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

5054

2013-2014 Regular Sessions

I N A S S E M B L Y

February 14, 2013

Introduced by M. of A. MAISEL, ENGLEBRIGHT, COLTON -- read once and referred to the Committee on Economic Development

AN ACT to amend the general business law, in relation to prohibiting the purchase of certain items as scrap

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

Section 1. 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. "PLASTIC BULK MERCHANDISE CONTAINER" SHALL MEAN A PLASTIC CRATE, PALLET, OR SHELL USED BY A PRODUCT, PRODUCER, DISTRIBUTOR, OR RETAILER FOR THE BULK TRANSPORT OR STORAGE OF RETAILER CONTAINERS OF BOTTLED BEVERAGES.

4. "GOVERNMENT ISSUED IDENTIFICATION" SHALL MEAN 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.

5. "DEPARTMENT" SHALL MEAN THE NEW YORK STATE DEPARTMENT OF STATE.

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

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

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S 69-f. License AND REGISTRATION. 1. It shall be unlawful for any person, association, partnership or corporation to engage in business as a scrap processor unless such scrap processor shall have complied with the provisions of this article and obtained a license to do so from the mayor of the city, if the place of business of such scrap processor is in a city, or the mayor of the village if the place of business is in an incorporated village, otherwise from the supervisor of the town in which such place of business is located, or from the licensing authority of any such municipality; for which license shall be paid such mayor or supervisor or licensing authority for the use of such city, village, or town the sum of seventy-five dollars if such place of business is the principal place of business of such scrap processor in this state, otherwise the sum of fifty dollars, which license shall expire on June thirtieth of each year.

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

3. ANY PERSON, FIRM OR CORPORATION SEEKING A CERTIFICATE OF REGISTRATION AS A SCRAP PROCESSOR SHALL FILE WITH THE DEPARTMENT AN APPLICATION FOR REGISTRATION IN SUCH FORM AND DETAIL AS THE DEPARTMENT SHALL PRESCRIBE, INCLUDING THE FOLLOWING:

(A) THE NAME AND RESIDENCE ADDRESS OF THE APPLICANT;

(B) THE BUSINESS NAME, IF OTHER THAN THE APPLICANT;

(C) THE PLACE, INCLUDING THE CITY, TOWN OR VILLAGE, WITH THE STREET AND NUMBER, WHERE THE BUSINESS IS TO BE LOCATED;

(D) THE BUSINESS TELEPHONE NUMBER OF THE APPLICANT;

(E) A STATEMENT INDICATING WHETHER THE APPLICANT HAS:

(I) BEEN CONVICTED OF ANY CRIME RELATING TO WORK AS A SCRAP PROCESSOR; AND

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

(F) A CERTIFICATION ATTESTING THAT THE SCRAP PROCESSOR IS IN COMPLIANCE WITH THE APPLICABLE REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION;

(G) A CERTIFICATION ATTESTING THAT THE SCRAP PROCESSOR IS IN COMPLIANCE WITH THE RECORD KEEPING REQUIREMENTS SET FORTH IN THIS ARTICLE;

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

(I) A COMPLETE SET OF TWO FINGERPRINT CARDS FOR EACH PRINCIPAL AND OFFICER OF THE APPLICANT ON A STANDARD FINGERPRINT CARD APPROVED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES. SUCH CARDS SHALL BE RETAINED BY THE DEPARTMENT AND USED SOLELY FOR THE PURPOSE OF CONDUCTING AN INVESTIGATION PURSUANT TO SUBDIVISION TWELVE OF THIS SECTION. IF ADDITIONAL COPIES OF FINGERPRINTS ARE REQUIRED THE APPLICANT SHALL FURNISH THEM UPON REQUEST.

4. IN DETERMINING WHETHER TO ISSUE OR RENEW A REGISTRATION, THE SECRETARY OF STATE MAY CONSIDER THE CHARACTER, COMPETENCY AND INTEGRITY OF THE APPLICANT.

5. THE SECRETARY OF STATE MAY REFUSE TO ISSUE A REGISTRATION TO ANY PERSON, FIRM OR CORPORATION WHOM HE OR SHE FINDS HAS BEEN CONVICTED OF ANY CRIME OR FAILED TO PAY ANY FINAL CIVIL JUDGMENT RELATING TO WORK AS A SCRAP PROCESSOR, IF SUCH REFUSAL WILL, IN THE JUDGMENT OF THE SECRETARY OF STATE, BEST PROMOTE THE INTERESTS OF THE PEOPLE OF THIS STATE.

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

(B) UPON ORIGINAL APPLICATION FOR A LICENSE TO OPERATE AS A SCRAP PROCESSOR, THE APPLICANT SHALL PAY AN APPLICATION FEE, IN SUCH AMOUNT AS MAY BE DETERMINED BY THE SECRETARY, NOT TO EXCEED ONE THOUSAND DOLLARS. UPON APPLICATION FOR A LICENSE RENEWAL, THE LICENSEE SHALL PAY A RENEWAL PROCESSING FEE IN SUCH AMOUNT AS SHALL BE DETERMINED BY THE SECRETARY, NOT TO EXCEED ONE THOUSAND DOLLARS.

