

2007 RECONVENED SESSION

SENATE SUBSTITUTE

070303832

SENATE BILL NO. 1140

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Governor
on March 26, 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 59.1-136.7, 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 59.1-136.7, 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, or 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~~ 30 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, but excluding any scrap metal consisting primarily of stainless steel. Ferrous scrap includes 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 (i) stainless steel or (ii) any metal other than iron or steel. Nonferrous scrap 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 that is three-eighths of one inch or greater in diameter, stranded or solid; (iii) any aluminum conductor, cable, or wire three quarters of one inch or greater in diameter,

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60 *stranded or solid; or (iv) stainless steel beer kegs.*

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

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

69 *§ 59.1-136.2. Purchases of ferrous scrap.*

70 *Except as provided in § 59.1-136.4, scrap metal processors may purchase ferrous scrap directly from*
71 *any person.*

72 *§ 59.1-136.3. Purchases of nonferrous scrap, metal articles, and proprietary articles.*

73 *A. Except as provided in § 59.1-136.4, scrap metal processors may purchase nonferrous scrap, metal*
74 *articles, and proprietary articles from any person who is not an authorized scrap seller or the*
75 *authorized agent and employee of an authorized scrap seller only in accordance with the following*
76 *requirements and procedures:*

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

81 *2. The scrap metal processor shall record the seller's identification information, as well as the time*
82 *and date of the transaction, the license number of the seller's vehicle, and a description of the items*
83 *received from the seller, in a permanent ledger maintained at the scrap metal processor's place of*
84 *business. The ledger shall be made available upon request to any law-enforcement official, conservator*
85 *of the peace, or special conservator of the peace appointed pursuant to § 19.2-13, in the performance of*
86 *his duties who presents his credentials at the scrap metal processor's normal business location during*
87 *regular business hours. Records required by this subdivision shall be maintained by the scrap metal*
88 *dealer at its normal place of business or at another readily accessible and secure location for at least*
89 *five years.*

90 *B. Upon compliance with the other requirements of this section and § 59.1-136.4, a scrap metal*
91 *processor may purchase proprietary articles from a person who is not an authorized scrap seller or the*
92 *authorized agent and employee of an authorized scrap seller if the scrap metal processor complies with*
93 *one of the following:*

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

97 *2. The scrap metal processor shall document a diligent inquiry into whether the person selling or*
98 *delivering the same has a legal right to do so, and, after purchasing a proprietary article from a person*
99 *without obtaining the documentation described in subdivision 1, shall submit a report to the local police*
100 *or sheriff's department, by the close of the following business day, describing the proprietary article and*
101 *including a copy of the seller's identifying information, and hold the proprietary article for not less than*
102 *15 days following purchase.*

103 *C. Scrap metal processors may purchase nonferrous scrap, metal articles, and proprietary articles*
104 *directly from an authorized scrap seller and from the authorized agent or employee of an authorized*
105 *scrap seller.*

106 *§ 59.1-136.4. Purchases of materials from minors.*

107 *Scrap metal processors shall not purchase ferrous scrap, nonferrous scrap, metal articles,*
108 *proprietary articles, or other scrap metal from any person under the age of 18 years.*

109 *§ 59.1-136.5. Reports of purchases by scrap metal processors.*

110 *If requested by the chief of police or other law-enforcement officer of the locality in which the scrap*
111 *metal processor conducts business, every scrap metal processor conducting business in the locality shall*
112 *furnish to the chief of police or other law-enforcement officer a report of all of the scrap metal*
113 *processor's purchases of nonferrous scrap, metal articles, and proprietary articles, excluding aluminum*
114 *cans and interior household items. Each report shall (i) be submitted on the next business day following*
115 *the date of a purchase; (ii) include the seller's name, date of birth, identification number, address,*
116 *height, and weight and the license number of any motor vehicle in which the goods or things were*
117 *delivered; and (iii) be submitted in an electronic format if required by the locality in which the scrap*
118 *metal processor conducts business, provided that if the locality requires that reports be submitted in*
119 *electronic format, scrap metal processors shall be given a period of not more than one year following*
120 *the locality's adoption of such a requirement to implement the requirement.*

121 *§ 59.1-136.6. Penalties.*

A. Any scrap metal processor who negligently violates any provisions of this article may be assessed a civil penalty not to exceed \$7,500 for each violation. Any attorney for the county, city, or town in which an alleged violation of this article occurred may bring a civil action to recover such a civil penalty. The civil penalty shall be paid into the local treasury.

B. Any scrap metal processor who knowingly violates any provisions of this article shall be guilty of a Class 1 misdemeanor.

§ 59.1-136.7. Exemption.

Nothing in this article shall apply to the purchase, sale or disposal of any material that is used in the provision of health care by any professional who is licensed, certified or registered to practice by a board within the Department of Health Professions under Title 54.1.