

9185

2009-2010 Regular Sessions

I N A S S E M B L Y

October 13, 2009

Introduced by M. of A. PEOPLES -- read once and referred to the Committee on Economic Development, Job Creation, Commerce and Industry

AN ACT to amend the general business law, in relation to the lawful sale of scrap copper and other metals by junk dealers; and creating the New York state metal theft task force

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

1 Section 1. Section 62 of the general business law, as amended by chap-
2 ter 302 of the laws of 2007, is amended to read as follows:
3 S 62. Statement required from persons selling certain property. 1. On
4 purchasing any pig or pigs of metal, bronze or brass castings or parts
5 thereof, sprues or gates or parts thereof, copper TUBING OR wire or
6 brass car journals, or metal beer kegs, such junk dealer shall: (A)
7 TAKE A COPY OF THE SELLER'S GOVERNMENT ISSUED IDENTIFICATION; AND (B)
8 cause to be subscribed by the person from whom purchased a statement as
9 to: (I) when, where and from whom he or she obtained such property[,
10 also his or her identity as verified by a government issued identifica-
11 tion card,] OR OTHER PROOF OF AUTHORIZATION TO SELL SUCH ITEMS; (II) THE
12 PERSON'S age, residence by city, village or town, and the street and
13 number thereof, if any, the driver's license number or information from
14 a government issued identification card, if any, of such person, and
15 otherwise such description as will reasonably locate the same[, his or
16 her]; (III) THE PERSON'S occupation and name of his or her employer and
17 place of employment or business, which statement the junk dealer shall
18 forthwith file in the office of the chief of police of the city or
19 village in which the purchase was made, if made in a city or incorpo-
20 rated village, and otherwise in the office of the sheriff of the county
21 in which made. THE JUNK DEALER SHALL CAUSE SUCH STATEMENT TO BE SIGNED
22 BY THE SELLER. The junk metal dealer shall also make and retain a copy
23 of the government issued photographic identification card used to verify
24 the identity of the person from whom the junk metal was purchased and

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

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1 shall retain this copy AND THE SIGNED STATEMENT in a separate book or
2 register for two years from the date of purchase of the junk metal and
3 include an additional copy of this identification with the information
4 required to be transmitted to the chief of police or sheriff pursuant to
5 this section. IT SHALL BE UNLAWFUL FOR ANY SELLER TO REFUSE TO FURNISH
6 SUCH INFORMATION OR TO FURNISH INCORRECT OR INCOMPLETE INFORMATION.

7 2. FOR THE PURPOSES OF THIS SECTION, "GOVERNMENT ISSUED IDENTIFICA-
8 TION" MEANS ANY CURRENT AND VALID OFFICIAL FORM OF IDENTIFICATION ISSUED
9 BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA, A STATE, TERRITORY,
10 PROTECTORATE, OR DEPENDENCY OF THE UNITED STATES OF AMERICA, A COUNTY,
11 MUNICIPALITY OR SUBDIVISION THEREOF, ANY PUBLIC AGENCY OR DEPARTMENT
12 THEREOF, OR ANY PUBLIC EMPLOYER, WHICH REQUIRES AND BEARS THE SIGNATURE
13 OF THE PERSON TO WHOM IT IS ISSUED, NOT INCLUDING A SOCIAL SECURITY
14 ACCOUNT NUMBER CARD.

15 S 2. Section 63 of the general business law is amended to read as
16 follows:

17 S 63. Certain property to be kept in separate piles. Every junk dealer
18 shall on purchasing any of the property described in [the last] section
19 SIXTY-TWO OF THIS ARTICLE, place and keep each separate purchase in a
20 separate and distinct pile, bundle or package, in the usual place of
21 business of such junk dealer, without removing, melting, cutting or
22 destroying any article thereof, for a period of five days immediately
23 succeeding such purchase, on which package, bundle or pile shall be
24 placed and kept by such dealer a tag bearing the name and residence of
25 the seller, with the date, hour and place of purchase, and the weight
26 thereof.

