

1591--A

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. GRISANTI, MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to licensing of scrap producers in the state and certain cities

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 69-e of the general business law, as added by chap-  
2 ter 431 of the laws of 1976, is amended to read as follows:

3 S 69-e. Definitions. 1. "Scrap metal processing facility" shall mean  
4 an establishment engaged primarily in the purchase, processing and ship-  
5 ment of ferrous and/or non-ferrous scrap METAL, the end product of which  
6 is the production of raw material [for remelting purposes] for steel  
7 mills, [foundaries] FOUNDRIES, smelters, refiners, and similar users,  
8 BUT SHALL NOT INCLUDE A REDEMPTION CENTER, DEALER OR DISTRIBUTOR AS  
9 DEFINED IN SECTION 27-1003 OF THE ENVIRONMENTAL CONSERVATION LAW OR AN  
10 ELECTRONIC WASTE COLLECTION, CONSOLIDATION OR RECYCLING FACILITY AS  
11 DEFINED IN SECTION 27-2601 OF THE ENVIRONMENTAL CONSERVATION LAW.

12 2. "Scrap processor" shall mean any person, association, partnership  
13 or corporation operating and maintaining a "scrap metal processing  
14 facility".

15 3. "GOVERNMENT ISSUED PHOTOGRAPHIC IDENTIFICATION" SHALL MEAN ANY  
16 CURRENT AND VALID OFFICIAL FORM OF IDENTIFICATION ISSUED BY THE GOVERN-  
17 MENT OF THE UNITED STATES OF AMERICA, A STATE, TERRITORY, PROTECTORATE,  
18 OR DEPENDENCY OF THE UNITED STATES OF AMERICA, A COUNTY, MUNICIPALITY OR  
19 SUBDIVISION THEREOF, ANY PUBLIC AGENCY OR DEPARTMENT THEREOF, OR ANY  
20 PUBLIC EMPLOYER, WHICH REQUIRES AND BEARS THE SIGNATURE AND PHOTOGRAPH  
21 OF THE PERSON TO WHOM IT IS ISSUED.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 4. "DEPARTMENT" SHALL MEAN THE NEW YORK STATE DEPARTMENT OF STATE.

2 S 2. Section 69-f of the general business law, as added by chapter  
3 431 of the laws of 1976, is amended to read as follows:

4 S 69-f. License. 1. It shall be unlawful for any person, association,  
5 partnership or corporation to engage in business as a scrap processor  
6 unless such scrap processor shall have complied with the provisions of  
7 this article and obtained a license to do so from [the mayor of the  
8 city, if the place of business of such scrap processor is in a city, or  
9 the mayor of the village if the place of business is in an incorporated  
10 village, otherwise from the supervisor of the town in which such place  
11 of business is located, or from] the licensing authority AS DESIGNATED  
12 BY A DULY ADOPTED LOCAL LAW of [any such] THE municipality IN WHICH SUCH  
13 SCRAP PROCESSOR IS LOCATED; for which license shall be paid [such mayor  
14 or supervisor or licensing authority for the use of such city, village,  
15 or town the sum of seventy-five dollars if such place of business is the  
16 principal place of business of such scrap processor in this state,  
17 otherwise the sum of fifty dollars, which license shall expire on June  
18 thirtieth of each year] AN ANNUAL LICENSE FEE NOT TO EXCEED TWO HUNDRED  
19 FIFTY DOLLARS.

20 2. ON OR AFTER SEPTEMBER FIRST, TWO THOUSAND FOURTEEN, NO PERSON,  
21 ASSOCIATION, PARTNERSHIP OR CORPORATION SHALL HOLD HIMSELF, HERSELF OR  
22 ITSELF OUT TO BE A SCRAP PROCESSOR IN NEW YORK STATE WITHOUT FIRST  
23 REGISTERING WITH THE DEPARTMENT AS PROVIDED IN THIS SECTION.

