

Senate, No. 2460

[Senate, May 26, 2010 – Text of amendment (143) offered by Mr. Timilty to the pending Senate Ways and Means amendment (Senate, No. 4) to the House Bill making appropriations for the fiscal year 2010 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND TEN

Mr. Timilty moved that the bill be amended by inserting after Section 4, the following section:-

“SECTION 4A. Chapter 6 of the General Laws is hereby amended by adding the following section:-

Section 216. Subject to distribution from the Secondary Metals Registry Trust Fund, established by section 35LL of chapter 10, the executive office of public safety and security, in cooperation with the criminal history systems board, shall establish a secondary metals registry. The registry shall consist of a central computerized registry of all information relative to metal received or kept pursuant to, or in violation of, chapter 140B½ or which was the subject of a transaction conducted in violation of said chapter 140B½. The registry shall be maintained and updated by the criminal history systems board any may use distributions from said fund for such purpose and no other. With the agreement of the criminal history systems board, information relative to metal which was stolen, or otherwise the subject of a violation of chapter 266, but not the subject of a violation of chapter 140B½, may be submitted for entry into the registry by a law enforcement agent.

The secretary of public safety and security, in cooperation with the criminal history systems board, shall develop standardized forms for use in connection with information collection requirements imposed under chapter 140B. The department of public safety and security shall make blank copies of such forms available, including electronically, to municipalities and to

secondary metal dealers for use by such dealers and may provide for such forms to be transmitted to the registry electronically. Such forms shall prominently include a statement that provision of false information or any other violation of sections 4 or 5 of chapter 140B ½ of the General Laws is punishable by a fine of not more than \$2,500 or by imprisonment in the house of correction for not more than 2½ years, or by both such fine and imprisonment for a first offense and by a fine of not less than \$2,500 nor more than \$10,000 or by imprisonment in the house of correction for not more than 2½ years or in the state prison for not less than 5 years, or by both such fine and imprisonment for a second or subsequent offense. Upon a third or subsequent violation of any provision of said chapter 140B½, the license of a secondary metals dealer shall be void and the licensing authority shall permanently revoke such license.

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

By inserting after Section 7 the following section:-

“**SECTION 7A.** Chapter 10 of the General Laws is hereby amended by inserting after section 35KK, the following section:-

Section 35LL. There is hereby established on the books of the commonwealth a separate fund to be known as the Secondary Metals Registry Trust Fund. The fund shall consist of monies paid to the commonwealth pursuant to chapter 140B and any interest or investment earnings on such monies. The state treasurer, ex officio, shall be the custodian of the fund and shall receive, deposit and invest all monies transmitted to him pursuant to this section and shall credit interest and earnings to the fund. The state treasure shall distribute 50 per cent of any fine collected and transferred to the fund, pursuant to said chapter 140B, to the municipality wherein the violation of said chapter 140B occurred and 50 per cent to the criminal history systems board for the establishment and maintenance of the secondary metals registry established under section 216 of chapter 6, without further appropriation.”;

By inserting after Section 64 the following 3 sections:-

SECTION 64A. The General Laws are hereby amended by inserting after chapter 140B, the following chapter:-

CHAPTER 140B½

SECONDARY METAL DEALING

Section 1. For the purposes of this chapter, the following terms shall have the following meanings unless the context clearly requires otherwise:

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

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

“Metal” or “metal article”, any substance or article consisting of metal or a metal alloy but excluding aluminum beverage containers if such containers have a refund value pursuant to section 322 of chapter 94.

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

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

Section 2. (a) The licensing authority in any city or town may license suitable persons to engage in secondary metal dealing within the borders of such municipality. A licensing authority may make additional rules, regulations and restrictions, not inconsistent with this chapter, which shall be expressed in all licenses issued pursuant to this section; provided, however, that such regulations shall include a requirement that a license issued pursuant to this section shall expire 1 year from the date of issue, may be renewed, and a fee of \$250 shall be assessed for the initial license, 50 per cent of which fee shall be forwarded by the collecting municipality to the state treasurer who shall deposit such monies into the Secondary Metals Registry Trust Fund, established by section 35LL of chapter 10 and \$75 shall be assessed for renewals for such licenses; and provided further, that any application for licensure or renewal shall designate a resident agent for service of process which designation may only be withdrawn, in writing, and upon designation of a new resident agent for such purpose. A license issued under section 54 or 54A shall not be deemed a valid license for engaging in secondary metals dealing. Licenses issued pursuant to this section may be revoked and shall be subject to sections 202 to 205, inclusive.

