SENATE DOCKET, NO. 590 FILED ON: 1/19/2011

SENATE . . . . . No. 145

The Commonwealth of Massachusetts

PRESENTED BY:

James E. Timilty

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act regulating secondary metals dealing.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
James E. Timilty	
John W. Scibak	*2nd Hampshire*
Stephen L. DiNatale	*3rd Worcester*
Jennifer L. Flanagan	
Cynthia S. Creem	
Jennifer E. Benson	*37th Middlesex*
Carolyn C. Dykema	*8th Middlesex*
Cory Atkins	*14th Middlesex*
Christine E. Canavan	*10th Plymouth*
James J. Dwyer	*30th Middlesex*
Robert L. Hedlund	
Denise Andrews	*2nd Franklin*
Gale D. Candaras	
Barry R. Finegold	
Patricia A. Haddad	*5th Bristol*
John D. Keenan	*7th Essex*
Denise Provost	*27th Middlesex*
Kathi-Anne Reinstein	*16th Suffolk*

SENATE DOCKET, NO. 590 FILED ON: 1/19/2011

SENATE . . . . . No. 145

By Mr. Timilty, petition (accompanied by bill, Senate, No. 145) of Reinstein, Provost, Keenan and other members of the General Court for legislation to regulate secondary metals dealing [Joint Committee on Consumer Protection and Professional Licensure].

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *2191* OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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:

SECTION 1. 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

11 relative to metal which was stolen, or otherwise the subject of a violation of chapter 266, but not
12 the subject of a violation of chapter 140B½, may be submitted for entry into the registry by a law
13 enforcement agent.

14 The secretary of public safety and security, in cooperation with the criminal history
15 systems board, shall develop standardized forms for use in connection with information
16 collection requirements imposed under chapter 140B. The department of public safety and
17 security shall make blank copies of such forms available, including electronically, to
18 municipalities and to secondary metal dealers for use by such dealers and may provide for such
19 forms to be transmitted to the registry electronically. Such forms shall prominently include a
20 statement that provision of false information or any other violation of sections 4 or 5 of chapter
21 140B ½ of the General Laws is punishable by a fine of not more than $2,500 or by
22 imprisonment in the house of correction for not more than 2½ years, or by both such fine and
23 imprisonment for a first offense and by a fine of not less than $2,500 nor more than $10,000 or
24 by imprisonment in the house of correction for not more than 2½ years or in the state prison for
25 not less than 5 years, or by both such fine and imprisonment for a second or subsequent offense.
26 Upon a third or subsequent violation of any provision of said chapter 140B½, the license of a
27 secondary metals dealer shall be void and the licensing authority shall permanently revoke such
28 license.

29 Said secretary shall adopt regulations, consistent with the purposes of said chapter
30 140B½, to collect the information required to be obtained and kept by secondary metal dealers
31 and to maintain that information in the registry for use by law enforcement agencies. Records
32 maintained in the secondary metals registry shall be open to any law enforcement agency in the
33 commonwealth, the United States or any other state. Information in the registry database shall

34 not be a public record under clause Twenty-sixth of section 7 of chapter 4 or section 10 of
35 chapter 66.

36 SECTION 2. Chapter 10 of the General Laws is hereby amended by inserting after
37 section 35KK, the following section:-

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

48 SECTION 3. The General Laws are hereby amended by inserting after chapter 140B, the
49 following chapter:-

50 CHAPTER 140B½

51 SECONDARY METAL DEALING

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

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

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

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

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

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

68 Section 2. (a) The licensing authority in any city or town may license suitable persons to
69 engage in secondary metal dealing within the borders of such municipality. A licensing
70 authority may make additional rules, regulations and restrictions, not inconsistent with this
71 chapter, which shall be expressed in all licenses issued pursuant to this section; provided,
72 however, that such regulations shall include a requirement that a license issued pursuant to this
73 section shall expire 1 year from the date of issue, may be renewed, and a fee of $250 shall be
74 assessed for the initial license, 50 per cent of which fee shall be forwarded by the collecting
75 municipality to the state treasurer who shall deposit such monies into the Secondary Metals

76 Registry Trust Fund, established by section 35LL of chapter 10 and $75 shall be assessed for
77 renewals for such licenses; and provided further, that any application for licensure or renewal
78 shall designate a resident agent for service of process which designation may only be withdrawn,
79 in writing, and upon designation of a new resident agent for such purpose. A license issued under
80 section 54 or 54A shall not be deemed a valid license for engaging in secondary metals dealing.
81 Licenses issued pursuant to this section may be revoked and shall be subject to sections 202 to
82 205, inclusive.