24 3. ANY PERSON, ASSOCIATION, PARTNERSHIP OR CORPORATION SEEKING A  
25 LICENSE AS A SCRAP PROCESSOR SHALL FILE WITH THE DEPARTMENT A LICENSE  
26 APPLICATION WHICH SHALL INCLUDE THE FOLLOWING INFORMATION:

27 (A) THE BUSINESS NAME AND ADDRESS OF THE APPLICANT;

28 (B) THE NAMES OF THE APPLICANT'S OFFICERS, DIRECTORS, AND HIGH MANAGE-  
29 RIAL AGENTS AS SUCH TERM IS DEFINED IN SECTION 20.20 OF THE PENAL LAW;

30 (C) THE BUSINESS TELEPHONE NUMBER OF THE APPLICANT;

31 (D) THE ADDRESS OF THE SCRAP PROCESSING FACILITY FOR WHICH A LICENSE  
32 IS SOUGHT;

33 (E) A STATEMENT INDICATING WHETHER THE APPLICANT OR ANY PERSON IDENTI-  
34 FIED PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION HAS:

35 (I) BEEN CONVICTED OF ANY CRIME RELATING TO CONDUCT AS A SCRAP PROCES-  
36 SOR; AND

37 (II) AT ANY TIME IN THE PAST BEEN ISSUED A LICENSE PURSUANT TO THIS  
38 SECTION, AND IF SO, WHETHER SUCH LICENSE WAS EVER REVOKED OR SUSPENDED;

39 (F) A CERTIFICATION ATTESTING THAT THE SCRAP PROCESSOR IS IN COMPLI-  
40 ANCE WITH THE APPLICABLE REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL  
41 CONSERVATION;

42 (G) A COPY OF (I) THE APPLICANT'S EPA REFRIGERANT RECOVERY EQUIPMENT  
43 ACQUISITION CERTIFICATION FORM CERTIFYING THAT THE PROSPECTIVE LICENSEE  
44 OWNS APPROVED REFRIGERANT REMOVAL EQUIPMENT, OR (II) A COPY OF A VALID  
45 CONTRACT BETWEEN THE APPLICANT AND A CERTIFIED REFRIGERANT REMOVAL  
46 CONTRACTOR.

47 (H) A CERTIFICATION ATTESTING THAT THE SCRAP PROCESSOR IS IN COMPLI-  
48 ANCE WITH REQUIREMENTS OF SECTION SIXTY-NINE-G OF THIS ARTICLE;

49 (I) A SWORN STATEMENT BY THE APPLICANT THAT THE INFORMATION SET FORTH  
50 IN THE APPLICATION IS CURRENT AND ACCURATE; AND

51 (J) A COMPLETE SET OF TWO FINGERPRINT CARDS FOR EACH OFFICER AND HIGH  
52 MANAGERIAL AGENT OF THE APPLICANT ON A STANDARD FINGERPRINT CARD  
53 APPROVED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES. SUCH CARDS SHALL  
54 BE RETAINED BY THE DEPARTMENT AND USED SOLELY FOR THE PURPOSE OF  
55 CONDUCTING AN INVESTIGATION PURSUANT TO SUBDIVISION TEN OF THIS SECTION.

1 IF ADDITIONAL COPIES OF FINGERPRINTS ARE REQUIRED THE APPLICANT SHALL  
2 FURNISH THEM UPON REQUEST.

3 4. (A) A LICENSE ISSUED OR RENEWED UNDER THE PROVISIONS OF THIS  
4 SECTION SHALL ENTITLE A PERSON, ASSOCIATION, PARTNERSHIP OR CORPORATION  
5 TO ACT AS A SCRAP PROCESSOR IN THE STATE OF NEW YORK FOR A PERIOD OF TWO  
6 YEARS FROM THE EFFECTIVE DATE OF THE LICENSE. ANY LICENSE GRANTED UNDER  
7 THIS SECTION MAY BE RENEWED BY THE DEPARTMENT UPON APPLICATION FOR SUCH  
8 RENEWAL BY THE HOLDER THEREOF, IN SUCH FORM AS THE DEPARTMENT MAY  
9 PRESCRIBE.

10 (B) UPON ORIGINAL APPLICATION FOR A LICENSE TO OPERATE AS A SCRAP  
11 PROCESSOR, THE APPLICANT SHALL PAY AN APPLICATION FEE OF ONE THOUSAND  
12 DOLLARS. UPON APPLICATION FOR A LICENSE RENEWAL, THE LICENSE SHALL PAY A  
13 RENEWAL PROCESSING FEE OF ONE THOUSAND DOLLARS.

14 (C) THE SECRETARY OF STATE SHALL HAVE THE AUTHORITY TO ASSIGN STAG-  
15 GERED EXPIRATION DATES FOR LICENSES AT THE TIME OF RENEWAL. IF THE  
16 ASSIGNED DATE RESULTS IN A TERM THAT EXCEEDS TWENTY-FOUR MONTHS, THE  
17 APPLICANT SHALL PAY AN ADDITIONAL PRORATED ADJUSTMENT TOGETHER WITH THE  
18 REGULAR RENEWAL FEE.

