

STATE OF NEW YORK

737--A

2017-2018 Regular Sessions

IN SENATE

January 4, 2017

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 licensing of scrap producers in the state and certain cities

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 chapter 431 of the laws of 1976, is amended to read as follows:

2 § 69-e. Definitions. 1. "Scrap metal processing facility" shall mean
3 an establishment engaged primarily in the purchase, processing and shipment of ferrous and/or non-ferrous scrap metal, the end product of which
4 is the production of raw material [~~for remelting purposes~~] for steel
5 mills, [~~foundaries~~] foundries, smelters, refiners, and similar users,
6 but shall not include a redemption center, dealer or distributor as
7 defined in section 27-1003 of the environmental conservation law or an
8 electronic waste collection, consolidation or recycling facility as
9 defined in section 27-2601 of the environmental conservation law.

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

13 3. "Government issued photographic identification" shall mean any
14 current and valid official form of identification issued by the govern-
15 ment of the United States of America, a state, territory, protectorate,
16 or dependency of the United States of America, a county, municipality or
17 subdivision thereof, any public agency or department thereof, or any
18 public employer, which requires and bears the signature and photograph
19 of the person to whom it is issued.

20 4. "Department" shall mean the New York state department of state.

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

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§ 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:

§ 69-f. License. 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 as designated by a duly adopted local law of [any such] the municipality in which such scrap processor is located; 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] an annual license fee not to exceed two hundred fifty dollars.

2. On or after September first, two thousand nineteen, no person, association, partnership or corporation shall hold himself, herself or itself out to be a scrap processor in New York state without first obtaining a license from the department as provided in this section.

3. Any person, association, partnership or corporation seeking a license as a scrap processor shall file with the department a license application which shall include the following information:

- (a) the business name and address of the applicant;
- (b) the names of the applicant's officers, directors, and high managerial agents as such term is defined in section 20.20 of the penal law;
- (c) the business telephone number of the applicant;
- (d) the address of the scrap processing facility for which a license is sought;
- (e) a statement indicating whether the applicant or any person identified pursuant to paragraph (b) of this subdivision has:
 - (i) been convicted of any crime relating to conduct as a scrap processor; and
 - (ii) at any time in the past been issued a license pursuant to this section, and if so, whether such license 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 copy of (i) the applicant's EPA refrigerant recovery equipment acquisition certification form certifying that the prospective licensee owns approved refrigerant removal equipment, or (ii) a copy of a valid contract between the applicant and a certified refrigerant removal contractor;
- (h) a certification attesting that the scrap processor is in compliance with requirements of section sixty-nine-g of this article;
- (i) a sworn statement by the applicant that the information set forth in the application is current and accurate; and
- (j) a complete set of two fingerprint cards for each officer and high managerial agent 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 ten of this section. If additional copies of fingerprints are required the applicant shall furnish them upon request.

4. (a) A license issued or renewed under the provisions of this section shall entitle a person, association, partnership or corporation to act as a scrap processor in the state of New York for a period of two years from the effective date of the license. Any license 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 of one thousand dollars. Upon application for a license renewal, the licensee shall pay a renewal processing fee of one thousand dollars.

(c) The secretary of state shall have the authority to assign staggered expiration dates for licenses 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 license number.

5. (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 license upon payment of a fee of one hundred dollars.

6. The fees established by this section shall not be refundable.

7. Each scrap processor shall exhibit the license prescribed by this article at the place of business.

8. No person, association, partnership or corporation shall:

(a) present, or attempt to present, the license of another;

(b) knowingly give false evidence of a material nature to the department for the purpose of procuring a license; or

(c) falsely represent themselves to be a registered scrap processor.

9. Licenses issued to scrap processors shall not be transferable or assignable.

10. (a) The secretary of state shall promulgate such rules and regulations as are deemed necessary to effectuate the purposes of 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 department's initiative, to investigate any violation thereof or to investigate the business practices and business methods of any person, association, partnership or corporation applying for or holding a license as a scrap processor. Each such applicant or registrant shall be obliged on request of the department, to supply such information, books, papers or records as may be required concerning business practices or business methods. Failure to comply with such lawful request shall be a ground for denying an application for a license, or for revoking, suspending, or not renewing a license issued under this article.

