

SENATE No. 1929

The Commonwealth of Massachusetts

—
In the Year Two Thousand Thirteen
—

SENATE, Wednesday, November 20, 2013

The committee on Ethics and Rules, to whom was referred the Senate Bill regulating secondary metals dealing (Senate, No. 1916),- reports, recommending that the same ought to pass with an amendment substituting a new draft of the same title (Senate, No. 1929).

For the committee,
Stanley C. Rosenberg

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An Act regulating secondary metals dealing.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 6 of the General Laws is hereby amended by adding the following
2 section:-

3 Section 216. Subject to distribution from the Secondary Metals Registry Trust Fund,
4 established by section 35ZZ of chapter 10, the executive office of public safety and security, in
5 cooperation with the criminal record review board, shall establish a secondary metals registry.
6 The registry shall consist of a central computerized registry of all information relative to metal
7 received, kept under or in violation of chapter 140B½ or which was the subject of a transaction
8 conducted in violation of said chapter 140B½. The registry shall be maintained and updated by
9 the criminal record review board and may use distributions from the fund for this purpose and no
10 other. With the agreement of the criminal record review board, information relative to metal
11 which was stolen or otherwise the subject of a violation of chapter 266, but not the subject of a
12 violation of chapter 140B½, may be submitted for entry into the registry by a law enforcement
13 agent.

14 The secretary of public safety and security, in cooperation with the criminal record
15 review board, shall develop standardized forms for use in connection with information collection
16 requirements imposed under chapter 140B½. The department of public safety and security shall
17 make blank copies of the forms available, including electronically, to municipalities and to
18 secondary metal dealers for use by the dealers and may provide for the forms to be transmitted to
19 the registry electronically. The forms shall prominently include a statement that provision of
20 false information or any other violation of sections 3 or 4 of said chapter 140B½ is punishable by
21 a fine of not more than \$2,500 or by imprisonment in the house of correction for not more than
22 2½ years or by both for a first offense and by a fine of not less than \$2,500 and not more than
23 \$10,000 or by imprisonment in the house of correction for not more than 2½ years or in the state
24 prison for not less than 5 years or by both for a second or subsequent offense. Upon a third or
25 subsequent violation of said chapter 140B½, the license of a secondary metals dealer shall be
26 void and the licensing authority shall permanently revoke the license.

27 The secretary shall adopt regulations, consistent with the purposes of said chapter
28 140B½, to collect the information required to be obtained and kept by secondary metal dealers
29 and to maintain that information in the registry for use by law enforcement agencies. Records
30 maintained in the registry shall be open to any law enforcement agency in the commonwealth,
31 the United States or any other state. Information in the registry database shall not be a public
32 record under clause Twenty-sixth of section 7 of chapter 4 or section 10 of chapter 66.

33 SECTION 2. Chapter 10 of the General Laws is hereby amended by inserting after
34 section 35YY the following section:-

56 “Engaging in a business”, a regular occupation or constant employment; not an isolated
57 or occasional transaction.

58 “Licensing authority”, the chief of police, the board or officer having control of the police
59 in a city or town or persons authorized by them.

60 “Metal” or “metal article”, any substance or article consisting of metal or a metal alloy,
61 but excluding: (i) aluminum beverage containers if the containers have a refund value under
62 section 322 of chapter 94; or (ii) firearms, ammunition and large capacity feeding devices, as
63 defined by section 121 of chapter 140.

64 “Secondary metals dealer”, any business, individual, corporation, association or
65 organization engaged in secondary metals dealing for profit, whether or not licensed under
66 section 2.

67 “Secondary metals dealing”, engaging in a business, from a fixed location or otherwise,
68 of gathering or obtaining metal or metal articles that are no longer in use and for which the
69 economic value is based upon the metal or metal article’s potential for re-use or upon the worth
70 of the raw material of which the metal or metal article is made.