19 (D) THE SECRETARY OF STATE SHALL ISSUE EACH SCRAP PROCESSOR A UNIQUE  
20 LICENSE NUMBER.

21 5. (A) NOTICE IN WRITING IN THE MANNER AND FORM PRESCRIBED BY THE  
22 DEPARTMENT SHALL BE GIVEN TO THE DEPARTMENT AT ITS OFFICES IN ALBANY  
23 WITHIN TEN DAYS OF CHANGES OF NAME OR ADDRESS BY A REGISTERED SCRAP  
24 PROCESSOR.

25 (B) IN THE CASE OF LOSS, DESTRUCTION OR DAMAGE, THE DEPARTMENT MAY,  
26 UPON SUBMISSION OF A REQUEST IN SUCH FORM AND MANNER AS THE DEPARTMENT  
27 MAY PRESCRIBE, ISSUE A DUPLICATE LICENSE UPON PAYMENT OF A FEE OF ONE  
28 HUNDRED DOLLARS.

29 6. THE FEES ESTABLISHED BY THIS SECTION SHALL NOT BE REFUNDABLE.

30 7. EACH SCRAP PROCESSOR SHALL EXHIBIT THE LICENSE PRESCRIBED BY THIS  
31 ARTICLE AT THE PLACE OF BUSINESS.

32 8. NO PERSON, ASSOCIATION, PARTNERSHIP OR CORPORATION SHALL:

33 (A) PRESENT, OR ATTEMPT TO PRESENT, THE LICENSE OF ANOTHER;

34 (B) KNOWINGLY GIVE FALSE EVIDENCE OF A MATERIAL NATURE TO THE DEPART-  
35 MENT FOR THE PURPOSE OF PROCURING A LICENSE; OR

36 (C) FALSELY REPRESENT THEMSELVES TO BE A REGISTERED SCRAP PROCESSOR.

37 9. LICENSES ISSUED TO SCRAP PROCESSORS SHALL NOT BE TRANSFERABLE OR  
38 ASSIGNABLE.

39 10. (A) THE SECRETARY OF STATE SHALL PROMULGATE SUCH RULES AND REGU-  
40 LATIONS AS ARE DEEMED NECESSARY TO EFFECTUATE THE PURPOSES OF THIS ARTI-  
41 CLE.

42 (B) THE SECRETARY OF STATE SHALL HAVE THE POWER TO ENFORCE THE  
43 PROVISIONS OF THIS ARTICLE AND UPON COMPLAINT OF ANY PERSON, OR UPON THE  
44 DEPARTMENT'S INITIATIVE, TO INVESTIGATE ANY VIOLATION THEREOF OR TO  
45 INVESTIGATE THE BUSINESS PRACTICES AND BUSINESS METHODS OF ANY PERSON,  
46 ASSOCIATION, PARTNERSHIP OR CORPORATION APPLYING FOR OR HOLDING A  
47 LICENSE AS A SCRAP PROCESSOR. EACH SUCH APPLICANT OR REGISTRANT SHALL BE  
48 OBLIGED ON REQUEST OF THE DEPARTMENT, TO SUPPLY SUCH INFORMATION, BOOKS,  
49 PAPERS OR RECORDS AS MAY BE REQUIRED CONCERNING BUSINESS PRACTICES OR  
50 BUSINESS METHODS. FAILURE TO COMPLY WITH SUCH LAWFUL REQUEST SHALL BE A  
51 GROUND FOR DENYING AN APPLICATION FOR A LICENSE, OR FOR REVOKING,  
52 SUSPENDING, OR NOT RENEWING A LICENSE ISSUED UNDER THIS ARTICLE.

53 11. IN ORDER TO ASSURE THAT SCRAP PROCESSOR LICENSES ARE NOT ISSUED TO  
54 OR HELD BY UNQUALIFIED OR UNSUITABLE PERSONS, THE SECRETARY OR STATE  
55 MAY, CONSISTENT WITH ARTICLES TWENTY-THREE AND TWENTY-THREE-A OF THE  
56 CORRECTION LAW, DENY, SUSPEND OR REVOKE ANY SUCH LICENSE UPON A WRITTEN

