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

6035

2009-2010 Regular Sessions

I N S E N A T E

June 21, 2009

Introduced by Sen. PERKINS -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the general business law and the penal law, in relation to the lawful sale of scrap copper and other metals by junk dealers

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[, also his or her identity as verified by a government issued identification card,] OR OTHER PROOF OF AUTHORIZATION TO SELL SUCH ITEMS; (II) THE PERSON'S 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[, his or her]; (III) THE PERSON'S 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. The junk metal dealer shall 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

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

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shall retain this copy AND THE SIGNED STATEMENT 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. IT SHALL BE UNLAWFUL FOR ANY SELLER TO REFUSE TO FURNISH SUCH INFORMATION OR TO FURNISH INCORRECT OR INCOMPLETE INFORMATION.

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 INTENTIONAL, 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. 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 AND PHOTOGRAPH OF THE PERSON TO WHOM IT IS ISSUED.

S 6. Subdivision 1 of section 69-g of the general business law, as amended by chapter 302 of the laws of 2007, is amended to read as follows:

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

S 7. Section 69-h of the general business law is renumbered section 69-i and two new sections 69-h and 69-j are 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 UNLESS SUCH ITEMS ARE OFFERED FOR SALE BY A DULY AUTHORIZED EMPLOYEE OR AGENT OF ANY GOVERNMENTAL ENTITY, UTILITY COMPANY, CEMETERY OR RAILROAD.

S 69-J. PREEMPTION OF LOCAL LAWS. THE PROVISIONS OF THIS ARTICLE SHALL APPLY TO ALL MUNICIPALITIES, INCLUDING CITIES WITH A POPULATION OF ONE MILLION OR MORE, AND SHALL SUPERSEDE ANY LOCAL LAW, RULE, REGULATION, OR ORDINANCE THAT DIRECTLY CONFLICTS WITH THE REGULATION OR LICENSING OF SCRAP PROCESSORS AS SET FORTH IN THIS ARTICLE. NOTHING CONTAINED IN LOCAL LAW NUMBER FIFTY OF THE CITY OF NEW YORK FOR THE YEAR TWO THOUSAND SEVEN SHALL BE DEEMED TO DIRECTLY CONFLICT WITH THE REGULATION OR LICENSING OF SCRAP PROCESSORS AS SET FORTH IN THIS ARTICLE.

S 8. Section 155.00 of the penal law is amended by adding a new subdivision 10 to read as follows:

10. "INCIDENTAL DAMAGE" MEANS PROPERTY DAMAGE, LOSS OF INCOME OR LOSS OF PROFIT.

S 9. Section 155.20 of the penal law is amended by adding a new subdivision 5 to read as follows:

5. WHEN, AS A RESULT OF THE THEFT OF PROPERTY, INCIDENTAL DAMAGE IS CAUSED TO OTHER PROPERTY OF AN OWNER, VALUE SHALL BE THE AGGREGATE OF THE VALUE OF PROPERTY TAKEN AS SET FORTH IN SUBDIVISION ONE OF THIS SECTION AND ANY INCIDENTAL DAMAGE CAUSED TO SUCH OTHER PROPERTY.

S 10. This act shall take effect on the ninetieth day after it shall have become a law.