71 Section 2. (a) The licensing authority in any city or town may license suitable persons to
72 engage in secondary metal dealing within the borders of the municipality. A licensing authority
73 may make additional rules, regulations and restrictions, consistent with this chapter, which shall
74 be expressed in all licenses issued under this section; provided, however, that the regulations
75 shall include a requirement that a license issued under this section shall expire 1 year from the
76 date of issue, may be renewed and a fee of \$250 shall be assessed for the initial license. Fifty per
77 cent of the fee shall be forwarded by the collecting municipality to the state treasurer who shall

78 deposit the monies into the Secondary Metals Registry Trust Fund established by section 35ZZ
79 of chapter 10 and \$75 shall be assessed for renewals for the licenses. Any application for
80 licensure or renewal shall designate a resident agent for service of process which designation
81 may only be withdrawn in writing and upon designation of a new resident agent for this purpose.
82 A license issued under section 54 or 54A of chapter 140 shall not be considered a valid license
83 for engaging in secondary metals dealing. Licenses issued under this section may be revoked and
84 shall be subject to sections 202 to 205, inclusive, of said chapter 140.

85 (b) A licensing authority shall enter the premises used by any licensee to engage in
86 secondary metals dealing where the records required to be maintained under this chapter are
87 stored or maintained, and inspect, in a reasonable manner, the records and inventory at least once
88 per calendar year during regular business hours for the purpose of enforcing this chapter. If the
89 records or inventory contain evidence of a violation of this chapter, the inspecting officer shall
90 produce and take possession of copies of the records. If the licensee does not possess the means
91 to provide copies, the inspecting officer shall arrange to obtain, in a reasonable time and manner,
92 copies of those records that contain evidence of the violation and the costs for obtaining the
93 copies shall be assessed against the owner of the records.

94 (c) The licensing authority, the licensing authority's authorized agent or a police officer
95 may at any time enter upon premises being used for secondary metals dealing to ascertain
96 whether the operator is validly licensed, whether the enterprise is being operated in accordance
97 with this chapter and to examine all articles received or stored in or upon the premises and all of
98 its related books, records and inventory. A secondary metals dealer shall exhibit to the licensing
99 authority, the licensing authority's authorized agent or a police officer, upon demand, all articles,
100 books or inventory.

101 (d) The department of state police and municipal police departments shall enforce this
102 chapter.

103 Section 3. (a) No person shall engage in secondary metals dealing without a license
104 issued under section 2.

105 (b) Whoever violates this section shall be punished, for a first offense, by a fine of not
106 more than \$2,500 or by imprisonment for not more than 2½ years in the house of correction.
107 Whoever commits a second or subsequent violation of this section shall be punished by 2½ years
108 in the house of correction or a fine of not more than \$5,000 or by not more than 5 years in state
109 prison and a fine of not more than \$5,000, or by both such fine and imprisonment.

110 Section 4. (a) Whoever engages in secondary metals dealing shall keep, for each
111 transaction, the following records together in a book, register or electronic archive for 2 years:

112 (1) a legible statement to be recorded in a book or register, signed by the person
113 from whom the metal is received, stating such person's name, current address and date and place
114 of birth and a statement from such person providing when, where and from whom such person
115 obtained that metal;

116 (2) a photocopy of a government issued identification card issued to the person
117 from whom the metal is received; provided, however, that if a photograph of the person does not
118 appear on the identification card, a photograph of the person's face shall be taken and retained;

119 (3) a photograph and a record of the weight of each individual metal article with a
120 fair market value in excess of \$250, unless the article bears an identifying number or mark
121 imprinted or embossed on the article during the manufacturing process and unique to the object

122 or to the object from which the metal was taken including, but not limited to, a vehicle
123 identification number; provided, however, that any photograph depicting more than 1 article
124 shall be sufficiently clear so as to distinguish each article from any other article in the
125 photograph; and provided further, that if a unique identifying number or mark is imprinted or
126 embossed on an article, that number or mark shall be recorded and neither a photograph nor the
127 recorded weight of the article shall be required unless the article is gold, silver or platinum with a
128 fair market value over \$250 in the condition in which it was received, in which case the article
129 shall be photographed notwithstanding any unique number or mark on the article;