(b) A licensing authority shall enter premises used by any licensee to engage in secondary metals dealing, wherein the records required to be maintained under this chapter are stored or

maintained, and inspect, in a reasonable manner, such records and inventory at least once per calendar year during regular business hours for the purpose of enforcing this chapter. If the records or inventory contain evidence of a violation of this chapter, the inspecting officer shall produce and take possession of copies of the records but, if the licensee does not possess the means to provide copies, the inspecting officer shall arrange to obtain copies in a reasonable time and manner, those records that contain evidence of the violation and the costs for obtaining the copies shall be assessed against the owner of the records.

(c) The licensing authority, his authorized agent or a police officer may at any time enter upon premises being used for secondary metals dealing to ascertain whether or not the operator thereof is validly licensed, whether such enterprise is being operated in accordance with this chapter, and examine all articles received or stored in or upon the premises and all books, records and inventory relating thereto. A secondary metals dealer shall exhibit to the licensing authority, his authorized agent, or a police officer, upon demand, all such articles, books or inventory.

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

Section 3. (a) It shall be illegal to engage in secondary metals dealing without a license issued in accordance with section 2.

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

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

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

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

(3) a photograph and a record of the weight of each individual metal article with a fair market value in excess of \$250, unless such article bears an identifying number or mark imprinted or embossed on such article during the manufacturing process and unique to such object or to the object from which the metal was taken including, but not limited to, a vehicle identification

number; provided, however, that any photograph depicting more than 1 such article shall be sufficiently clear so as to distinguish each article from any other article in the photograph. If a unique identifying number or mark is imprinted or embossed on an article, that number or mark shall be recorded and neither a photograph nor the recorded weight of such article shall be required unless the article is gold, silver or platinum with a fair market value over \$250, in the condition in which it was received, in which case such article shall be photographed notwithstanding any such unique number or mark thereon;

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

(5) retain any metal or metal article received for 10 days following the postmark on, or the date of electronic transmission of, the information sent to the criminal history systems board as required under clauses (1) to (3), inclusive, and preserve such metal or article during such 10 days in the exact form in which it was received, without processing, tearing down, shredding, crushing, cutting, recycling, compacting, melting or otherwise alteration thereof.

(b) It shall be illegal to engage in secondary metals dealing and to:

- (1) knowingly accept a false name, address, date of birth or proof of identification or a false source from which metal or metal articles were obtained from any person seeking to exchange metal or metal articles for money or some other thing of value, with the intent to profit economically thereby;
- (2) refuse the licensing authority, his authorized agent or a police officer entry onto the premises used for secondary metals dealing, fail to exhibit to the licensing authority, his authorized agent or a police officer, upon demand, all articles, books or inventory, or willfully hinder, obstruct or prevent the licensing authority, his authorized agent or a police officer from entering such premises for the purpose of conducting an examination of records or inventory or the validity of any license purportedly issued pursuant to section 2;
- (3) receive any street sign, manhole cover, beer keg, propane container for fueling forklifts, street light, guard rail, water meter cover, railroad track, railroad spike, funeral or memorial marker, any metal item bearing the mark of any government entity, utility company or brewer, or copper wire, the insulation around which such dealer knew, or reasonably should have known, had been burned or stripped away; provided, however, that the manufacturer or authorized distributor of these metal

articles shall be exempt from this clause if such manufacturer or distributor refills, reuses or recycles such articles of its own manufacture or that it distributes.

- (4) receive any motor vehicle or trailer, or part thereof, which such dealer knew, or reasonably should have known, that the identifying number or mark thereon had been removed, defaced, altered, destroyed or obliterated.

(c) It shall be illegal to knowingly provide a false name, address, date of birth or proof of identification, or a false source from which metal or metal articles were obtained to a secondary metals dealer, with the intent to exchange metal or metal articles for money or some other thing of value.

