

# **HOUSE . . . . . No. 3797**

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## **The Commonwealth of Massachusetts**

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HOUSE OF REPRESENTATIVES, October 7, 2015.

The committee on the Consumer Protection and Professional Licensure to whom was referred the petition (accompanied by bill, House, No. 226) of Ronald Mariano and others relative to secondary metals dealings, reports recommending that the accompanying bill (House, No. 3797) ought to pass.

For the committee,

JENNIFER E. BENSON.

# HOUSE . . . . . No. 3797

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## The Commonwealth of Massachusetts

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In the One Hundred and Eighty-Ninth General Court  
(2015-2016)  
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An Act regulating secondary metals dealings.

*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. The General Laws are hereby amended by inserting after chapter 140B, the  
2 following chapter:-

3           CHAPTER 140B½ SECONDARY METAL DEALING

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

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

“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.

“Registration”, process by which the scrap metal dealer will file a form at the local municipal police station which will be addressed to the local police chief which will include basic information regarding the scrap metal facility. Such form shall list the name of the registrant, nature of the business and address and contact information.

“Secondary metals dealer”, any business, individual, corporation, association or organization engaged in secondary metals dealing for profit.

“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) No person shall carry on the business of being a scrap metal processor, collector of, dealer in or keeper of a shop for the purchase, sale, and barter of junk, scrap metal commodities, old metals or second hand articles without filing a registration form with the municipality’s chief of police or designee.

All registrations under this section shall be made on a form or forms to be prescribed by the municipality’s chief of police or designee and shall set forth the name of the registrant, the nature of the business and the building or place in the city or town in which it is to be carried on.

The fee for such registration shall be determined by the chief of police or his designee. Societies, associations or corporations organized solely for religious or charitable purposes shall not be required to pay a fee for such registration. No registrations shall be transferred without prior consent of the chief of police and all registrations shall be posted on the registrant's premises in a conspicuous place and manner.

Every registration issued under this section shall expire on May first following the date of issue.

Section 3. A secondary metals dealer registered in accordance with this section shall comply with the following procedures when purchasing any metal products:

(a) The Dealer shall require the individual selling the metals by requiring him to produce a Massachusetts or state-issued photo identification, and maintaining a copy of the same in the record of transaction.

(b) The Dealer shall ascertain the identity of any business, organization, society, corporation etc., selling the metals by requiring him to provide a Massachusetts or state-issued identification number, and the dealer shall maintain a copy of such identification in the record of transaction.

(c) The Dealer shall keep a daily transaction log, in the English language and such log information shall include:

(1) Name, date of birth and residence of the person with whom such a transaction was made, or company or organization name and principal address with whom such a transaction was made;

- 49           (2) The date and time when such a transaction occurred;
- 50           (3) The price paid for the article;
- 51           (4) A description of the article, including type, weight and quantity;
- 52           (5) The license plate number and state of issue of the vehicle being used by the person
- 53 offering the article to transport the article to the registrant's place of business and
- 54           (6) A written statement from the person offering the article stating that he or she is in
- 55 lawful possession of the article being offered.
- 56           (d) A secondary metals dealer may not accept from any individual, who is not company
- 57 affiliated or an authorized contractor of the manufacturer, municipality, government,
- 58 communications company or utility, the following items:
- 59           (1) guardrails;
- 60           (2) manhole covers,
- 61           (3) cables used only in high voltage transmission lines;
- 62           (4) historical markers;
- 63           (5) cemetery plaques;
- 64           (6) full sized new materials, such as those used in construction;
- 65           (7) equipment tools used by contractors;
- 66           (8) bleachers from an athletic field;

(9) traffic signs;

(10) beer kegs;

(11) railroad scrap metal;

(12) materials that have been reported stolen through the Institute of Scrap Recycling Industries, Inc. (ISRI) alert system; and

(13) any metal item bearing the mark of any government entity, utility or communications company, or copper wire, the insulation around which the dealer knew or reasonably should have known had been burned or stripped away.

A list of the materials named above which are deemed unacceptable shall be prominently posted on a large sign at every registered facility in the Commonwealth.

(e) The record file shall be retained by the Dealer for a period of 1 year from the date of the transaction. Accompanying documentation may be destroyed following the one year period. If documentation is stored electronically, said documents must be stored or backed-up by any current electronic means and may be deleted at the completion of the one year period.

(f) During the 1 year period, the log shall be open for inspection by the state and local police upon reasonable request.

Section 4. (a) Following notification, either verbally or in writing, from a law enforcement officer that specific scrap materials have been reported as stolen, a scrap processor or recycling facility operator that is in possession of the scrap material in question shall hold that scrap material intact and safe from alteration, damage or commingling and shall place an identifying tag or other suitable identification upon the scrap material.

