

4503--A

2015-2016 Regular Sessions

I N S E N A T E

March 25, 2015

Introduced by Sen. ORTT -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

- 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, the end product of which is
6 the production of raw material [for remelting purposes] for steel mills,
7 [foundaries] FOUNDRIES, smelters, refiners, and similar users.
8 2. "Scrap processor" shall mean any person, association, partnership
9 or corporation operating and maintaining a "scrap metal processing
10 facility".
11 3. "PLASTIC BULK MERCHANDISE CONTAINER" SHALL MEAN A PLASTIC CRATE,
12 PALLET, OR SHELL USED BY A PRODUCT, PRODUCER, DISTRIBUTOR OR RETAILER
13 FOR THE BULK TRANSPORT OR STORAGE OF RETAILER CONTAINERS OF BOTTLED
14 BEVERAGES.
15 4. "GOVERNMENT ISSUED IDENTIFICATION" SHALL MEAN ANY CURRENT AND VALID
16 OFFICIAL FORM OF IDENTIFICATION ISSUED BY THE GOVERNMENT OF THE UNITED
17 STATES OF AMERICA, A STATE, TERRITORY, PROTECTORATE OR DEPENDENCY OF THE
18 UNITED STATES OF AMERICA, A COUNTY, MUNICIPALITY OR SUBDIVISION THEREOF,
19 ANY PUBLIC AGENCY OR DEPARTMENT THEREOF, OR ANY PUBLIC EMPLOYER, WHICH
20 REQUIRES AND BEARS THE SIGNATURE AND PHOTOGRAPH OF THE PERSON TO WHOM IT
21 IS ISSUED.
22 5. "DEPARTMENT" SHALL MEAN THE DEPARTMENT OF STATE.

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

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

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

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

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

25 (A) THE NAME AND RESIDENCE ADDRESS OF THE APPLICANT;
26 (B) THE BUSINESS NAME, IF OTHER THAN THE APPLICANT;
27 (C) THE PLACE, INCLUDING THE CITY, TOWN OR VILLAGE, WITH THE STREET
28 AND NUMBER, WHERE THE BUSINESS IS TO BE LOCATED;
29 (D) THE BUSINESS TELEPHONE NUMBER OF THE APPLICANT;
30 (E) A STATEMENT INDICATING WHETHER THE APPLICANT HAS:
31 (I) BEEN CONVICTED OF ANY CRIME RELATING TO WORK AS A SCRAP PROCESSOR;
32 AND

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

36 (F) A CERTIFICATION ATTESTING THAT THE SCRAP PROCESSOR IS IN COMPLI-
37 ANCE WITH THE APPLICABLE REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL
38 CONSERVATION;

39 (G) A CERTIFICATION ATTESTING THAT THE SCRAP PROCESSOR IS IN COMPLI-
40 ANCE WITH THE RECORD KEEPING REQUIREMENTS SET FORTH IN THIS ARTICLE;

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

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

50 4. IN DETERMINING WHETHER TO ISSUE OR RENEW A REGISTRATION, THE SECRE-
51 TARY OF STATE MAY CONSIDER THE CHARACTER, COMPETENCY AND INTEGRITY OF
52 THE APPLICANT.

53 5. THE SECRETARY OF STATE MAY REFUSE TO ISSUE A REGISTRATION TO ANY
54 PERSON, FIRM OR CORPORATION WHOM HE OR SHE FINDS HAS BEEN CONVICTED OF
55 ANY CRIME OR FAILED TO PAY ANY FINAL CIVIL JUDGMENT RELATING TO WORK AS

1 A SCRAP PROCESSOR, IF SUCH REFUSAL WILL, IN THE JUDGMENT OF THE SECRE-
2 TARY OF STATE, BEST PROMOTE THE INTERESTS OF THE PEOPLE OF THIS STATE.