1 DETERMINATION THAT SUCH ACTION IS REQUIRED TO PROTECT THE PUBLIC HEALTH  
2 AND SAFETY AND THAT:

3 (A) THE LICENSE HOLDER OR APPLICANT HAS BEEN FINALLY DETERMINED IN AN  
4 ADMINISTRATIVE, CIVIL OR CRIMINAL PROCEEDING TO HAVE VIOLATED A SUBSTAN-  
5 TIVE PROVISION OF THIS ARTICLE, ANY SUBSTANTIVE REGULATION PROMULGATED  
6 PURSUANT TO THIS ARTICLE, A MATERIAL CONDITION OF ANY LICENSE ISSUED  
7 THEREUNDER, OR OF ANY SUBSTANTIALLY SIMILAR STATUTE, REGULATION, ORDER  
8 OR LICENSE CONDITION OF THE FEDERAL OR OTHER STATE GOVERNMENT RELATING  
9 TO OPERATION AS A SCRAP PROCESSOR; OR

10 (B) SUCH LICENSEE OR APPLICANT HAS BEEN PREVIOUSLY DENIED A LICENSE  
11 FOR THE SAME OR SUBSTANTIALLY SIMILAR ACTIVITY BASED UPON ONE OR MORE OF  
12 THE PROVISIONS OF THIS SUBDIVISION; OR

13 (C) SUCH LICENSE HOLDER OR APPLICANT HAS BEEN FOUND IN A CIVIL  
14 PROCEEDING TO HAVE COMMITTED AN INTENTIONALLY TORTIOUS ACT IN RELATION  
15 TO OPERATIONS AS A SCRAP PROCESSOR OR HAS BEEN CONVICTED IN A CRIMINAL  
16 PROCEEDING OF A CRIME INVOLVING OPERATION AS A SCRAP PROCESSOR; OR

17 (D) SUCH LICENSEE HAS BEEN CONVICTED OF A FELONY UNDER THE LAWS OF  
18 THIS STATE INVOLVING FRAUD, BRIBERY, PERJURY, OR THEFT, OR HAS BEEN  
19 CONVICTED UNDER THE LAWS OF ANY OTHER STATE OR OF THE UNITED STATES OF A  
20 CRIMINAL OFFENSE WHICH, IF COMMITTED AND PROSECUTED IN THIS STATE, WOULD  
21 CONSTITUTE A SIMILAR FELONY UNDER SUCH LAWS OF THIS STATE; OR

22 (E) SUCH LICENSEE IN ANY MATTER WITHIN THE JURISDICTION OF THE DEPART-  
23 MENT HAS BEEN DETERMINED TO HAVE KNOWINGLY FALSIFIED A MATERIAL FACT, OR  
24 KNOWINGLY SUBMITTED A FALSE STATEMENT, OR KNOWINGLY MADE USE OF A FALSE  
25 STATEMENT IN CONNECTION WITH ANY DOCUMENT OR APPLICATION SUBMITTED TO  
26 THE DEPARTMENT OR SAID AGENCY; OR

27 (F) SUCH LICENSEE OR APPLICANT IS EITHER:

28 (I) AN INDIVIDUAL WHO HAD A SUBSTANTIAL INTEREST IN OR ACTED AS A HIGH  
29 MANAGERIAL AGENT OR DIRECTOR FOR ANY CORPORATION, PARTNERSHIP, ASSOCI-  
30 ATION OR ORGANIZATION WHICH COMMITTED AN ACT OR FAILED TO ACT, AND SUCH  
31 ACT OR FAILURE TO ACT COULD BE THE BASIS FOR THE DENIAL OF A LICENSE  
32 PURSUANT TO THIS SECTION OR REGULATIONS PROMULGATED THEREUNDER IF SUCH  
33 CORPORATION, PARTNERSHIP, ASSOCIATION OR ORGANIZATION APPLIED FOR A  
34 LICENSE UNDER THIS TITLE; OR

35 (II) A CORPORATION, PARTNERSHIP, ASSOCIATION, OR ORGANIZATION, OR ANY  
36 PRINCIPAL THEREOF, OR ANY PERSON HOLDING A SUBSTANTIAL INTEREST THEREIN,  
37 WHICH COMMITTED AN ACT OR FAILED TO ACT, AND SUCH ACT OR FAILURE TO ACT  
38 COULD BE THE BASIS FOR THE DENIAL OF A LICENSE PURSUANT TO THIS SECTION  
39 OR REGULATIONS PROMULGATED THEREUNDER IF SUCH CORPORATION, PARTNERSHIP,  
40 ASSOCIATION OR ORGANIZATION APPLIED FOR A LICENSE UNDER THIS TITLE; OR