(d) Whoever violates any provision of this section shall be punished, for a first offense, by a fine of not more than \$2,500 or by imprisonment in the house of correction for not more than 2½ years, or by both such fine and imprisonment. Whoever commits a second or subsequent violation of this section shall be punished by a fine of not less than \$2,500 nor more than \$10,000 or by imprisonment in the house of correction for not more than 2½ years or in the state prison for not less than 5 years, or by both such fine and imprisonment.

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

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

Section 6. Any premises used for secondary metals dealing and operated in violation of this chapter shall be deemed a nuisance and the licensing authority, the state police or local police department of the municipality in which such premises are located, the applicable district attorney or the attorney general may make application to the superior court in the county wherein the secondary metals dealing operation is established or maintained for an injunction to abate such nuisance.

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

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

- (2) all materials, products and equipment of any kind used, or intended for use, in processing, transporting, purchasing, exchanging or recycling metals or metal articles in violation of this chapter;
- (3) all conveyances used, or intended for use, to transport, conceal or otherwise facilitate the processing, transporting, purchasing, exchanging or recycling of metals or metal articles in violation of this chapter;
- (4) all money, negotiable instruments, securities or other things of value furnished, or intended to be furnished, by any person in exchange for metal or metal articles in violation of this chapter, all proceeds traceable to such an exchange, including real estate and any other thing of value, and all moneys, negotiable instruments and securities used, or intended to be used, to facilitate any violation of this chapter;
- (5) all real property, including any right, title and interest in the whole of any lot or tract of land and any appurtenances or improvements thereto, which is used in any manner or part, to commit or to facilitate the commission of a violation of this chapter; and
- (6) all property which is used, or intended for use, as a container for property described in clauses (1) or (2).

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

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

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

- (1) No conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited unless it shall appear that the owner or other person in charge of such conveyance was a consenting party to, or privy to, a violation of this chapter.
- (2) No conveyance shall be forfeited by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of the commonwealth or of any other state.

(3) No conveyance or real property shall be subject to forfeiture unless the owner thereof knew, or should have known, that such conveyance or real property was used in and for the business of secondary metals dealing in violation of this chapter. Proof that the conveyance or real property was used to facilitate a violation of this chapter on 3 or more different dates shall be prima facie evidence that the conveyance or real property was used in and for the business of unlawful secondary metals dealing.

(e) (1) The attorney general, a district attorney or a municipality may petition the superior court in the name of the commonwealth or, in the case of a municipality, in such municipality's name, in the nature of a proceeding in rem to order forfeiture of property subject to forfeiture under subsection (a). Such petition shall be filed in the court having jurisdiction over such property or having final jurisdiction over any related criminal proceeding brought under this chapter. If the property is claimed by any person, other than the commonwealth, the plaintiff in all such suits shall have the burden of proving to the court the existence of probable cause to institute the action and any such claimant shall then have the burden of proving that the property is not forfeitable pursuant to subsection (a). The owner of such property, or other person claiming thereunder, shall have the burden of proof as to the exceptions set forth in subsections (d) and (i). The court shall order the forfeiture petitioner to give notice, by certified or registered mail, to the owner of the property which is the subject of the forfeiture proceeding and to such other persons as appear to have an interest therein and the court shall promptly, but not less than 2 weeks after notice, hold a hearing on the petition. Upon the motion of the owner of such property, the court may continue the hearing on the petition pending the outcome of any criminal trial related to the violation of this chapter. At such hearing, the court shall hear evidence and make conclusions of law and shall thereupon issue a final order from which the parties shall have a right of appeal. In all such suits in which a final order results in an order of forfeiture, the final order shall provide for disposition of such property by the commonwealth, or any subdivision thereof, in any manner not prohibited by law, including official use by authorized law enforcement or other public agency or sale at public auction or by competitive bidding. The proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice and the balance thereof shall be distributed as provided in subparagraph (2).

(2) The final order of the court shall provide that moneys and the proceeds of any sale conducted pursuant to subparagraph (1) shall be distributed equally among the prosecuting district attorney or attorney general, the municipal or state police department involved in the

seizure and the municipality in which such property is located. If more than 1 police department was substantially involved in the seizure, the court having jurisdiction over the forfeiture proceeding shall equitably divide, among each of the departments involved, the 1/3 share of the money and proceeds of such sale that would be distributed as if a single department was involved in the seizure.