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

9 (B) UPON ORIGINAL APPLICATION FOR A REGISTRATION TO OPERATE AS A SCRAP
10 PROCESSOR, THE APPLICANT SHALL PAY AN APPLICATION FEE, IN SUCH AMOUNT AS
11 MAY BE DETERMINED BY THE SECRETARY OF STATE, NOT TO EXCEED ONE THOUSAND
12 DOLLARS. UPON APPLICATION FOR A REGISTRATION RENEWAL, THE REGISTRANT
13 SHALL PAY A RENEWAL PROCESSING FEE IN SUCH AMOUNT AS SHALL BE DETERMINED
14 BY THE SECRETARY OF STATE, NOT TO EXCEED ONE THOUSAND DOLLARS.

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

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

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

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

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

31 9. EACH SCRAP PROCESSOR SHALL EXHIBIT HIS OR HER REGISTRATION CERTIF-
32 ICATE PRESCRIBED BY THIS ARTICLE AT HIS OR HER PLACE OF BUSINESS.

33 10. NO PERSON, FIRM OR CORPORATION SHALL:

34 (A) PRESENT OR ATTEMPT TO PRESENT, AS HIS, HER OR ITS OWN, THE REGIS-
35 TRATION OF ANOTHER;

36 (B) KNOWINGLY GIVE FALSE EVIDENCE OF A MATERIAL NATURE TO THE DEPART-
37 MENT FOR THE PURPOSE OF PROCURING A REGISTRATION; OR

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

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

41 12. (A) THE SECRETARY OF STATE SHALL PROMULGATE SUCH RULES AND REGU-
42 LATIONS AS ARE DEEMED NECESSARY TO EFFECTUATE THE PURPOSES OF THIS ARTI-
43 CLE, AND SHALL PROVIDE WRITTEN NOTIFICATION OF THE PROVISIONS OF THIS
44 ARTICLE TO ALL SCRAP PROCESSORS REGISTERED PURSUANT TO THIS ARTICLE.

45 (B) THE SECRETARY OF STATE SHALL HAVE THE POWER TO ENFORCE THE
46 PROVISIONS OF THIS ARTICLE AND UPON COMPLAINT OF ANY PERSON, OR UPON THE
47 SECRETARY'S INITIATIVE, TO INVESTIGATE ANY VIOLATION THEREOF OR TO
48 INVESTIGATE THE BUSINESS, BUSINESS PRACTICES AND BUSINESS METHODS OF ANY
49 PERSON, FIRM, LIMITED LIABILITY COMPANY, PARTNERSHIP OR CORPORATION
50 APPLYING FOR OR HOLDING A REGISTRATION AS A SCRAP PROCESSOR, IF IN THE
51 OPINION OF THE SECRETARY OF STATE SUCH INVESTIGATION IS WARRANTED. EACH
52 SUCH APPLICANT OR REGISTRANT SHALL BE OBLIGED, ON REQUEST OF THE SECRE-
53 TARY OF STATE, TO SUPPLY SUCH INFORMATION, BOOKS, PAPERS OR RECORDS AS
54 MAY BE REQUIRED CONCERNING HIS, HER OR ITS BUSINESS PRACTICES OR BUSI-
55 NESS METHODS. FAILURE TO COMPLY WITH A LAWFUL REQUEST OF THE SECRETARY
56 OF STATE SHALL BE A GROUND FOR DENYING AN APPLICATION FOR A REGISTRA-

1 TION, OR FOR REVOKING, SUSPENDING OR NOT RENEWING A REGISTRATION ISSUED
2 UNDER THIS ARTICLE.

3 (C) THE DEPARTMENT SHALL HAVE THE POWER TO REVOKE OR SUSPEND ANY
4 REGISTRATION, OR DENY AN APPLICATION FOR A REGISTRATION OR RENEWAL THERE-
5 OF UPON PROOF:

