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SENATE BILL NO. 1140

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on January 22, 2007)

(Patron Prior to Substitute—Senator Wagner)

A BILL to amend and reenact §§ 59.1-123 and 59.1-129 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 9 of Title 59.1 an article numbered 4, consisting of sections numbered 59.1-136.1 through 59.1-136.5, relating to scrap metal processors; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-123 and 59.1-129 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 9 of Title 59.1 an article numbered 4, consisting of sections numbered 59.1-136.1 through 59.1-136.5 as follows:

§ 59.1-123. Exemptions from article.

The provisions of this article shall not apply to the:

1. The sale of secondhand materials mentioned in § 59.1-117 taken from premises occupied by the owner, when sold by such owner on the premises; nor shall the provisions of this article apply to the sale of such articles when purchased from a public utilities corporation at its place of business or a governmental agency; or

2. Scrap metal processors as provided in Article 4 (§ 59.1-136.1 et seq.).

§ 59.1-129. Requirements when articles mentioned in § 59.1-128 are bought, exchanged, etc.

A. Any person, firm or corporation which shall barter, purchase, exchange, buy or accept any of the articles mentioned in § 59.1-128, shall comply with the provisions of § 59.1-126 and shall, in addition, tag each lot of said articles with the name of the seller and the date of receipt and shall retain each such lot in his possession so tagged for thirty days in such manner that its separate identity shall be preserved; provided that the requirements of this section for tagging said articles and retaining them in possession shall not be applicable if the receipt or bill of sale required by § 59.1-126 shall contain an authorization naming the agent who delivers the articles and signed by an officer, or by the proprietor, of the manufacturer, or coal mining, industrial, manufacturing, public utility company, governmental agency, licensed junk dealer, licensed scrap metal dealer, licensed electrical contractor or licensed merchant, giving such authorization.

B. Notwithstanding anything in subsection A to the contrary, the provisions of this article shall not apply to scrap metal processors as provided in Article 4 (§ 59.1-136.1 et seq.).

Article 4.

Scrap Metal Processors.

§ 59.1-136.1. Definitions.

For the purpose of this article:

"Authorized scrap seller" means licensed plumbers, electricians, HVAC contractors, building and construction contractors, demolition contractors, construction and demolition debris contractors, public utilities, transportation companies, licensed peddlers and brokers, industrial and manufacturing companies, marine, automobile, and aircraft salvage and wrecking companies, and government entities.

"Ferrous scrap" means any scrap metal consisting primarily of iron, steel, or both, including large manufactured articles such as automobile bodies that may contain other substances to be removed and sorted during normal operations of scrap metal processors.

"Metal article" means any manufactured item, consisting of metal, that is usable for its originally intended purpose without processing, repairs or alteration and that is not otherwise excluded by the definitions in this section. Examples include, without limitation, manhole covers, railings, copper or aluminum wire, copper pipe and tubing, bronze cemetery plaques, urns, and markers, plumbing fixtures, and cast-iron radiators.

"Nonferrous scrap" means any scrap metal consisting primarily of metal other than iron or steel but does not include aluminum beverage cans; postconsumer household items such as pots, pans, barbecue grills, and lawn chairs; used items such as wire flashing, gutters, and downspouts removed during building renovation or demolition; or small quantities of nonferrous metals contained in large manufactured articles, such as automobile bodies and appliances.

"Proprietary article" means (i) any metal article stamped, engraved, stenciled, or otherwise marked so as to identify it as being or having been the property of a governmental entity or public utility, transportation, shipbuilding, ship repair, mining or manufacturing company, (ii) any hard drawn copper electrical conductor, cable, or wire greater than three-eighths of one inch in diameter, stranded or solid, or (iii) any aluminum conductor, cable, or wire greater than three quarters of one inch in diameter, stranded or solid.

60 "Scrap metal" means any manufactured item or article consisting of or containing metal; any metal
61 removed from or obtained by cutting, demolishing, or disassembling any building, structure,
62 manufactured item, or article; and any other metal that is no longer used for its original purpose and
63 that can be processed for reuse in mills, foundries, and other manufacturing facilities.

64 "Scrap metal processor" means a business entity in good standing authorized to conduct business in
65 the Commonwealth that regularly utilizes machinery and equipment at one or more established locations
66 in the normal course of business for processing and manufacturing scrap metal into prepared grades for
67 sale as raw material to mills, foundries and other manufacturing facilities.

68 § 59.1-136.2. Purchases of ferrous scrap.

69 Scrap metal processors may purchase ferrous scrap directly from any person.

70 § 59.1-136.3. Purchases of nonferrous scrap, metal articles, and proprietary articles.

71 A. Scrap metal processors may purchase nonferrous scrap, metal articles, and proprietary articles
72 from any person who is not an authorized scrap seller or the authorized agent and employee of an
73 authorized scrap seller only in accordance with the following requirements and procedures:

74 1. At the time of sale, the seller of any nonferrous scrap, metal article, or proprietary article shall
75 provide a driver's license or other government-issued current photographic identification including the
76 seller's full name, current address, date of birth, and social security or other recognized identification
77 number; and

78 2. The scrap metal processor shall record the seller's identification information, as well as the time
79 and date of the transaction, the license number of the seller's vehicle, and a description of the items
80 received from the seller, in a permanent ledger maintained at the scrap metal processor's place of
81 business. The ledger shall be made available upon request to any law-enforcement official or authorized
82 security agent of a governmental entity or public utility, transportation, shipbuilding, ship repair,
83 mining, or manufacturing company providing his credentials at the scrap metal processor's normal
84 business location during regular business hours. Records required by this subdivision shall be
85 maintained by the scrap metal dealer at its normal place of business or at another readily accessible
86 and secure location for at least five years.

87 B. Upon compliance with the other requirements of this section, a scrap metal processor may
88 purchase proprietary articles from a person who is not an authorized scrap seller or the authorized
89 agent and employee of an authorized scrap seller if the scrap metal processor complies with one of the
90 following:

91 1. The scrap metal processor receives from the person seeking to sell the proprietary articles
92 documentation, such as a bill of sale, receipt, letter of authorization or similar evidence, establishing
93 that the person lawfully possesses the proprietary articles to be sold; or

94 2. The scrap metal processor shall document a diligent inquiry into whether the person selling or
95 delivering the same has a legal right to do so, and, after purchasing a proprietary article from a person
96 without obtaining the documentation described in subdivision 1, shall submit a report to the local police
97 or sheriff's department, by the close of the following business day, describing the proprietary article and
98 including a copy of the seller's identifying information, and hold the proprietary article for not less than
99 15 days following purchase.

100 C. Scrap metal processors may purchase nonferrous scrap, metal articles, and proprietary articles
101 directly from an authorized scrap seller and from the authorized agent or employee of an authorized
102 scrap seller without complying with the requirements of subsection A or B.

103 § 59.1-136.4. Civil penalties.

104 A scrap metal dealer who violates any provisions of this article may be assessed a civil penalty not
105 to exceed \$1,000 for each violation. Any attorney for the county, city, or town in which an alleged
106 violation of this article occurred may bring a civil action to recover such a civil penalty. The civil
107 penalty shall be paid into the local treasury.

108 § 59.1-136.5. Local ordinances.

109 Local ordinances pertaining to scrap metal processors shall conform to the requirements of this
110 article.