27 S 3. The general business law is amended by adding a new section 63-b
28 to read as follows:

29 S 63-B. PROHIBITION ON SALE OF CERTAIN ITEMS. NOTWITHSTANDING ANY
30 PROVISION OF LAW, RULE OR REGULATION TO THE CONTRARY, IT SHALL BE UNLAW-
31 FUL TO SELL, OFFER FOR SALE, OR PURCHASE AS JUNK, ANY OF THE FOLLOWING:
32 STREET SIGNS, PROPANE CONTAINERS FOR FUELING FORKLIFTS, FUNERAL MARKERS,
33 OR ANY METAL ITEMS BEARING MARKINGS OF ANY GOVERNMENTAL ENTITY, UTILITY
34 COMPANY, CEMETERY OR RAILROAD. THIS SECTION SHALL NOT APPLY TO THE
35 SALE, OFFER FOR SALE, OR PURCHASE AS JUNK, OF SUCH ITEMS BY A DULY
36 AUTHORIZED EMPLOYEE OR REPRESENTATIVE OF ANY GOVERNMENTAL ENTITY, UTILI-
37 TY COMPANY, CEMETERY OR RAILROAD ACTING IN THEIR OFFICIAL CAPACITY.

38 S 4. Section 64 of the general business law is amended to read as
39 follows:

40 S 64. [Penalty] PENALTIES. 1. Each violation of this article, either
41 by the junk dealer, the agent or servant thereof, and each false state-
42 ment made in or on any statement or tag above mentioned shall be a
43 misdemeanor and the person convicted shall, in addition to other penal-
44 ties imposed, forfeit his OR HER license to do business.

45 2. IF A JUNK DEALER, THE AGENT OR SERVANT THEREOF, HAS THREE OR MORE
46 PREVIOUS CONVICTIONS IN A TEN-YEAR PERIOD FOR VIOLATIONS OF SECTION
47 SIXTY-TWO, SIXTY-THREE OR SIXTY-THREE-B OF THIS ARTICLE, SUCH CURRENT
48 VIOLATION SHALL BE PUNISHABLE AS A CLASS E FELONY.

49 3. EACH VIOLATION OF THIS ARTICLE BY A SELLER SHALL BE A VIOLATION
50 SUBJECT TO A FINE OF NOT MORE THAN ONE HUNDRED DOLLARS, UNLESS SUCH
51 VIOLATION SHALL BE KNOWING AND WILLFUL, IN WHICH EVENT IT SHALL BE A
52 MISDEMEANOR.

53 4. But nothing [herein contained] IN THIS SECTION shall apply to
54 cities of the first class.

1 S 5. New York state metal theft task force. 1. The New York state
2 metal theft task force is hereby established. The role of the task force
3 includes, but is not limited to:

4 (a) compiling and analyzing data regarding the incidence of metal
5 theft in the state;

6 (b) assessing the extent to which junk dealers and scrap processors
7 are complying with the laws, rules and regulations of this state;

8 (c) assessing the efforts of municipalities in ensuring lawful junk
9 dealing and scrap processing within their jurisdiction;

10 (d) assessing the extent to which the current junk dealer and scrap
11 processor licensing scheme provided for by the state law ensures profes-
12 sionalism in these industries;

13 (e) assessing the need for legislation to further deter the theft of
14 metal in the state and enhance the ability of law enforcement entities
15 to prosecute those engaged in such activity; and if legislation is
16 deemed necessary, to make specific legislative recommendations to the
17 legislature; and

18 (f) preparing a report for submission to the governor and the legisla-
19 ture that provides specific recommendations regarding: existing state
20 laws, regulations, programs, policies, and practices related to the
21 theft of metal, junk dealing and scrap processing; research on law
22 enforcement techniques that have, or are most likely to be, successful
23 in prosecuting metal thieves; current and anticipated trends in metal
24 theft; the effectiveness of establishing a toll-free statewide telephone
25 number for citizens to report suspected metal theft; the need for
26 increased state oversight for junk dealers and scrap metal processors;
27 and the results of the assessment of the need for legislation to address
28 such activity, as required in paragraph (e) of this subdivision.

29 2. The task force shall issue its findings, in the form of a report,
30 no later than November 30, 2012.