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

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

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

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

8. THE FEES ESTABLISHED BY THIS SECTION SHALL NOT BE REFUNDABLE.

9. EACH SCRAP PROCESSOR SHALL EXHIBIT HIS OR HER REGISTRATION CERTIFICATE PRESCRIBED BY THIS ARTICLE AT HIS OR HER PLACE OF BUSINESS.

10. NO PERSON, FIRM OR CORPORATION SHALL:

(A) PRESENT, OR ATTEMPT TO PRESENT, AS HIS, HER OR ITS OWN, THE REGISTRATION OF ANOTHER;

(B) KNOWINGLY GIVE FALSE EVIDENCE OF A MATERIAL NATURE TO THE DEPARTMENT FOR THE PURPOSE OF PROCURING A REGISTRATION; OR

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

11. REGISTRATIONS ISSUED TO SCRAP PROCESSORS SHALL NOT BE TRANSFERABLE OR ASSIGNABLE.

12. (A) THE SECRETARY OF STATE SHALL PROMULGATE SUCH RULES AND REGULATIONS AS ARE DEEMED NECESSARY TO EFFECTUATE THE PURPOSES OF THIS ARTICLE, AND SHALL PROVIDE WRITTEN NOTIFICATION OF THE PROVISIONS OF THIS ARTICLE TO ALL SCRAP PROCESSORS REGISTERED PURSUANT TO THIS ARTICLE.

(B) THE SECRETARY OF STATE SHALL HAVE THE POWER TO ENFORCE THE PROVISIONS OF THIS ARTICLE AND UPON COMPLAINT OF ANY PERSON, OR UPON THE SECRETARY'S INITIATIVE, TO INVESTIGATE ANY VIOLATION THEREOF OR TO INVESTIGATE THE BUSINESS, BUSINESS PRACTICES AND BUSINESS METHODS OF ANY PERSON, FIRM, LIMITED LIABILITY COMPANY, PARTNERSHIP OR CORPORATION APPLYING FOR OR HOLDING A REGISTRATION AS A SCRAP PROCESSOR, IF IN THE OPINION OF THE SECRETARY OF STATE SUCH INVESTIGATION IS WARRANTED. EACH SUCH APPLICANT OR REGISTRANT SHALL BE OBLIGED, ON REQUEST OF THE SECRETARY OF STATE, TO SUPPLY SUCH INFORMATION, BOOKS, PAPERS OR RECORDS AS MAY BE REQUIRED CONCERNING HIS, HER OR ITS BUSINESS PRACTICES OR BUSINESS METHODS. FAILURE TO COMPLY WITH A LAWFUL REQUEST OF THE SECRETARY SHALL BE A GROUND FOR DENYING AN APPLICATION FOR A REGISTRATION, OR FOR REVOKING, SUSPENDING, OR NOT RENEWING A REGISTRATION ISSUED UNDER THIS ARTICLE.

(C) THE DEPARTMENT SHALL HAVE THE POWER TO REVOKE OR SUSPEND ANY REGISTRATION, OR DENY AN APPLICATION FOR A REGISTRATION OR RENEWAL THEREOF UPON PROOF:

(I) THAT THE APPLICANT OR REGISTRANT HAS VIOLATED ANY OF THE PROVISIONS OF THIS ARTICLE OR THE RULES AND REGULATIONS PROMULGATED PURSUANT TO THIS ARTICLE; OR

(II) THAT THE APPLICANT OR REGISTRANT HAS MADE A MATERIAL MISSTATEMENT IN THE APPLICATION FOR OR RENEWAL OF HIS, HER OR ITS REGISTRATION.

13. THE DEPARTMENT SHALL, BEFORE DENYING AN APPLICATION FOR A REGISTRATION NOTIFY IN WRITING THE APPLICANT FOR, OR THE HOLDER OF SUCH REGISTRATION OF ANY CHARGE MADE AND SHALL AFFORD SUCH APPLICANT OR REGISTRANT AN OPPORTUNITY TO BE HEARD IN PERSON OR BY COUNSEL IN REFERENCE THERETO. SUCH WRITTEN NOTICE MAY BE SERVED BY DELIVERY OF SAME PERSONALLY TO THE APPLICANT OR REGISTRANT, OR BY MAILING SAME BY REGISTERED MAIL TO THE LAST KNOWN BUSINESS ADDRESS OF SUCH APPLICANT OR REGISTRANT.

14. THE HEARING ON SUCH CHARGES SHALL BE AT SUCH TIME AND PLACE AS THE DEPARTMENT SHALL PRESCRIBE AND SHALL BE CONDUCTED BY SUCH OFFICER OR PERSON IN THE DEPARTMENT AS THE SECRETARY OF STATE MAY DESIGNATE, WHO SHALL HAVE THE POWER TO SUBPOENA AND BRING BEFORE THE OFFICER OR PERSON SO DESIGNATED ANY PERSON IN THIS STATE, AND ADMINISTER AN OATH TO AND TAKE TESTIMONY OF ANY PERSON OR CAUSE HIS OR HER DEPOSITION TO BE TAKEN. A SUBPOENA ISSUED UNDER THIS SECTION SHALL BE GOVERNED BY THE CIVIL PRACTICE LAW AND RULES.