11. In order to assure that scrap processor licenses are not issued to or held by unqualified or unsuitable persons, the secretary of state may, consistent with articles twenty-three and twenty-three-A of the correction law, deny, suspend or revoke any such license upon a written determination that such action is required to protect the public health and safety and that:

1 (a) the license holder or applicant has been finally determined in an
2 administrative, civil or criminal proceeding to have violated a substan-
3 tive provision of this article, any substantive regulation promulgated
4 pursuant to this article, a material condition of any license issued
5 thereunder, or of any substantially similar statute, regulation, order
6 or license condition of the federal or other state government relating
7 to operation as a scrap processor; or

8 (b) such licensee or applicant has been previously denied a license
9 for the same or substantially similar activity based upon one or more of
10 the provisions of this subdivision; or

11 (c) such license holder or applicant has been found in a civil
12 proceeding to have committed an intentionally tortious act in relation
13 to operations as a scrap processor or has been convicted in a criminal
14 proceeding of a crime involving operation as a scrap processor; or

15 (d) such licensee has been convicted of a felony under the laws of
16 this state involving fraud, bribery, perjury, or theft, or has been
17 convicted under the laws of any other state or of the United States of a
18 criminal offense which, if committed and prosecuted in this state, would
19 constitute a similar felony under such laws of this state; or

20 (e) such licensee in any matter within the jurisdiction of the depart-
21 ment has been determined to have knowingly falsified a material fact, or
22 knowingly submitted a false statement, or knowingly made use of a false
23 statement in connection with any document or application submitted to
24 the department or said agency; or

25 (f) such licensee or applicant is either:

26 (i) an individual who had a substantial interest in or acted as a high
27 managerial agent or director for any corporation, partnership, associ-
28 ation or organization which committed an act or failed to act, and such
29 act or failure to act could be the basis for the denial of a license
30 pursuant to this section or regulations promulgated thereunder if such
31 corporation, partnership, association or organization applied for a
32 license under this title; or

33 (ii) a corporation, partnership, association, or organization, or any
34 principal thereof, or any person holding a substantial interest therein,
35 which committed an act or failed to act, and such act or failure to act
36 could be the basis for the denial of a license pursuant to this section
37 or regulations promulgated thereunder if such corporation, partnership,
38 association or organization applied for a license under this title; or

39 (iii) a corporation, partnership, association or organization or any
40 high managerial agent or director thereof, or any person holding a
41 substantial interest therein, acting as high managerial agent or direc-
42 tor for or holding a substantial interest in another corporation, part-
43 nership, association or organization which committed an act or failed to
44 act, and such act or failure to act could be the basis for the denial of
45 a license pursuant to this section or regulations promulgated thereunder
46 had such other corporation, partnership, association or organization
47 applied for a license under this title.

48 For the purposes of this subdivision, "high managerial agent" has the
49 same meaning as is given that term in section 20.20 of the penal law.

50 12. Any act or failure to act which serves as a basis for denial or
51 revocation of a license pursuant to this subdivision shall have occurred
52 within five years from the date on which the application for a license,
53 renewal or modification is submitted to the department or from the date
54 on which the department serves notice of intent to revoke or modify a
55 license issued by the department in relation to an existing license.

1 13. Any person denied a license or renewal on the grounds specified in
2 this section shall be entitled to a hearing within sixty days of such
3 denial in the case of a new license, or within fifteen days in the case
4 of a renewal of any existing license.

5 14. The department shall maintain and publish a registry of all regis-
6 tered scrap processors, which shall list and identify on a county by
7 county basis, all registered scrap processors doing business in this
8 state. The department shall make the registry available on its website.