(b) A law enforcement officer making a verbal request shall provide the scrap processor or recycling facility operator, upon request, with the officer's name, badge number and department contact telephone number so that the scrap processor or recycling facility operator may call back to confirm the identity of the law enforcement officer.

(c) Within 48 hours of notification by the law enforcement officer or 48 hours of the receipt of the material, whichever is later, the scrap processor or recycling facility operator shall notify the law enforcement officer that scrap material matching the law enforcement officer's description is on the premises.

(d) The scrap processor or recycling facility shall hold the scrap material for a period of time as directed by the applicable law enforcement agency, up to a maximum of 48 hours following notification, unless extended pursuant to sub-section (f) of this section.

(e) A law enforcement officer shall not place a hold on any scrap material unless that law enforcement officer reasonably suspects that the scrap material is lost or stolen. The request to hold scrap material shall be as specific as possible by using descriptive language, including, but not limited to, the type and style of the material, length or weight or any other such description to identify the material to be held. Any hold that is placed on scrap material shall not exceed 48 hours, and the scrap material must be returned to the owner or released when the hold has been released or has expired.

(f) A holding period may be extended beyond 48 hours only upon the order of a clerk-magistrate after the clerk-magistrate has determined that probable cause exists that the scrap material is lost or stolen.

(g) A scrap processor or recycling facility operator that receives material that does not meet the description materials being sought by a law enforcement officer may dispose of that material at its discretion.

Section 5. (a) For the purposes of this subsection a “prohibited metal” is any metal article as provided in subsections (d)(1) to (d)(12), inclusive, of section 3 of this chapter. Any secondary metals dealer who knowingly buys or receives a prohibited metal may be punished by a fine of not more than \$500 for the first offense. Upon a second offense, such dealer may be punished by a fine of not more than \$1,000. Upon a third or subsequent offense, such dealer may be punished by a fine of not more than \$2,000.

(b) It shall be illegal to engage in secondary metals dealing without registering in accordance with section 2 of this chapter. Any person who illegally engages in secondary metals dealing without registering may be assessed a civil penalty of not more than \$3,000 by the city or town in which the violation occurred. This penalty shall be imposed pursuant to any by-law or ordinance adopted by a town or city under Chapter 40.

(c) For the purposes of this subsection a “prohibited metal” is any metal article as provided in subsections (d)(1) to (d)(11), inclusive, of section 3 of this chapter. Any person who violates section 30 of Chapter 266 and the property for this violation is a prohibited metal may be punished by a fine of not more than \$250 for the first offense. Upon a second offense, such person may be punished by a fine of not more than \$500. Upon a third or subsequent offense, such person may be punished by a fine of not more than \$1,000.

(d) Any person who fails to comply with the procedures and record-keeping requirements as outlined in subsections (a) to (c) and (e) to (f), inclusive, of section 3 of this chapter may be



131 punished by a fine of not more than \$150 for the first offense. Upon a second offense, such  
132 person may be punished by a fine of not more than \$300. Upon a third or subsequent offense,  
133 such person may be punished by a fine of not more than \$500.

134 (e) Any penalty imposed for a violation of this section shall be imposed in addition to any  
135 other penalty imposed under laws of the commonwealth and shall be payable to the city or town  
136 where the violation occurred.

137 Section 6. The provisions set forth in this act shall not apply to vehicles received by an  
138 entity subject to the regulation and reporting requirements of the federal National Motor Vehicle  
139 Title Information System, as set forth in 49 U.S.C. § 30501.

140 SECTION 2. Notwithstanding any general or special law to the contrary, the  
141 commissioner of banks shall establish a 2 year pilot program to implement a Massachusetts  
142 abandoned property registry, hereinafter referred to as MAP. Such registry shall require all  
143 property owners, including lenders, trustees, and service companies, to properly register and  
144 maintain vacant or foreclosing properties located in the commonwealth. Law enforcement  
145 entities including, but not limited to, the attorney general and municipalities shall have access to  
146 the MAP. The commissioner of banks shall have enforcement authority of the pilot program  
147 including, but not limited to, the authority impose civil assessments. Said commissioner shall  
148 adopt rules and regulations governing the implementation and administration of the MAP pilot  
149 program.

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

152           SECTION 3. Section 54 of chapter 140 of the General Laws, as appearing in the 2012  
153 Official Edition, is hereby amended by striking, in line 5, the words “old metals”.

154           SECTION 4. Section 202 of said chapter 140 is hereby amended by striking out, in line  
155 2, the words “, old metals and .”

156           SECTION 5. This act shall take effect upon its passage.