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

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

11 13. THE DEPARTMENT SHALL, BEFORE DENYING AN APPLICATION FOR A REGIS-
12 TRATION NOTIFY IN WRITING THE APPLICANT FOR, OR THE HOLDER OF SUCH
13 REGISTRATION OF ANY CHARGE MADE AND SHALL AFFORD SUCH APPLICANT OR
14 REGISTRANT AN OPPORTUNITY TO BE HEARD IN PERSON OR BY COUNSEL IN REFER-
15 ENCE THERETO. SUCH WRITTEN NOTICE MAY BE SERVED BY DELIVERY OF SAME
16 PERSONALLY TO THE APPLICANT OR REGISTRANT, OR BY MAILING SAME BY REGIS-
17 TERED MAIL TO THE LAST KNOWN BUSINESS ADDRESS OF SUCH APPLICANT OR
18 REGISTRANT.

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

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

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

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

45 S 3. Subdivision 1 of section 69-g of the general business law, as
46 amended by chapter 302 of the laws of 2007, is amended and a new subdi-
47 vision 3 is added to read as follows:

48 1. Such scrap processor shall record [(i) each purchase of any pig or
49 pigs of metal, bronze or brass castings or parts thereof, sprues or
50 gates or parts thereof, utility wire or brass car journals, or of metal
51 beer kegs, and (ii)] each purchase of [iron, steel] FERROUS and/or
52 nonferrous scrap for a price of fifty dollars or more, and preserve such
53 record for a period of three years; which record shall show the date of
54 purchase, name of seller, [his] THE SELLER'S residence OR BUSINESS
55 address [by street, number, city, village or town, the driver's license
56 number or information from a government issued photographic identifica-

1 tion card, if any, of such person, or by such description as will
2 reasonably locate the seller,] AND the type and quantity of such
3 purchase[; and the]. THE scrap processor shall cause such record to be
4 signed by the seller or his OR HER agent. It shall be unlawful for any
5 seller to refuse to furnish such information or to furnish incorrect or
6 incomplete information. Such scrap processor shall also make and retain
7 a copy of the government issued photographic identification card used to
8 verify the identity of [the] ANY NATURAL person from whom the scrap
9 metal was purchased and shall retain this copy in a separate book,
10 register or electronic archive for [two] THREE years from the date of
11 purchase.

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

19 S 4. Section 69-h of the general business law is renumbered section
20 69-i and two new sections 69-h and 69-j are added to read as follows:

21 S 69-H. PROHIBITION ON SALE OF CERTAIN ITEMS. NOTWITHSTANDING ANY
22 PROVISION OF LAW, RULE OR REGULATION TO THE CONTRARY, IT SHALL BE UNLAW-
23 FUL TO SELL, OFFER FOR SALE OR PURCHASE AS SCRAP, ANY METAL ITEMS BEAR-
24 ING MARKINGS OF ANY GOVERNMENTAL ENTITY, UTILITY COMPANY, CEMETERY OR
25 RAILROAD UNLESS SUCH ITEMS ARE OFFERED FOR SALE BY A DULY AUTHORIZED
26 EMPLOYEE OR AGENT OF ANY SUCH GOVERNMENTAL ENTITY, UTILITY COMPANY,
27 CEMETERY OR RAILROAD.

28 S 69-J. PREEMPTION OF LOCAL LAWS. THE PROVISIONS OF THIS ARTICLE SHALL
29 APPLY TO ALL MUNICIPALITIES, INCLUDING CITIES WITH A POPULATION OF ONE
30 MILLION OR MORE, AND SHALL SUPERSEDE ANY LOCAL LAW, RULE, REGULATION OR
31 ORDINANCE WHICH SEEKS TO REGULATE THE PURCHASE OF SCRAP MATERIAL BY A
32 SCRAP PROCESSOR; EXCEPT THAT LOCAL LAW NUMBER FIFTY OF THE CITY OF NEW
33 YORK FOR THE YEAR TWO THOUSAND SEVEN SHALL NOT BE DEEMED TO BE PREEMPTED
34 BY THE PROVISIONS OF THIS ARTICLE.

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

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

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

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