41 (III) A CORPORATION, PARTNERSHIP, ASSOCIATION OR ORGANIZATION OR ANY  
42 HIGH MANAGERIAL AGENT OR DIRECTOR THEREOF, OR ANY PERSON HOLDING A  
43 SUBSTANTIAL INTEREST THEREIN, ACTING AS HIGH MANAGERIAL AGENT OR DIREC-  
44 TOR FOR OR HOLDING A SUBSTANTIAL INTEREST IN ANOTHER CORPORATION, PART-  
45 NERSHIP, ASSOCIATION OR ORGANIZATION WHICH COMMITTED AN ACT OR FAILED TO  
46 ACT, AND SUCH ACT OR FAILURE TO ACT COULD BE THE BASIS FOR THE DENIAL OF  
47 A LICENSE PURSUANT TO THIS SECTION OR REGULATIONS PROMULGATED THEREUNDER  
48 HAD SUCH OTHER CORPORATION, PARTNERSHIP, ASSOCIATION OR ORGANIZATION  
49 APPLIED FOR A LICENSE UNDER THIS TITLE.

50 FOR THE PURPOSES OF THIS SUBDIVISION, "HIGH MANAGERIAL AGENT" HAS THE  
51 SAME MEANING AS IS GIVEN THAT TERM IN SECTION 20.20 OF THE PENAL LAW.

52 12. ANY ACT OR FAILURE TO ACT WHICH SERVES AS A BASIS FOR DENIAL OR  
53 REVOCATION OF A LICENSE PURSUANT TO THIS SUBDIVISION SHALL HAVE OCCURRED  
54 WITHIN FIVE YEARS FROM THE DATE ON WHICH THE APPLICATION FOR A LICENSE,  
55 RENEWAL OR MODIFICATION IS SUBMITTED TO THE DEPARTMENT OR FROM THE DATE

1 ON WHICH THE DEPARTMENT SERVES NOTICE OF INTENT TO REVOKE OR MODIFY A  
2 LICENSE ISSUED BY THE DEPARTMENT IN RELATION TO AN EXISTING LICENSE.

3 13. ANY PERSON DENIED A LICENSE OR RENEWAL ON THE GROUNDS SPECIFIED IN  
4 THIS SECTION SHALL BE ENTITLED TO A HEARING WITHIN SIXTY DAYS OF SUCH  
5 DENIAL IN THE CASE OF A NEW LICENSE, OR WITHIN FIFTEEN DAYS IN THE CASE  
6 OF A RENEWAL OF ANY EXISTING LICENSE.

7 14. THE DEPARTMENT SHALL MAINTAIN AND PUBLISH A REGISTRY OF ALL REGIS-  
8 TERED SCRAP PROCESSORS, WHICH SHALL LIST AND IDENTIFY ON A COUNTY BY  
9 COUNTY BASIS, ALL REGISTERED SCRAP PROCESSORS DOING BUSINESS IN THIS  
10 STATE. THE DEPARTMENT SHALL MAKE THE REGISTRY AVAILABLE ON ITS WEBSITE.

11 S 3. Section 69-g of the general business law, as amended by chapter  
12 302 of the laws of 2007, is amended to read as follows:

13 S 69-g. Records. 1. [Such] A scrap processor shall record [(i) each  
14 purchase of any pig or pigs of metal, bronze or brass castings or parts  
15 thereof, sprues or gates or parts thereof, utility wire or brass car  
16 journals, or of metal beer kegs, and (ii)] each purchase of [iron,  
17 steel] FERROUS and/or nonferrous scrap for a price of fifty dollars or  
18 more, and preserve such record for a period of three years; which record  
19 shall show the date of purchase, THE name of THE seller, [his] THE SELL-  
20 ER'S residence OR BUSINESS address [by street, number, city, village or  
21 town], the driver's license number or information from a government  
22 issued photographic identification card, [if any, of such person, or by  
23 such description as will reasonably locate the seller,] AND the type and  
24 quantity of such purchase[; and the]. THE scrap processor shall cause  
25 such record to be signed by the seller or his OR HER agent. It shall be  
26 unlawful for any seller to refuse to furnish such information or to  
27 furnish incorrect or incomplete information. Such scrap processor shall  
28 also make and retain a copy of the government issued photographic iden-  
29 tification card used to verify the identity of [the] ANY NATURAL person  
30 from whom the scrap metal was purchased and shall retain this copy in a  
31 separate book, register or electronic archive for [two] THREE years from  
32 the date of purchase.