130 (4) forward, not later than 48 hours from the time of receipt, the information
131 required under clauses (1) to (3), inclusive, to the criminal record review board on forms
132 provided by the board or by the municipality in which the metal is received; and

133 (5) retain any metal or metal article received for 10 days following the postmark
134 on, or the date of electronic transmission of, the information sent to the criminal record review
135 board as required under clauses (1) to (3), inclusive, and preserve the metal or article during
136 these 10 days in the exact form in which it was received, without processing, tearing down,
137 shredding, crushing, cutting, recycling, compacting, melting or otherwise altering the metal or
138 article.

139 (b) No person shall engage in secondary metals dealing and:

140 (1) knowingly, and with the intent to profit economically, accept a false name,
141 address, date of birth or proof of identification or a false source from which metal or metal
142 articles were obtained from any person seeking to exchange metal or metal articles for money or
143 some other thing of value, with the intent to profit economically;

144 (2) refuse the licensing authority, the licensing authority's authorized agent or a
145 police officer entry onto the premises used for secondary metals dealing, fail to exhibit to the
146 licensing authority, the licensing authority's authorized agent or a police officer, upon demand,
147 all articles, books or inventory, or willfully hinder, obstruct or prevent the licensing authority, the
148 licensing authority's authorized agent or a police officer from entering the premises for the
149 purpose of conducting an examination of records or inventory or the validity of any license
150 purportedly issued under section 2;

151 (3) receive, with the intent to profit economically, any street sign, manhole cover,
152 beer keg, propane container for fueling forklifts, street light, guard rail, water meter cover,
153 railroad track, railroad spike, funeral or memorial marker, any metal item bearing the mark of
154 any government entity, utility company or brewer, or copper wire, the insulation around which
155 the dealer knew or reasonably should have known had been burned or stripped away; provided,
156 however, that the manufacturer or authorized distributor of these metal articles shall be exempt
157 from this clause if the manufacturer or distributor refills, reuses or recycles the articles of its own
158 manufacture or that it distributes; or

159 (4) receive, with the intent to profit economically, any motor vehicle, trailer or
160 part of a motor vehicle or trailer which the dealer knew or reasonably should have known that
161 the identifying number or mark on the motor vehicle, trailer or part of the motor vehicle or trailer
162 had been removed, defaced, altered, destroyed or obliterated.

163 (c) No person shall knowingly provide a false name, address, date of birth or proof of
164 identification or a false source from which metal or metal articles were obtained to a secondary

165 metals dealer with the intent to exchange metal or metal articles for money or some other thing
166 of value.

167 (d) Whoever violates this section shall be punished for a first offense by a fine of not
168 more than \$2,500 or by imprisonment in the house of correction for not more than 2½ years or
169 by both. Whoever commits a second or subsequent violation of this section shall be punished by
170 a fine of not less than \$2,500 and not more than \$10,000 or by imprisonment in the house of
171 correction for not more than 2½ years or in the state prison for not less than 5 years or by both.

172 (e) Upon a third or subsequent violation of this chapter, the license of a secondary metals
173 dealer shall be void and the licensing authority shall permanently revoke the license and the
174 license revocation may be imposed in addition to any criminal penalties imposed as a result of a
175 violation of this chapter.

176 (f) Whoever engages in secondary metals dealing may knowingly violate this chapter for
177 the purpose of reporting the transaction and turning over all relative records and metal materials
178 to the local licensing authority; provided, however, that they in no way profit from the
179 transaction.

180 Section 5. Notwithstanding any general or special law to the contrary, 100 per cent of the
181 fines imposed for violations of this chapter shall be transferred by the court to the state treasurer
182 for deposit into the Secondary Metals Registry Trust Fund established under section 35ZZ of
183 chapter 10.