31 3. The task force shall consist of seven members of whom two shall be
32 appointed by the governor, two by the temporary president of the senate,
33 two by the speaker of the assembly and one shall be the superintendent
34 of state police, or such superintendent's designee. A chair shall be
35 elected by the members of the task force. Four members shall, at all
36 times, constitute a quorum. Members shall receive no compensation for
37 their services but shall be reimbursed for their expenses actually and
38 necessarily incurred in the performance of any of their duties.
39 Notwithstanding any inconsistent provision of any general, special, or
40 local law, no officer or employee of the state or of any political
41 subdivision thereof shall forfeit his or her office or employment by
42 reason of acceptance of appointment to the task force.

43 4. The task force may request from any department, board, bureau,
44 commission or other agency of the state, and the same are authorized to
45 provide, such cooperation and assistance, services and data as will
46 enable the task force properly to carry out its functions.

47 S 6. Section 69-e of the general business law, as added by chapter 431
48 of the laws of 1976, is amended to read as follows:

49 S 69-e. Definitions. 1. "Scrap metal processing facility" shall mean
50 an establishment engaged primarily in the purchase, processing and ship-
51 ment of ferrous and/or non-ferrous scrap, the end product of which is
52 the production of raw material for remelting purposes for steel mills,
53 [foundaries] FOUNDRIES, smelters, refiners, and similar users.

54 2. "Scrap processor" shall mean any person, association, partnership
55 or corporation operating and maintaining a "scrap metal processing
56 facility".

1 3. "GOVERNMENT ISSUED IDENTIFICATION" MEANS ANY CURRENT AND VALID
2 OFFICIAL FORM OF IDENTIFICATION ISSUED BY THE GOVERNMENT OF THE UNITED
3 STATES OF AMERICA, A STATE, TERRITORY, PROTECTORATE, OR DEPENDENCY OF
4 THE UNITED STATES OF AMERICA, A COUNTY, MUNICIPALITY OR SUBDIVISION
5 THEREOF, ANY PUBLIC AGENCY OR DEPARTMENT THEREOF, OR ANY PUBLIC EMPLOY-
6 ER, WHICH REQUIRES AND BEARS THE SIGNATURE AND PHOTOGRAPH OF THE PERSON
7 TO WHOM IT IS ISSUED.

8 S 7. Subdivision 1 of section 69-g of the general business law, as
9 amended by chapter 302 of the laws of 2007, is amended to read as
10 follows:

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

31 S 8. Section 69-h of the general business law is renumbered section
32 69-i and two new sections 69-h and 69-j are added to read as follows:

33 S 69-H. PROHIBITION ON SALE OF CERTAIN ITEMS. NOTWITHSTANDING ANY
34 PROVISION OF LAW, RULE OR REGULATION TO THE CONTRARY, IT SHALL BE UNLAW-
35 FUL TO SELL, OFFER FOR SALE, OR PURCHASE AS SCRAP, ANY OF THE FOLLOWING:
36 STREET SIGNS, PROPANE CONTAINERS FOR FUELING FORKLIFTS, FUNERAL MARKERS,
37 OR ANY METAL ITEMS BEARING MARKINGS OF ANY GOVERNMENTAL ENTITY, UTILITY
38 COMPANY, CEMETERY OR RAILROAD UNLESS SUCH ITEMS ARE OFFERED FOR SALE BY
39 A DULY AUTHORIZED EMPLOYEE OR AGENT OF ANY GOVERNMENTAL ENTITY, UTILITY
40 COMPANY, CEMETERY OR RAILROAD.

41 S 69-J. PREEMPTION OF LOCAL LAWS. THE PROVISIONS OF THIS ARTICLE
42 SHALL APPLY TO ALL MUNICIPALITIES, INCLUDING CITIES WITH A POPULATION OF
43 ONE MILLION OR MORE, AND SHALL SUPERSEDE ANY LOCAL LAW, RULE, REGU-
44 LATION, OR ORDINANCE REGULATING OR LICENSING SCRAP PROCESSORS AS DEFINED
45 IN THIS ARTICLE.

46 S 9. This act shall take effect on the ninetieth day after it shall
47 have become a law.