33 2. Such records shall be available for inspection by the police  
34 department of the state or the municipality in which the establishment  
35 is located, BY THE DEPARTMENT AND BY THE LOCAL LICENSING AUTHORITY SO  
36 DESIGNATED PURSUANT TO SUBDIVISION ONE OF SECTION SIXTY-NINE-F OF THIS  
37 ARTICLE.

38 3. BY NO LATER THAN SEPTEMBER FIRST, TWO THOUSAND FOURTEEN, A SCRAP  
39 PROCESSOR SHALL INSTALL AND MAINTAIN IN WORKING ORDER AN ELECTRONIC  
40 VIDEO RECORDING SYSTEM AT ALL SCALES AND AT ALL POINTS OF SALE LOCATED  
41 ON THE PREMISES OF THE SCRAP PROCESSING FACILITY. ELECTRONIC VIDEO  
42 RECORDS SHALL BE MAINTAINED IN AN ELECTRONIC ARCHIVE FOR A PERIOD OF NO  
43 LESS THAN ONE HUNDRED TWENTY DAYS FROM THE DATE WHEN SUCH ELECTRONIC  
44 VIDEO RECORD WAS MADE.

45 4. BY NO LATER THAN SEPTEMBER FIRST, TWO THOUSAND FOURTEEN, A SCRAP  
46 PROCESSOR SHALL MAINTAIN A RECORD THAT SAID SCRAP PROCESSOR EITHER (A)  
47 POSSESSES REFRIGERANT RECOVERY EQUIPMENT CERTIFIED BY THE UNITED STATES  
48 ENVIRONMENTAL PROTECTION AGENCY OR (B) HAS EXECUTED A VALID CONTRACT  
49 WITH A REFRIGERANT REMOVAL CONTRACT CERTIFIED BY THE UNITED STATES ENVI-  
50 RONMENTAL PROTECTION AGENCY.

51 S 4. Section 69-h of the general business law is renumbered section  
52 69-i and two new sections 69-h and 69-j are added to read as follows:

53 S 69-H. PROHIBITION ON SALE OF CERTAIN ITEMS. NOTWITHSTANDING ANY  
54 PROVISION OF LAW, RULE OR REGULATION TO THE CONTRARY, IT SHALL BE UNLAW-  
55 FUL FOR SCRAP PROCESSORS TO SELL, OFFER FOR SALE, OR PURCHASE AS SCRAP,  
56 ANY METAL ITEMS BEARING MARKINGS OF ANY GOVERNMENTAL ENTITY, UTILITY

1 COMPANY, CEMETERY OR RAILROAD UNLESS SUCH ITEMS ARE OFFERED FOR SALE BY  
2 A DULY AUTHORIZED EMPLOYEE OR AGENT OF ANY SUCH GOVERNMENTAL ENTITY,  
3 UTILITY COMPANY, CEMETERY OR RAILROAD.

4 S 69-J. PREEMPTION OF LOCAL LAWS. THE PROVISIONS OF SECTIONS  
5 SIXTY-NINE-G AND SIXTY-NINE-H OF THIS ARTICLE SHALL PREEMPT AND SUPER-  
6 SEDE ANY LOCAL LAW WHICH WOULD OTHERWISE REGULATE THE PURCHASE AND/OR  
7 SALE OF SCRAP METAL AND/OR IMPOSE RECORD KEEPING AND/OR REPORTING  
8 REQUIREMENTS IN A MANNER WHICH CONFLICTS WITH OR IMPOSED ADDITIONAL  
9 REQUIREMENTS OTHER THAN THOSE SET FORTH THEREIN, AND/OR WHICH WOULD  
10 REQUIRE A SCRAP PROCESSOR TO HOLD SCRAP MATERIAL FOR A SPECIFIED PERIOD  
11 OF TIME PRIOR TO THE PROCESSING OR RE-SALE OF SUCH SCRAP MATERIAL, OR  
12 WHICH WOULD OTHERWISE PROHIBIT THE ACCEPTANCE OF SCRAP MATERIAL.

13 S 5. Section 69-i of the general business law, as added by chapter 431  
14 of the laws of 1976 and as renumbered by section four of this act, is  
15 amended to read as follows:

16 S 69-i. Penalty. 1. [Each violation of this article by a scrap proces-  
17 sor shall be a violation subject to a fine of not more than two hundred  
18 dollars, unless such violation shall be wilful, in which event it shall  
19 be a misdemeanor except, however, the scrap processor shall not be  
20 liable for any violation of this article by a seller, his agent, or a  
21 purported seller or agent.