184 Section 6. Any premises used for secondary metals dealing and operated in violation of
185 this chapter shall be deemed a nuisance and the licensing authority, the state police, the local
186 police department of the municipality in which the premises are located, the applicable district

187 attorney or the attorney general may apply to the superior court in the county where the
188 secondary metals dealing operation is established or maintained for an injunction to abate the
189 nuisance.

190 Section 7. (a) The following property shall be subject to forfeiture:

191 (1) all metal or metal articles which have been received, maintained, transferred
192 or altered or in any manner obtained or kept in violation of this chapter;

193 (2) all materials, products and equipment of any kind used or intended for use in
194 processing, transporting, purchasing, exchanging or recycling metals or metal articles in
195 violation of this chapter;

196 (3) all conveyances used or intended for use to transport, conceal or otherwise
197 facilitate the processing, transporting, purchasing, exchanging or recycling of metals or metal
198 articles in violation of this chapter;

199 (4) all money, negotiable instruments, securities or other things of value furnished
200 or intended to be furnished by any person in exchange for metal or metal articles in violation of
201 this chapter, all proceeds traceable to the exchange, including real estate and any other thing of
202 value, and all monies, negotiable instruments and securities used or intended to be used to
203 facilitate any violation of this chapter;

204 (5) all real property, including any right, title and interest in the whole of any lot
205 or tract of land and any appurtenances or improvements thereto, which is used in any manner or
206 part to commit or to facilitate the commission of a violation of this chapter; and

207 (6) all property which is used or intended for use as a container for property
208 described in clauses (1) or (2).

209 (b) No forfeiture under this section shall extinguish a perfected security interest held by a
210 creditor in a conveyance or in any real property at the time of the filing of the forfeiture action.

211 (c) Property subject to forfeiture under subsection (a) shall, upon motion of the petitioner,
212 be declared forfeit by any court having jurisdiction over the property or having final jurisdiction
213 over any related criminal proceeding brought under this chapter.

214 (d) The court shall order forfeiture of all conveyances and of all real property subject to
215 subsection (a), except as follows:

216 (1) no conveyance used by any person as a common carrier in the transaction of
217 business as a common carrier shall be forfeited unless it shall appear that the owner or other
218 person in charge of the conveyance was a consenting party to or privy to a violation of this
219 chapter;

220 (2) no conveyance shall be forfeited by reason of any act or omission established
221 by the owner of the conveyance to have been committed or omitted by any person other than the
222 owner while the conveyance was unlawfully in the possession of a person other than the owner
223 in violation of the criminal laws of the United States, the commonwealth or any other state; and

224 (3) no conveyance or real property shall be subject to forfeiture unless the owner
225 of the conveyance or real property knew or should have known that the conveyance or real
226 property was used in and for the business of secondary metals dealing in violation of this
227 chapter. Proof that the conveyance or real property was used to facilitate a violation of this

228 chapter on 3 or more different dates shall be prima facie evidence that the conveyance or real
229 property was used in and for the business of unlawful secondary metals dealing.