9 § 3. Section 69-g of the general business law, as amended by chapter
10 302 of the laws of 2007, is amended to read as follows:

11 § 69-g. Records. 1. [~~Such~~] A scrap processor shall record [~~(i) each~~
12 ~~purchase of any pig or pigs of metal, bronze or brass castings or parts~~
13 ~~thereof, sprues or gates or parts thereof, utility wire or brass car~~
14 ~~journals, or of metal beer kegs, and (ii)] each purchase of [iron,~~
15 ~~steel]~~ ferrous and/or nonferrous scrap for a price of fifty dollars or
16 more, and preserve such record for a period of three years; which record
17 shall show the date of purchase, the name of the seller, [~~his~~] the sell-
18 er's residence or business address [~~by street, number, city, village or~~
19 ~~town~~], the driver's license number or information from a government
20 issued photographic identification card, [~~if any, of such person, or by~~
21 ~~such description as will reasonably locate the seller,~~] and the type and
22 quantity of such purchase[, ~~and the~~]. The scrap processor shall cause
23 such record to be signed by the seller or his or her agent. It shall be
24 unlawful for any seller to refuse to furnish such information or to
25 furnish incorrect or incomplete information. Such scrap processor shall
26 also make and retain a copy of the government issued photographic iden-
27 tification card used to verify the identity of [~~the~~] any natural person
28 from whom the scrap metal was purchased and shall retain this copy in a
29 separate book, register or electronic archive for [~~two~~] three years from
30 the date of purchase.

31 2. Such records shall be available for inspection by the police
32 department of the state or the municipality in which the establishment
33 is located, by the department and by the local licensing authority so
34 designated pursuant to subdivision one of section sixty-nine-f of this
35 article.

36 3. By no later than September first, two thousand nineteen, a scrap
37 processor shall install and maintain in working order an electronic
38 video recording system at all scales and at all points of sale located
39 on the premises of the scrap processing facility. Electronic video
40 records shall be maintained in an electronic archive for a period of no
41 less than one hundred twenty days from the date when such electronic
42 video record was made.

43 4. By no later than September first, two thousand nineteen, a scrap
44 processor shall maintain a record that said scrap processor either (a)
45 possesses refrigerant recovery equipment certified by the United States
46 environmental protection agency or (b) has executed a valid contract
47 with a refrigerant removal contract or certified by the United States
48 Environmental Protection Agency.

49 § 4. Section 69-h of the general business law is renumbered section
50 69-i and two new sections 69-h and 69-j are added to read as follows:

51 § 69-h. Prohibition on sale of certain items. Notwithstanding any
52 provision of law, rule or regulation to the contrary, it shall be unlaw-
53 ful for scrap processors to sell, offer for sale, or purchase as scrap,
54 any metal items bearing markings of any governmental entity, utility
55 company, cemetery or railroad unless such items are offered for sale by

1 a duly authorized employee or agent of any such governmental entity,
2 utility company, cemetery or railroad.

3 § 69-j. Preemption of local laws. The provisions of sections sixty-
4 nine-g and sixty-nine-h of this article shall preempt and supersede any
5 local law which would otherwise regulate the purchase and/or sale of
6 scrap metal and/or impose record keeping and/or reporting requirements
7 in a manner which conflicts with or imposed additional requirements
8 other than those set forth therein, and/or which would require a scrap
9 processor to hold scrap material for a specified period of time prior to
10 the processing or re-sale of such scrap material, or which would other-
11 wise prohibit the acceptance of scrap material.

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

15 § 69-i. Penalty. 1. ~~[Each violation of this article by a scrap proces-~~
16 ~~ser shall be a violation subject to a fine of not more than two hundred~~
17 ~~dollars, unless such violation shall be wilful, in which event it shall~~
18 ~~be a misdemeanor except, however, the scrap processor shall not be~~
19 ~~liable for any violation of this article by a seller, his agent, or a~~
20 ~~purported seller or agent.~~

21 ~~2. Each violation of this article by a seller or his agent shall be a~~
22 ~~misdemeanor.] Any person, association, partnership or corporation who~~
23 violates this article shall be liable for a criminal fine of not more
24 than two thousand five hundred dollars and/or imprisonment for a term of
25 not more than fifteen days. A second violation of this article committed
26 within a ten-year period shall be punishable as a misdemeanor subject to
27 a criminal fine of not more than five thousand dollars and/or imprison-
28 ment for a term of not more than one year.