15. IN THE EVENT THAT THE DEPARTMENT SHALL DENY THE APPLICATION FOR, OR REVOKE OR SUSPEND ANY SUCH REGISTRATION, ITS DETERMINATION SHALL BE IN WRITING AND OFFICIALLY SIGNED. THE ORIGINAL OF SUCH DETERMINATIONS, WHEN SO SIGNED, SHALL BE FILED IN THE OFFICE OF THE DEPARTMENT AND COPIES THEREOF SHALL BE MAILED TO THE APPLICANT OR REGISTRANT AND TO THE COMPLAINANT WITHIN TWO DAYS AFTER SUCH FILING.

16. THE ACTION OF THE DEPARTMENT IN GRANTING OR REFUSING TO GRANT OR TO RENEW A REGISTRATION UNDER THIS ARTICLE OR IN REVOKING OR SUSPENDING OR REFUSING TO REVOKE OR SUSPEND SUCH A REGISTRATION SHALL BE SUBJECT TO REVIEW BY A PROCEEDING INSTITUTED UNDER ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

17. THE DEPARTMENT SHALL MAINTAIN AND PUBLISH A REGISTRY OF ALL REGISTERED SCRAP PROCESSORS, WHICH SHALL LIST AND IDENTIFY ON A COUNTY BY COUNTY BASIS, ALL REGISTERED SCRAP PROCESSORS DOING BUSINESS IN THIS STATE. THE DEPARTMENT SHALL MAKE THE REGISTRY AVAILABLE ON ITS WEBSITE. COPIES OF THE ROSTER SHALL BE MADE AVAILABLE UPON REQUEST AND PAYMENT OF A FEE TO BE DETERMINED BY THE SECRETARY OF STATE AND APPROVED BY THE DIRECTOR OF THE DIVISION OF THE BUDGET.

S 3. Subdivision 1 of section 69-g of the general business law, as amended by chapter 302 of the laws of 2007, is amended and a new subdivision 3 is added 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 OR HER 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.

3. BY NO LATER THAN APRIL FIFTEENTH, TWO THOUSAND FOURTEEN, A SCRAP PROCESSOR SHALL INSTALL AND MAINTAIN IN WORKING ORDER AN ELECTRONIC VIDEO RECORDING SYSTEM AT ALL SCALES AND AT ALL POINTS OF SALE LOCATED ON THE PREMISES OF THE SCRAP PROCESSING FACILITY. ELECTRONIC VIDEO RECORDS SHALL BE MAINTAINED IN AN ELECTRONIC ARCHIVE FOR A PERIOD OF NO LESS THAN SIXTY DAYS FROM THE DATE WHEN SUCH ELECTRONIC VIDEO RECORD WAS MADE.

S 4. 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 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 SUCH 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 WHICH SEEKS TO REGULATE THE PURCHASE OF SCRAP MATERIAL BY A SCRAP PROCESSOR; EXCEPT THAT LOCAL LAW NUMBER FIFTY OF THE CITY OF NEW YORK FOR THE YEAR TWO THOUSAND SEVEN SHALL NOT BE DEEMED TO BE PREEMPTED BY THE PROVISIONS OF THIS ARTICLE.

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

S 69-i. Penalty. 1. [Each] A FIRST violation of this article [by a scrap processor] shall be a violation subject to a fine of not more than two [hundred] THOUSAND dollars[, unless such violation shall be wilful, in which event it shall be a misdemeanor except, however, the scrap processor shall not be liable for any violation of this article by a seller, his agent, or a purported seller or agent.] AND/OR IMPRISONMENT FOR A TERM OF NOT MORE THAN FIFTEEN DAYS. A SECOND OR SUBSEQUENT VIOLATION OF THIS ARTICLE SHALL BE A MISDEMEANOR SUBJECT TO A FINE OF NOT MORE THAN FIVE THOUSAND DOLLARS AND/OR IMPRISONMENT FOR A TERM OF NOT MORE THAN ONE YEAR.

2. [Each violation of this article by a seller or his agent shall be a misdemeanor.] ALTERNATIVE FINE. IN ADDITION TO A TERM OF IMPRISONMENT, WHERE A PERSON HAS GAINED MONEY OR PROPERTY THROUGH A VIOLATION OF THIS ARTICLE THE COURT, UPON CONVICTION THEREOF, IN LIEU OF IMPOSING THE FINE AUTHORIZED FOR THE OFFENSE MAY SENTENCE THE DEFENDANT TO PAY AN AMOUNT NOT EXCEEDING DOUBLE THE AMOUNT OF THE DEFENDANT'S GAIN FROM THE COMMISSION OF THE OFFENSE.

S 6. This act shall take effect on the one hundred eightieth day after it shall have become a law.