230 (e) (1) The attorney general, a district attorney or a municipality may petition the
231 superior court in the name of the commonwealth or, in the case of a municipality, in the
232 municipality's name, in the nature of a proceeding in rem to order forfeiture of property subject
233 to forfeiture under subsection (a). The petition shall be filed in the court having jurisdiction over
234 the property or having final jurisdiction over any related criminal proceeding brought under this
235 chapter. If the property is claimed by any person, other than the commonwealth, the plaintiff in
236 all suits shall have the burden of proving to the court the existence of probable cause to institute
237 the action and any claimant shall then have the burden of proving that the property is not
238 forfeitable under subsection (a). The owner of the property or other person claiming thereunder
239 shall have the burden of proof as to the exceptions set forth in subsections (d) and (i). The court
240 shall order the forfeiture petitioner to give notice by certified or registered mail to the owner of
241 the property which is the subject of the forfeiture proceeding and to any other persons as appear
242 to have an interest in the property and the court shall promptly, but not less than 2 weeks after
243 notice, hold a hearing on the petition. Upon the motion of the owner of the property, the court
244 may continue the hearing on the petition pending the outcome of any criminal trial related to the
245 violation of this chapter. At the hearing, the court shall hear evidence and make conclusions of
246 law and shall issue a final order from which the parties shall have a right of appeal. In all suits in
247 which a final order results in an order of forfeiture, the final order shall provide for disposition of
248 the property by the commonwealth or any of its subdivisions in any manner not prohibited by
249 law, including official use by authorized law enforcement or other public agency, sale at public
250 auction or by competitive bidding. The proceeds of any sale shall be used to pay the reasonable

251 expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and
252 notice and the balance of the proceeds shall be distributed as provided in subparagraph (2).

253 (2) The final order of the court shall provide that the monies and proceeds of any
254 sale conducted under subparagraph (1) shall be distributed equally among the prosecuting district
255 attorney or attorney general, the municipal or state police department involved in the seizure and
256 the municipality in which the property is located. If more than 1 police department was
257 substantially involved in the seizure, the court having jurisdiction over the forfeiture proceeding
258 shall equitably divide among each of the departments involved the 1/3 share of the money and
259 proceeds of the sale that would be distributed as if a single department was involved in the
260 seizure.

261 (3) There shall be established, within the office of the state treasurer, separate
262 special law enforcement trust funds for each district attorney and for the attorney general. All
263 such monies and proceeds received by the attorney general or any prosecuting district attorney
264 under this subsection shall be deposited into the appropriate trust fund and may be expended
265 without further appropriation to defray the costs of protracted investigations, to provide
266 additional technical equipment or expertise, to provide matching funds to obtain federal grants,
267 or such other law enforcement purposes as the attorney general or the prosecuting district
268 attorney considers appropriate.

269 All such monies and proceeds received by any police department under this subsection
270 shall be deposited into a special law enforcement trust fund and may be expended without further
271 appropriation to defray the costs of protracted investigations, to provide additional technical
272 equipment or expertise, to provide matching funds to obtain federal grants, or to accomplish

273 other law enforcement purposes as the colonel of state police or applicable chief of police
274 considers appropriate, but the funds shall not be considered a source of revenue to meet the
275 operating needs of such department.

276 (f) Any officer, department or municipality having custody of any property subject to
277 forfeiture under this chapter or having disposed of the property subject to forfeiture under this
278 chapter shall keep and maintain full and complete records showing from whom it received the
279 property, under what authority it held or received or disposed of the property, to whom it
280 delivered the property, the date and manner of destruction or disposition of the property and the
281 exact kind, quantity and form of the property. The records shall be open to inspection by the
282 attorney general and state officers charged with enforcement of this chapter. Persons making
283 final disposition or destruction of the property under court order shall report under oath to the
284 court the exact circumstances of the disposition.

285 (g) (1) During the pendency of forfeiture proceedings, the court may, at the request of
286 the petitioner, ex parte, issue any preliminary order or process necessary to seize or secure the
287 property for which forfeiture is sought and to provide for its custody, including, but not limited
288 to: (i) an order that the petitioner shall remove the property, if possible, and shall safeguard it in a
289 secure location in a reasonable fashion; (ii) that monies shall be deposited in an interest-bearing
290 escrow account; and (iii) that a substitute custodian shall be appointed to manage the property or
291 a business enterprise. Property taken or detained under this section shall not be repleviable, but
292 once seized shall be lawfully in the custody of the petitioner pending forfeiture, subject only to
293 the orders and decrees of the court having jurisdiction over the property. Process for seizure of
294 the property shall issue only upon a showing of probable cause and the application for probable
295 cause and the issuance, execution, and return shall be subject to chapter 276, so far as applicable.