29 2. Any person, association, partnership or corporation who violates
30 this article shall be liable for a maximum civil penalty of two thousand
31 five hundred dollars for a first offense, five thousand dollars for a
32 second offense within a twelve month period and for a maximum civil
33 penalty of ten thousand dollars for a third and for each subsequent
34 offense within a twelve-month period.

35 3. In any criminal proceeding brought pursuant to this article, in
36 addition to a term of imprisonment, where a person, association, part-
37 nership or corporation has gained money or property through a violation
38 of this article the court, upon conviction thereof, in lieu of imposing
39 the fine authorized for the offense under subdivision one of this
40 section may sentence the defendant to pay an amount, fixed by the court,
41 not exceeding double the amount of the defendant's gain from the commis-
42 sion of the offense.

43 4. (a) Notwithstanding any other provision of law, rule or regulation,
44 in addition to those persons otherwise authorized to enforce this arti-
45 cle and adjudicate violations thereof, the provisions of this article
46 shall also be enforceable in a city with a population of one million or
47 more by an agency designated by a local law duly adopted by such city,
48 and notices of violation may be returnable to the environmental control
49 board of such city, which shall have the power to impose the civil
50 penalties herein provided. Notwithstanding any other provision of law,
51 rule or regulation, service of a notice of violation for an alleged
52 violation of this subdivision committed in such city may be made upon
53 any person, association, partnership or corporation by first class mail,
54 postage prepaid, and any such notice served by mail shall be returnable
55 only to such environmental control board. Such service by first class
56 mail shall be deemed complete upon mailing of the notice of violation,

1 unless the notice of violation is returned to the sender by the United
2 States postal service for any reason other than refusal of delivery. In
3 addition, any notice of violation for a violation of this subdivision
4 may be served by a means prescribed in article three of the civil prac-
5 tice law and rules or article three of the business corporation law.

6 (b) Notwithstanding any other provision of law, rule or regulation,
7 such civil penalties imposed by such environmental control board shall
8 be paid into the general fund of such city.

9 (c) Any final order issued pursuant to this subdivision by an environ-
10 mental control board of a city with a population of one million or more
11 shall constitute a judgment that may be entered in any place provided
12 for the entry of civil judgments within the state, and may be enforced
13 without court proceedings in the same manner as the enforcement of money
14 judgments entered in civil actions; provided, however, that no such
15 judgment shall be entered that exceeds the sum of twenty-five thousand
16 dollars for each person, association, partnership or corporation.
17 Notwithstanding the preceding sentence, before a judgment based upon a
18 default may be so entered, such environmental control board must have
19 notified the person, association, partnership or corporation by first
20 class mail in such form as such environmental control board may direct:
21 (1) of the default decision and order and the penalty imposed; (2) that
22 a judgment will be entered in any place provided for the entry of civil
23 judgments in the state; and (3) that entry of such judgment may be
24 avoided by requesting a stay of default for good cause shown and either
25 requesting a hearing or entering a plea pursuant to the rules of such
26 environmental control board within thirty days of the mailing of such
27 notice. No judgment based upon a default may be so entered by the envi-
28 ronmental control board within less than sixty days from the completion
29 of service by mail of the notice of violation as provided in paragraph
30 (a) of this subdivision. Any requirement of any provision of law other
31 than this subdivision that relates to the manner of service of the
32 notice of violation that precedes any final order of such environmental
33 control board shall not apply to a final order issued pursuant to this
34 subdivision. A judgment entered pursuant to this paragraph shall remain
35 in full force and effect for eight years.

36 § 6. This act shall take effect on the first of September next
37 succeeding the date on which it shall have become a law, provided,
38 however, that the department of state may take all steps necessary,
39 including but not limited to the promulgation of rules and regulations,
40 to ensure the prompt implementation of this act on its effective date.