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

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

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

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

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

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

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

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

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

119 identification number; provided, however, that any photograph depicting more than 1 such
120 article shall be sufficiently clear so as to distinguish each article from any other article in the
121 photograph. If a unique identifying number or mark is imprinted or embossed on an article, that
122 number or mark shall be recorded and neither a photograph nor the recorded weight of such
123 article shall be required unless the article is gold, silver or platinum with a fair market value over
124 $250, in the condition in which it was received, in which case such article shall be photographed
125 notwithstanding any such unique number or mark thereon;

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

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

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

135 knowingly accept a false name, address, date of birth or proof of identification or a false
136 source from which metal or metal articles were obtained from any person seeking to exchange
137 metal or metal articles for money or some other thing of value, with the intent to profit
138 economically thereby;

139 refuse the licensing authority, his authorized agent or a police officer entry onto the
140 premises used for secondary metals dealing, fail to exhibit to the licensing authority, his

141 authorized agent or a police officer, upon demand, all articles, books or inventory, or willfully
142 hinder, obstruct or prevent the licensing authority, his authorized agent or a police officer from
143 entering such premises for the purpose of conducting an examination of records or inventory or
144 the validity of any license purportedly issued pursuant to section 2;

145 receive any street sign, manhole cover, beer keg, propane container for fueling forklifts,
146 street light, guard rail, water meter cover, railroad track, railroad spike, funeral or memorial
147 marker, any metal item bearing the mark of any government entity, utility company or brewer, or
148 copper wire, the insulation around which such dealer knew, or reasonably should have known,
149 had been burned or stripped away; provided, however, that the manufacturer or authorized
150 distributor of these metal articles shall be exempt from this clause if such manufacturer or
151 distributor refills, reuses or recycles such articles of its own manufacture or that it distributes.

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

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

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

163 than $10,000 or by imprisonment in the house of correction for not more than 2½ years or in the
164 state prison for not less than 5 years, or by both such fine and imprisonment.

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

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

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

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

180 all metal or metal articles which have been received, maintained, transferred or altered or
181 in any manner obtained or kept in violation of this chapter;

182 all materials, products and equipment of any kind used, or intended for use, in processing,
183 transporting, purchasing, exchanging or recycling metals or metal articles in violation of this
184 chapter;

185 all conveyances used, or intended for use, to transport, conceal or otherwise facilitate the
186 processing, transporting, purchasing, exchanging or recycling of metals or metal articles in
187 violation of this chapter;

188 all money, negotiable instruments, securities or other things of value furnished, or
189 intended to be furnished, by any person in exchange for metal or metal articles in violation of
190 this chapter, all proceeds traceable to such an exchange, including real estate and any other thing
191 of value, and all moneys, negotiable instruments and securities used, or intended to be used, to
192 facilitate any violation of this chapter;

193 all real property, including any right, title and interest in the whole of any lot or tract of
194 land and any appurtenances or improvements thereto, which is used in any manner or part, to
195 commit or to facilitate the commission of a violation of this chapter; and

196 all property which is used, or intended for use, as a container for property described in
197 clauses (1) or (2).

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

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

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

205 No conveyance used by any person as a common carrier in the transaction of business as
206 a common carrier shall be forfeited unless it shall appear that the owner or other person in charge
207 of such conveyance was a consenting party to, or privy to, a violation of this chapter.

208 No conveyance shall be forfeited by reason of any act or omission established by the
209 owner thereof to have been committed or omitted by any person other than such owner while
210 such conveyance was unlawfully in the possession of a person other than the owner in violation
211 of the criminal laws of the United States, or of the commonwealth or of any other state.

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

218 (e) (1) The attorney general, a district attorney or a municipality may petition the superior
219 court in the name of the commonwealth or, in the case of a municipality, in such municipality's
220 name, in the nature of a proceeding in rem to order forfeiture of property subject to forfeiture
221 under subsection (a). Such petition shall be filed in the court having jurisdiction over such
222 property or having final jurisdiction over any related criminal proceeding brought under this
223 chapter. If the property is claimed by any person, other than the commonwealth, the plaintiff in
224 all such suits shall have the burden of proving to the court the existence of probable cause to

225 institute the action and any such claimant shall then have the burden of proving that the property
226 is not forfeitable pursuant to subsection (a). The owner of such property, or other person
227 claiming thereunder, shall have the burden of proof as to the exceptions set forth in subsections
228 (d) and (i). The court shall order the forfeiture petitioner to give notice, by certified or registered
229 mail, to the owner of the property which is the subject of the forfeiture proceeding and to such
230 other persons as appear to have an interest therein and the court shall promptly, but not less than
231 2 weeks after notice, hold a hearing on the petition. Upon the motion of the owner of such
232 property, the court may continue the hearing on the petition pending the outcome of any criminal
233 trial related to the violation of this chapter. At such hearing, the court shall hear evidence and
234 make conclusions of law and shall thereupon issue a final order from which the parties shall have
235 a right of appeal. In all such suits in which a final order results in an order of forfeiture, the final
236 order shall provide for disposition of such property by the commonweal, or any subdivision
237 thereof, in any manner not prohibited by law, including official use by authorized law
238 enforcement or other public agency or sale at public auction or by competitive bidding. The
239 proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture
240 proceedings, seizure, storage, maintenance of custody, advertising and notice and the balance
241 thereof shall be distributed as provided in subparagraph (2).

