S T A T E O F N E W Y O R K

1237

2009-2010 Regular Sessions

I N S E N A T E

January 28, 2009

Introduced by Sens. THOMPSON, ONORATO, PERKINS -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

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:

Section 1. Section 62 of the general business law, as amended by chapter 302 of the laws of 2007, is amended to read as follows:

S 62. Statement required from persons selling certain property. 1. On purchasing any pig or pigs of metal, bronze or brass castings or parts thereof, sprues or gates or parts thereof, copper TUBING OR wire or brass car journals, or metal beer kegs, such junk dealer shall: (A) TAKE A COPY OF THE SELLER'S GOVERNMENT ISSUED IDENTIFICATION; AND (B) cause to be subscribed by the person from whom purchased a statement as to (I) when, where and from whom he or she obtained such property, OR OTHER PROOF OF AUTHORIZATION TO SELL SUCH ITEMS; (II) also his or her identity as verified by a government issued identification card, age, residence by city, village or town, and the street and number thereof, if any, the driver's license number or information from a government issued identification card, if any, of such person, and otherwise such description as will reasonably locate the same, (III) his or her occupation and name of his or her employer and place of employment or business, which statement the junk dealer shall forthwith file in the office of the chief of police of the city or village in which the purchase was made, if made in a city or incorporated village, and otherwise in the office of the sheriff of the county in which made. THE JUNK DEALER SHALL CAUSE SUCH STATEMENT TO BE SIGNED BY THE SELLER. IT SHALL BE UNLAWFUL FOR ANY SELLER TO REFUSE TO FURNISH SUCH INFORMATION OR TO FURNISH INCORRECT OR INCOMPLETE INFORMATION. The junk metal dealer shall

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

LBD04698-01-9

also make and retain a copy of the government issued photographic identification card used to verify the identity of the person from whom the junk metal was purchased and shall retain this copy in a separate book or register for two years from the date of purchase of the junk metal and include an additional copy of this identification with the information required to be transmitted to the chief of police or sheriff pursuant to this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) assessing the extent to which the current junk dealer and scrap processor licensing scheme provided for by the state law ensures professionalism in these industries;

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

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

2. The task force shall issue its findings, in the form of a report, no later than November 30, 2010.

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

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

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

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

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

3. "GOVERNMENT ISSUED IDENTIFICATION" MEANS ANY CURRENT AND VALID OFFICIAL FORM OF IDENTIFICATION ISSUED BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA, A STATE, TERRITORY, PROTECTORATE, OR DEPENDENCY OF THE UNITED STATES OF AMERICA, A COUNTY, MUNICIPALITY OR SUBDIVISION THEREOF, ANY PUBLIC AGENCY OR DEPARTMENT THEREOF, OR ANY PUBLIC EMPLOYER, WHICH REQUIRES AND BEARS THE SIGNATURE OF THE PERSON TO WHOM IT IS ISSUED, NOT INCLUDING A SOCIAL SECURITY ACCOUNT NUMBER CARD.

S 7. Section 69-h of the general business law is renumbered section 69-i and a new section 69-h is added to read as follows:

S 69-H. PROHIBITION ON SALE OF CERTAIN ITEMS. NOTWITHSTANDING ANY PROVISION OF LAW, RULE OR REGULATION TO THE CONTRARY, IT SHALL BE UNLAWFUL TO SELL, OFFER FOR SALE, OR PURCHASE AS SCRAP, ANY OF THE FOLLOWING: STREET SIGNS, PROPANE CONTAINERS FOR FUELING FORKLIFTS, FUNERAL MARKERS, OR ANY METAL ITEMS BEARING MARKINGS OF ANY GOVERNMENTAL ENTITY, UTILITY COMPANY, CEMETERY OR RAILROAD. THIS SECTION SHALL NOT APPLY TO THE SALE, OFFER FOR SALE, OR PURCHASE AS SCRAP, OF SUCH ITEMS BY A DULY AUTHORIZED EMPLOYEE OR REPRESENTATIVE OF ANY GOVERNMENTAL ENTITY, UTILITY COMPANY, CEMETERY OR RAILROAD ACTING IN THEIR OFFICIAL CAPACITY.

S 8. This act shall take effect on the ninetieth day after it shall have become a law.