SENATE DOCKET, NO. FILED ON: 11/12/2013

SENATE . . . . . No. 1916

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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 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 140B½. 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 said chapter 140B½ 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.

Said 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.

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

Section 35TT. 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 140B½ 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 140B½, to the municipality wherein the violation of said chapter 140B½ 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.

SECTION 3. 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.

58 “Metal” or “metal article”, any substance or article consisting of metal or a metal alloy,
59 but excluding: (1) aluminum beverage containers if such containers have a refund value pursuant
60 to section 322 of chapter 94; or (2) firearms, ammunition and feeding devices, as defined by
61 section 121 of chapter 140.

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

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

69 Section 2. (a) The licensing authority in any city or town may license suitable persons to
70 engage in secondary metal dealing within the borders of such municipality. A licensing authority
71 may make additional rules, regulations and restrictions, not inconsistent with this chapter, which
72 shall be expressed in all licenses issued pursuant to this section; provided, however, that such
73 regulations shall include a requirement that a license issued pursuant to this section shall expire 1
74 year from the date of issue, may be renewed, and a fee of $250 shall be assessed for the initial
75 license, 50 per cent of which fee shall be forwarded by the collecting municipality to the state
76 treasurer who shall deposit such monies into the Secondary Metals Registry Trust Fund,
77 established by section 35TT of chapter 10 and $75 shall be assessed for renewals for such
78 licenses; and provided further, that any application for licensure or renewal shall designate a
79 resident agent for service of process which designation may only be withdrawn, in writing, and
80 upon designation of a new resident agent for such purpose. A license issued under section 54 or
81 54A of chapter 140 shall not be deemed a valid license for engaging in secondary metals dealing.
82 Licenses issued pursuant to this section may be revoked and shall be subject to sections 202 to
83 205, inclusive, of said chapter 140.

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

93 (c) The licensing authority, his authorized agent or a police officer may at any time enter
94 upon premises being used for secondary metals dealing to ascertain whether or not the operator

95 thereof is validly licensed, whether such enterprise is being operated in accordance with this
96 chapter and to examine all articles received or stored in or upon the premises and all books,
97 records and inventory relating thereto. A secondary metals dealer shall exhibit to the licensing
98 authority, his authorized agent or a police officer, upon demand, all such articles, books or
99 inventory.

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

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

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

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

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

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

117 (3) a photograph and a record of the weight of each individual metal article with a
118 fair market value in excess of $250, unless such article bears an identifying number or mark
119 imprinted or embossed on such article during the manufacturing process and unique to such
120 object or to the object from which the metal was taken including, but not limited to, a vehicle
121 identification number; provided, however, that any photograph depicting more than 1 such article
122 shall be sufficiently clear so as to distinguish each article from any other article in the
123 photograph; provided further, that if a unique identifying number or mark is imprinted or
124 embossed on an article, that number or mark shall be recorded and neither a photograph nor the
125 recorded weight of such article shall be required unless the article is gold, silver or platinum with
126 a fair market value over $250 in the condition in which it was received, in which case such
127 article shall be photographed notwithstanding any such unique number or mark thereon;

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

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

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

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

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

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

156 (4) receive, with the intent to profit economically thereby, any motor vehicle or
157 trailer, or part thereof, which such dealer knew, or reasonably should have known, that the
158 identifying number or mark thereon had been removed, defaced, altered, destroyed or obliterated.

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

163 (d) Whoever violates any provision of this section shall be punished, for a first offense,
164 by a fine of not more than $2,500 or by imprisonment in the house of correction for not more
165 than 2½ years, or by both such fine and imprisonment. Whoever commits a second or subsequent
166 violation of this section shall be punished by a fine of not less than $2,500 nor more than
167 $10,000 or by imprisonment in the house of correction for not more than 2½ years or in the state
168 prison for not less than 5 years, or by both such fine and imprisonment.

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

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

176 Section 5. Notwithstanding any general or special law to the contrary, 100 per cent of the
177 fines imposed pursuant to a violation of this chapter shall be transferred by the court to the state
178 treasurer for deposit into the Secondary Metals Registry Trust Fund, established under section
179 35TT of chapter 10.

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

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

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

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

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

195 (4) all money, negotiable instruments, securities or other things of value
196 furnished, or intended to be furnished, by any person in exchange for metal or metal articles in
197 violation of this chapter, all proceeds traceable to such an exchange, including real estate and any

198 other thing of value, and all moneys, negotiable instruments and securities used, or intended to
199 be used, to facilitate any violation of this chapter;

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

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

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

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

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

212 (1) no conveyance used by any person as a common carrier in the transaction of
213 business as a common carrier shall be forfeited unless it shall appear that the owner or other
214 person in charge of such conveyance was a consenting party to, or privy to, a violation of this
215 chapter;

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

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

227 (e) (1) The attorney general, a district attorney or a municipality may petition the
228 superior court in the name of the commonwealth or, in the case of a municipality, in such
229 municipality's name, in the nature of a proceeding in rem to order forfeiture of property subject
230 to forfeiture under subsection (a). Such petition shall be filed in the court having jurisdiction over
231 such property or having final jurisdiction over any related criminal proceeding brought under this
232 chapter. If the property is claimed by any person, other than the commonwealth, the plaintiff in

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

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

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

267 All such moneys and proceeds received by any police department pursuant to this
268 subsection shall be deposited into a special law enforcement trust fund and may be expended
269 without further appropriation to defray the costs of protracted investigations, to provide
270 additional technical equipment or expertise, to provide matching funds to obtain federal grants,
271 or to accomplish such other law enforcement purposes as the colonel of state police or applicable

272 chief of police deems appropriate, but such funds shall not be considered a source of revenue to
273 meet the operating needs of such department.

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

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

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

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

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

319 SECTION 4. Section 202 of said chapter 140, as appearing in the 2010 Official Edition,
320 is hereby amended by striking out, in line 2, the words “, old metals.”

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

324 SECTION 6. Chapter 266 of the General Laws is hereby amended by striking out section
325 142A, as so appearing.

326 SECTION 7. Section 70C of chapter 277 of the General Laws, as so appearing, is hereby
327 amended by inserting after the second sentence the following sentence:- This section shall apply
328 to a violator of chapter 140B½ once only; provided, however, that any such violator who agrees
329 to treat such violation as a civil offense shall be assessed a fine of $500, which fine shall not be
330 waived; and provided further, that notwithstanding any general or special law to the contrary,
331 100 per cent of such fine shall be forwarded to the state treasurer for deposit into the Secondary
332 Metals Registry Trust Fund, established under section 35PP of chapter 10.

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

340 The commissioner of banks shall have enforcement authority of the pilot program
341 including, but not limited to, the authority to impose civil assessments. Said commissioner shall
342 establish rules and regulations governing the implementation and administration of the MAP
343 pilot program.

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

346 SECTION 9. The provisions set forth in this act shall not apply to any entity subject to
347 the regulation and reporting requirements of the National Motor Vehicle Title Information
348 System as set forth in 49 U.S.C. 30501.

349 SECTION 10. Section 2 of chapter 140B½ of the General Laws shall take effect 6
350 months after the effective date of this act. The remainder of this bill shall take effect 1 year after
351 the effective date of this act.