242 (2) The final order of the court shall provide that moneys and the proceeds of any sale
243 conducted pursuant to subparagraph (1) shall be distributed equally among the prosecuting
244 district attorney or attorney general, the municipal or state police department involved in the
245 seizure and the municipality in which such property is located. If more than 1 police department
246 was substantially involved in the seizure, the court having jurisdiction over the forfeiture
247 proceeding shall equitably divide, among each of the departments involved, the 1/3 share of the

248 money and proceeds of such sale that would be distributed as if a single department was involved
249 in the seizure.

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

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

264 (f) Any officer, department, or municipality having custody of any property subject to
265 forfeiture under this chapter or having disposed of such property shall keep and maintain full and
266 complete records showing from whom it received such property, under what authority it held or
267 received or disposed of such property, to whom it delivered such property, the date and manner
268 of destruction or disposition of such property, and the exact kind, quantity and form of such
269 property. The records shall be open to inspection by the attorney general and state officers

270 charged with enforcement of this chapter. Persons making final disposition or destruction of such
271 property under court order shall report, under oath, to the court the exact circumstances of such
272 disposition.

273 (g) (1) During the pendency of forfeiture proceedings, the court may issue, at the request
274 of the petitioner, ex parte, any preliminary order or process as is necessary to seize or secure the
275 property for which forfeiture is sought and to provide for its custody including, but not limited
276 to: an order that the petitioner remove the property, if possible, and safeguard it in a secure
277 location in a reasonable fashion; that monies be deposited in an interest-bearing escrow account
278 and; that a substitute custodian be appointed to manage such property or a business enterprise.
279 Property taken or detained under this section shall not be repleviable, but once seized shall be
280 deemed to be lawfully in the custody of the petitioner pending forfeiture, subject only to the
281 orders and decrees of the court having jurisdiction thereof. Process for seizure of such property
282 shall issue only upon a showing of probable cause, and the application therefore and the
283 issuance, execution, and return thereof shall be subject to chapter 276, so far as applicable.

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

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

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

309 SECTION 4. Section 202 of said chapter 140, as appearing in the 2008 Official Edition,
310 is hereby amended by striking out, in line 2, the words “, old metals.”

311 SECTION 5. Said section 202 of said chapter 140, as so appearing, is hereby further
312 amended by inserting after the word “pawnbrokers”, in line 2, the words “, secondary metals
313 dealing”.

314 SECTION 6. Chapter 266 of the General Laws is hereby amended by striking out section
315 142A, as so appearing.

316 SECTION 7. Section 70C of chapter 277 of the General Laws, as so appearing, is hereby
317 amended by inserting after the second sentence the following sentence:- This section may apply
318 to a violator of chapter 140B½ once only; provided, however, that any such violator who agrees
319 to treat such violation as a civil offense shall be assessed a fine of $500, which fine shall not be
320 waived; and provided further, that notwithstanding any general or special law to the contrary,
321 100 per cent of such fine shall be forwarded to the state treasurer for deposit into the Secondary
322 Metals Registry Trust Fund, established under section 35LL of chapter 10.

323 SECTION 8 Notwithstanding any general or special law to the contrary, the
324 commissioner of banks shall establish a 2 year pilot program to implement a state “massachusetts
325 abandoned property registry”, hereinafter referred to as MAP. Such registry shall require all
326 property owners, including lenders, trustees, and service companies, to properly register and
327 maintain vacant or foreclosing properties located in the Commonwealth. Law enforcement
328 entities including, but not limited to, the attorney general and municipalities shall have access to
329 the MAP. The commissioner of banks shall have enforcement authority of the pilot program
330 including, but not limited to, the authority impose civil assessments. Said commissioner shall
331 adopt rules and regulations governing the implementation and administration of the MAP pilot
332 program.

333 The MAP pilot program shall be implemented 120 days after passage, and shall expire
334 two years thereafter.

335 SECTION 9. Section 2 of chapter 140B½ of the General Laws shall take effect 6 months
336 after the effective date of this act. The remainder of this bill shall take effect 1 year after the
337 effective date of this act.