22 2. Each violation of this article by a seller or his agent shall be a  
23 misdemeanor.] ANY PERSON, ASSOCIATION, PARTNERSHIP OR CORPORATION WHO  
24 VIOLATES THIS ARTICLE SHALL BE LIABLE FOR A CRIMINAL FINE OF NOT MORE  
25 THAN TWO THOUSAND FIVE HUNDRED DOLLARS AND/OR IMPRISONMENT FOR A TERM OF  
26 NOT MORE THAN FIFTEEN DAYS. A SECOND VIOLATION OF THIS ARTICLE COMMITTED  
27 WITHIN A TEN-YEAR PERIOD SHALL BE PUNISHABLE AS A MISDEMEANOR SUBJECT TO  
28 A CRIMINAL FINE OF NOT MORE THAN FIVE THOUSAND DOLLARS AND/OR IMPRISON-  
29 MENT FOR A TERM OF NOT MORE THAN ONE YEAR.

30 2. ANY PERSON, ASSOCIATION, PARTNERSHIP OR CORPORATION WHO VIOLATES  
31 THIS ARTICLE SHALL BE LIABLE FOR A MAXIMUM CIVIL PENALTY OF TWO THOUSAND  
32 FIVE HUNDRED DOLLARS FOR A FIRST OFFENSE, FIVE THOUSAND DOLLARS FOR A  
33 SECOND OFFENSE WITHIN A TWELVE MONTH PERIOD AND FOR A MAXIMUM CIVIL  
34 PENALTY OF TEN THOUSAND DOLLARS FOR A THIRD AND FOR EACH SUBSEQUENT  
35 OFFENSE WITHIN A TWELVE-MONTH PERIOD.

36 3. IN ANY CRIMINAL PROCEEDING BROUGHT PURSUANT TO THIS ARTICLE, IN  
37 ADDITION TO A TERM OF IMPRISONMENT, WHERE A PERSON, ASSOCIATION, PART-  
38 NERSHIP OR CORPORATION HAS GAINED MONEY OR PROPERTY THROUGH A VIOLATION  
39 OF THIS ARTICLE THE COURT, UPON CONVICTION THEREOF, IN LIEU OF IMPOSING  
40 THE FINE AUTHORIZED FOR THE OFFENSE UNDER SUBDIVISION ONE OF THIS  
41 SECTION MAY SENTENCE THE DEFENDANT TO PAY AN AMOUNT, FIXED BY THE COURT,  
42 NOT EXCEEDING DOUBLE THE AMOUNT OF THE DEFENDANT'S GAIN FROM THE COMMIS-  
43 SION OF THE OFFENSE.

44 4. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION,  
45 IN ADDITION TO THOSE PERSONS OTHERWISE AUTHORIZED TO ENFORCE THIS ARTI-  
46 CLE AND ADJUDICATE VIOLATIONS THEREOF, THE PROVISIONS OF THIS ARTICLE  
47 SHALL ALSO BE ENFORCEABLE IN A CITY WITH A POPULATION OF ONE MILLION OR  
48 MORE BY AN AGENCY DESIGNATED BY A LOCAL LAW DULY ADOPTED BY SUCH CITY,  
49 AND NOTICES OF VIOLATION MAY BE RETURNABLE TO THE ENVIRONMENTAL CONTROL  
50 BOARD OF SUCH CITY, WHICH SHALL HAVE THE POWER TO IMPOSE THE CIVIL  
51 PENALTIES HEREIN PROVIDED. NOTWITHSTANDING ANY OTHER PROVISION OF LAW,  
52 RULE OR REGULATION, SERVICE OF A NOTICE OF VIOLATION FOR AN ALLEGED  
53 VIOLATION OF THIS SUBDIVISION COMMITTED IN SUCH CITY MAY BE MADE UPON  
54 ANY PERSON, ASSOCIATION, PARTNERSHIP OR CORPORATION BY FIRST CLASS MAIL,  
55 POSTAGE PREPAID, AND ANY SUCH NOTICE SERVED BY MAIL SHALL BE RETURNABLE  
56 ONLY TO SUCH ENVIRONMENTAL CONTROL BOARD. SUCH SERVICE BY FIRST CLASS

1 MAIL SHALL BE DEEMED COMPLETE UPON MAILING OF THE NOTICE OF VIOLATION,  
2 UNLESS THE NOTICE OF VIOLATION IS RETURNED TO THE SENDER BY THE UNITED  
3 STATES POSTAL SERVICE FOR ANY REASON OTHER THAN REFUSAL OF DELIVERY. IN  
4 ADDITION, ANY NOTICE OF VIOLATION FOR A VIOLATION OF THIS SUBDIVISION  
5 MAY BE SERVED BY A MEANS PRESCRIBED IN ARTICLE THREE OF THE CIVIL PRAC-  
6 TICE LAW AND RULES OR ARTICLE THREE OF THE BUSINESS CORPORATION LAW.

