, subject to 1 to 10 years imprisonment in a correctional facility and/or a maximum \$10,000 fine.

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### *Agreement with Law Enforcement*

A Scrap metal dealer, pursuant to a written agreement with law-enforcement officials, is not prohibited from purchasing or taking possession of scrap metal the dealer knows or has reason to know has been stolen or obtained illegally.

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### *Railroad Scrap Metal*

As provided in [§ 31-2-17](#), Railroad Scrap Metal may only be sold by an authorized agent or employee of the company that owns it. A sale or disposition is void if the purchaser knowingly makes it with an unauthorized Seller. Railroad Scrap Metal must be:

- Sold in quantities of 1 ton or more;
- Accompanied by a bill of sale or other written evidence of authorization to sell, a copy of which must be retained by the purchaser and the Seller; and
- Comply with other lawful requirements regarding the sale and purchase of Railroad Scrap Metal.

In a civil suit between a purchaser and the formerly owning company:

- The company claiming rightful ownership of Railroad Scrap Metal may seek an immediate court ordered hold on the scrap and any other metals it may have been mixed with while the suit is pending.
- If a purchaser knowingly purchases Railroad Scrap Metal without attempting to check that the Seller is authorized, the owning company shall be rewarded costs and attorneys' fees.
- A purchaser that cannot produce a copy of the authorization to sell shall be presumed to have unlawfully taken from the owning company. In absence of adequate proof to the contrary, the owning company is entitled to immediate possession of the material. If the Railroad Scrap Metal has been intentionally mixed with other scrap, the purchaser loses all rights to the mixed metal unless the Railroad Scrap can be identified and separated. Does not apply if an authorized Seller sells Railroad Scrap Metal in quantities of less than 1 ton or without providing a copy of their authorization to sell.

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### *References and Recent Amendments*

#### Statutes

- [W. Va. Code Ch. 61, 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.
  - [§ 61-3-49b](#). Disruption of communications and utilities services.
  - [§ 61-3-49c](#). Possession of a catalytic converter without documentation of ownership or authority to possess; advertising the sale or purchase of a catalytic converter.
- [W. Va. Code Ch. 11, Article 12, § 11-12-5a](#). Prohibition on certificate being obtained by person connected to illegal activities involving scrap metal.
- [W. Va. Code Ch. 31, Article 2; § 31-2-17](#). Selling railroad scrap metal.

#### Recent Amendments

- [2021 West Virginia SB 626](#) (effective July 7, 2021)

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