296 (2) The office of seized property management within the division of capital asset
297 management and maintenance, established under section 47 of chapter 94C, shall preserve and
298 manage property seized under this chapter, in a reasonable fashion, dispose of the property upon
299 a judgment ordering forfeiture issued under this chapter and enter into contracts to preserve,
300 manage and dispose of the property. The office of seized property management shall be funded
301 by a portion of the proceeds of each sale of the managed property to the extent provided as
302 payment of reasonable expenses under subsection (e).

303 (h) The owner of any real property which is the principal domicile of the immediate
304 family of the owner and which is subject to forfeiture under this section may file a petition for
305 homestead exemption with the court having jurisdiction over the forfeiture. The court may, in its
306 discretion, allow the petition exempting from forfeiture an amount allowed under section 1 of
307 chapter 188. The value of the balance of the principal domicile, if any, shall be forfeited as
308 provided in this section. The homestead exemption may be acquired on only 1 principal domicile
309 for the benefit of the immediate family of the owner.

310 (i) A forfeiture proceeding affecting the title to real property, the use and occupation of
311 the real property or the buildings on the real property shall not have any effect except against the
312 parties to the forfeiture proceeding and persons having actual notice of the forfeiture proceeding
313 until a memorandum containing the names of the parties to the proceeding, the name of the
314 municipality where the affected real property lies and a description of the real property
315 sufficiently accurate for identification is recorded in the registry of deeds for the county or
316 district where the real property lies. At any time after a judgment on the merits, or after the
317 discontinuance, dismissal or other final disposition is recorded by the court having jurisdiction
318 over the matter, the clerk of the court shall issue a certificate of the judgment, discontinuance,

319 dismissal or other final disposition and that certificate shall be recorded in the registry in which
320 the original memorandum recorded under this section was filed.

321 SECTION 6. Chapter 266 of the General Laws is hereby amended by striking out section
322 142A.

323 SECTION 7. Section 70C of chapter 277 of the General Laws, as appearing in the 2012
324 Official Edition, is hereby amended by inserting after the second sentence the following
325 sentence:- This section shall apply to a violator of chapter 140B¹/₂ once only; provided, however,
326 that the violator who agrees to treat the violation as a civil offense shall be assessed a fine of
327 \$500, which fine shall not be waived; and provided further, that, notwithstanding any general or
328 special law to the contrary, 100 per cent of the fine shall be forwarded to the state treasurer for
329 deposit into the Secondary Metals Registry Trust Fund established under section 35ZZ of chapter
330 10.

331 SECTION 8. Notwithstanding any general or special law to the contrary, the
332 commissioner of banks shall establish a 2-year pilot program to implement a state
333 “Massachusetts abandoned property registry”, hereinafter referred to as MAP. The registry shall
334 require all property owners, including lenders, trustees and service companies, to properly
335 register and maintain vacant or foreclosing properties located in the commonwealth. Law
336 enforcement entities, including, but not limited to, the attorney general and municipal police
337 departments shall have access to the MAP.

338 The commissioner of banks shall enforce the pilot program, including, but not limited to,
339 the authority to impose civil assessments. The commissioner shall establish rules and regulations
340 governing the implementation and administration of the MAP pilot program.

341 The MAP pilot program shall be implemented 120 days after the effective date of this act
342 and shall expire 2 years thereafter.

343 SECTION 9. The provisions set forth in this act shall not apply to vehicles received by
344 an entity subject to the regulation and reporting requirements of the federal National Motor
345 Vehicle Title Information System, as set forth in 49 U.S.C. § 30501.

346 SECTION 10. Section 2 of chapter 140B½ of the General Laws shall take effect 6
347 months after the effective date of this act.

348 SECTION 11. Unless otherwise specified, this act shall take effect 1 year after its
349 passage.