7 (B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION,  
8 SUCH CIVIL PENALTIES IMPOSED BY SUCH ENVIRONMENTAL CONTROL BOARD SHALL  
9 BE PAID INTO THE GENERAL FUND OF SUCH CITY.

10 (C) ANY FINAL ORDER ISSUED PURSUANT TO THIS SUBDIVISION BY AN ENVIRON-  
11 MENTAL CONTROL BOARD OF A CITY WITH A POPULATION OF ONE MILLION OR MORE  
12 SHALL CONSTITUTE A JUDGMENT THAT MAY BE ENTERED IN ANY PLACE PROVIDED  
13 FOR THE ENTRY OF CIVIL JUDGMENTS WITHIN THE STATE, AND MAY BE ENFORCED  
14 WITHOUT COURT PROCEEDINGS IN THE SAME MANNER AS THE ENFORCEMENT OF MONEY  
15 JUDGMENTS ENTERED IN CIVIL ACTIONS; PROVIDED, HOWEVER, THAT NO SUCH  
16 JUDGMENT SHALL BE ENTERED THAT EXCEEDS THE SUM OF TWENTY-FIVE THOUSAND  
17 DOLLARS FOR EACH PERSON, ASSOCIATION, PARTNERSHIP OR CORPORATION.  
18 NOTWITHSTANDING THE PRECEDING SENTENCE, BEFORE A JUDGMENT BASED UPON A  
19 DEFAULT MAY BE SO ENTERED, SUCH ENVIRONMENTAL CONTROL BOARD MUST HAVE  
20 NOTIFIED THE PERSON, ASSOCIATION, PARTNERSHIP OR CORPORATION BY FIRST  
21 CLASS MAIL IN SUCH FORM AS SUCH ENVIRONMENTAL CONTROL BOARD MAY DIRECT:  
22 (1) OF THE DEFAULT DECISION AND ORDER AND THE PENALTY IMPOSED; (2) THAT  
23 A JUDGMENT WILL BE ENTERED IN ANY PLACE PROVIDED FOR THE ENTRY OF CIVIL  
24 JUDGMENTS IN THE STATE; AND (3) THAT ENTRY OF SUCH JUDGMENT MAY BE  
25 AVOIDED BY REQUESTING A STAY OF DEFAULT FOR GOOD CAUSE SHOWN AND EITHER  
26 REQUESTING A HEARING OR ENTERING A PLEA PURSUANT TO THE RULES OF SUCH  
27 ENVIRONMENTAL CONTROL BOARD WITHIN THIRTY DAYS OF THE MAILING OF SUCH  
28 NOTICE. NO JUDGMENT BASED UPON A DEFAULT MAY BE SO ENTERED BY THE ENVI-  
29 RONMENTAL CONTROL BOARD WITHIN LESS THAN SIXTY DAYS FROM THE COMPLETION  
30 OF SERVICE BY MAIL OF THE NOTICE OF VIOLATION AS PROVIDED IN PARAGRAPH  
31 (A) OF THIS SUBDIVISION. ANY REQUIREMENT OF ANY PROVISION OF LAW OTHER  
32 THAN THIS SUBDIVISION THAT RELATES TO THE MANNER OF SERVICE OF THE  
33 NOTICE OF VIOLATION THAT PRECEDES ANY FINAL ORDER OF SUCH ENVIRONMENTAL  
34 CONTROL BOARD SHALL NOT APPLY TO A FINAL ORDER ISSUED PURSUANT TO THIS  
35 SUBDIVISION. A JUDGMENT ENTERED PURSUANT TO THIS PARAGRAPH SHALL REMAIN  
36 IN FULL FORCE AND EFFECT FOR EIGHT YEARS.

37 S 6. This act shall take effect on the first of September next  
38 succeeding the date on which it shall have become a law, provided,  
39 however, that the department of state may take all steps necessary,  
40 including but not limited to the promulgation of rules and regulations,  
41 to ensure the prompt implementation of this act on its effective date.