HOUSE . . . . . No. 3806

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, October 13, 2015.

The committee on Ways and Means, to whom was referred the Bill regulating secondary metals dealings (House, No. 3797), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 3806).

For the committee,

BRIAN S. DEMPSEY.

HOUSE . . . . . No. 3806

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

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:

SECTION 1. 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.

"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.

"Prohibited metal", any metal article as listed in clauses (1) through (12), inclusive, of subsection (d) of section 3 of this chapter.

"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 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 2 of this chapter shall comply with the following procedures when purchasing any metal products:

(a) The dealer shall require that the individual selling the metals provide a Massachusetts or state-issued photo identification and the dealer shall maintain a copy of the same in the record of transaction.

(b) The dealer shall ascertain the identity of any business, organization, society, corporation or other entity, selling the metals by requiring that a federal employer identification number be provided and the dealer shall maintain a copy of the number 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; (2) The date and time when such a transaction occurred; (3) The price paid for the article; (4) A description of the article, including type, weight and quantity; (5) The license plate number and state of issue of the vehicle being used by the person offering the article to transport the article to the registrant's place of business; and (6) A written statement from the

person offering the article stating that he or she is in lawful possession of the article being offered.

(d) A secondary metals dealer may not accept from any individual, who is not company affiliated or an authorized contractor of the manufacturer, municipality, government, communications company or utility, the following items: (1) guardrails; (2) manhole covers; (3) cables used only in high voltage transmission lines; (4) historical markers; (5) cemetery plaques; (6) full sized new materials, such as those used in construction; (7) equipment tools used by contractors; (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. or "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 to be prohibited metals 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 1 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 1 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 subsection (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) 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) Any person who violates section 30 of chapter 266 and in which the property for such 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 section 3 of this chapter may be punished by a fine of not more than $150 for the first offense. Upon a second offense, such person may be punished by a fine of not more than $300. Upon a third or subsequent offense, such person may be punished by a fine of not more than $500.

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

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

SECTION 2. Section 54 of chapter 140 of the General Laws, as appearing in the 2014 Official Edition, appearing, is hereby amended by striking out, in line 5, the words “old metals”.

SECTION 3. Section 202 of said chapter 140, as so appearing, is hereby further amended by striking out, in line 2, the words “old metals and”.

SECTION 4. Notwithstanding any general or special law to the contrary, the commissioner of banks shall establish a 2-year pilot program to implement a 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 or foreclosing properties located in the commonwealth. Law enforcement entities including, but not limited to, the attorney general and municipalities shall have access to the MAP. The commissioner shall adopt rules and regulations governing the implementation and

administration of the MAP pilot program and shall have the authority to impose a civil assessment for failure to register or maintain vacant or abandoned properties of not more than $3,000 for each violation subject to the provisions of chapter 30A.

Nothing in this section shall be construed to interfere with any local ordinance regulating vacant and abandoned properties.

SECTION 5. Section 4 shall take effect 120 days after the after the effective date of this act.