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

All such moneys and proceeds received by any police department pursuant to this subparagraph shall be deposited into a special law enforcement trust fund and may be expended without further appropriation to defray the costs of protracted investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or to accomplish such other law enforcement purposes as the colonel of state police or applicable chief of police deems appropriate, but such funds shall not be considered a source of revenue to meet the operating needs of such department.

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

(g) (1) During the pendency of forfeiture proceedings, the court may issue, at the request of the petitioner, *ex parte*, any preliminary order or process as is necessary to seize or secure the property for which forfeiture is sought and to provide for its custody including, but not limited to: an order that the petitioner remove the property, if possible, and safeguard it in a secure location in a reasonable fashion; that monies be deposited in an interest-bearing escrow account and; that a substitute custodian be appointed to manage such property or a business enterprise. Property

taken or detained under this section shall not be repleviable, but once seized shall be deemed to be lawfully in the custody of the petitioner pending forfeiture, subject only to the orders and decrees of the court having jurisdiction thereof. Process for seizure of such property shall issue only upon a showing of probable cause, and the application therefore and the issuance, execution, and return thereof shall be subject to chapter 276, so far as applicable.

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

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

(i) A forfeiture proceeding affecting the title to real property or the use and occupation thereof, or the buildings thereon, shall not have any effect except against the parties thereto and persons having actual notice thereof, until a memorandum containing the names of the parties to such proceeding, the name of the municipality wherein the affected real property lies, and a description of such real property sufficiently accurate for identification is recorded in the registry of deeds for the county or district wherein the real property lies. At any time after a judgment on the merits, or after the discontinuance, dismissal or other final disposition is recorded by the court having jurisdiction over such matter, the clerk of such court shall issue a certificate of such judgment, discontinuance, dismissal or other final disposition and that certificate shall be recorded in the registry in which the original memorandum recorded pursuant to this section was filed.

Section 8. The chapter shall not apply to a person who is required under the federal Banking Secrecy Act, Public Law 91-508, as amended by 12 U.S.C. 1829B, 12 U.S.C. 1951-1959 and 31 U.S.C. 5311-5314, 5316-5332 to maintain an anti-money laundering program that vets customers and transactions in metals.

SECTION 64B. Section 202 of said chapter 140, as appearing in the 2008 Official Edition, is hereby amended by striking out, in line 2, the words “, old metals.”

SECTION 64C. Said section 202 of said chapter 140, as so appearing, is hereby further amended by inserting after the word “pawnbrokers”, in line 2, the words“- , secondary metals dealing.”;

By inserting after Section 89 the following 2 sections:-

“SECTION 89A. Chapter 266 of the General Laws is hereby amended by striking out section 142A.

SECTION 89B. Section 70C of chapter 277 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the second sentence the following sentence:- This section may apply to a violator of chapter 140B½ once only; provided, however, that any such violator who agrees to treat such violation as a civil offense shall be assessed a fine of \$500, which fine shall not be waived; and provided further, that notwithstanding any general or special law to the contrary, 100 per cent of such fine shall be forwarded to the state treasurer for deposit into the Secondary Metals Registry Trust Fund, established under section 35LL of chapter 10.”;

By inserting after Section 107 the following section:-

“SECTION 107A. Notwithstanding any general or special law to the contrary, the attorney general shall establish a 2 year pilot program to implement a state “Massachusetts abandoned property registry”, hereinafter referred to as MAP. Such registry shall require all property owners, including lenders, trustees, and service companies, to properly register and maintain vacant and/or foreclosing properties located in the state.

The attorney general shall have enforcement authority of the pilot program, and shall establish rules governing the implementation and administration of the MAP pilot program. The MAP pilot program shall be implemented 120 days after passage, and shall expire 2 years thereafter.”;

And by inserting after Section 157 the following 3 sections:-

“SECTION 157A. Sections 4A, 7A, 64B, 64C, 89A, 89B and 107A shall take effect on July 1, 2011.

SECTION 157B. Proposed sections 1 and 3 to 8, inclusive, of chapter 140B1/2 of the General Laws, as inserted by Section 64A, shall take effect on July 1, 2011.

SECTION 157C. Proposed section 2 of chapter 140B1/2 of the General Laws, as inserted by Section 64A, shall take effect on January 1, 2011.”