

SENATE No. 202

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:
<i>James E. Timilty</i>	<i>Bristol and Norfolk</i>
<i>Cynthia S. Creem</i>	<i>First Middlesex and Norfolk</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>

SENATE No. 202

By Mr. Timilty, a petition (accompanied by bill, Senate, No. 202) of James E. Timilty and Paul McMurtry for legislation to regulate secondary metals dealing. Consumer Protection and Professional Licensure.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 155 OF 2013-2014.]

The Commonwealth of Massachusetts

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

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:

1 SECTION 1. Chapter 6 of the General Laws is hereby amended by adding the following
2 section:-

3 Section 216. Subject to distribution from the Secondary Metals Registry Trust Fund,
4 established by section 35ZZ of chapter 10, the executive office of public safety and security, in
5 cooperation with the criminal record review board, shall establish a secondary metals registry.
6 The registry shall consist of a central computerized registry of all information relative to metal
7 received, kept under or in violation of chapter 140B½ or which was the subject of a transaction
8 conducted in violation of said chapter 140B½. The registry shall be maintained and updated by
9 the criminal record review board and may use distributions from the fund for this purpose and no
10 other. With the agreement of the criminal record review board, information relative to metal

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

14 The secretary of public safety and security, in cooperation with the criminal record
15 review board, shall develop standardized forms for use in connection with information collection
16 requirements imposed under chapter 140B½. The department of public safety and security shall
17 make blank copies of the forms available, including electronically, to municipalities and to
18 secondary metal dealers for use by the dealers and may provide for the forms to be transmitted to
19 the registry electronically. The forms shall prominently include a statement that provision of
20 false information or any other violation of sections 3 or 4 of said chapter 140B½ is punishable by
21 a fine of not more than \$2,500 or by imprisonment in the house of correction for not more than
22 2½ years or by both for a first offense and by a fine of not less than \$2,500 and not more than
23 \$10,000 or by imprisonment in the house of correction for not more than 2½ years or in the state
24 prison for not less than 5 years or by both for a second or subsequent offense. Upon a third or
25 subsequent violation of said chapter 140B½, the license of a secondary metals dealer shall be
26 void and the licensing authority shall permanently revoke the license.

27 The secretary shall adopt regulations, consistent with the purposes of said chapter
28 140B½, to collect the information required to be obtained and kept by secondary metal dealers
29 and to maintain that information in the registry for use by law enforcement agencies. Records
30 maintained in the registry shall be open to any law enforcement agency in the commonwealth,
31 the United States or any other state. Information in the registry database shall not be a public
32 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 35YY the following section:-

Section 35ZZ. There shall be established and set up 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 under chapter 140B½ and any interest or investment earnings on the monies. The state treasurer, ex officio, shall be the custodian of the fund and shall receive, deposit and invest all monies transmitted to him under this section and shall credit interest and earnings to the fund. The state treasurer shall distribute 50 per cent of any fine collected and transferred to the fund under said chapter 140B½ to the municipality where the violation of said chapter 140B½ occurred and 50 per cent to the criminal record review board for the establishment and maintenance of the secondary metals registry established under section 216 of chapter 6, without further appropriation.

SECTION 3. Section 202 of chapter 140 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by striking out, in line 2, the words “, old metals”.

SECTION 4. 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 dealers.

SECTION 5. 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, 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: (i) aluminum beverage containers if the containers have a refund value under section 322 of chapter 94; or (ii) firearms, ammunition and large capacity feeding devices, as defined by section 121 of chapter 140.

“Secondary metals dealer”, any business, individual, corporation, association or organization engaged in secondary metals dealing for profit, whether or not licensed under 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 for which the economic value is based upon the metal or metal article’s potential for re-use or upon the worth of the raw material of which the metal or metal 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 the municipality. A licensing authority may make additional rules, regulations and restrictions, consistent with this chapter, which shall be expressed in all licenses issued under this section; provided, however, that the regulations

shall include a requirement that a license issued under 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. Fifty per cent of the fee shall be forwarded by the collecting municipality to the state treasurer who shall deposit the monies into the Secondary Metals Registry Trust Fund established by section 35ZZ of chapter 10 and \$75 shall be assessed for renewals for the licenses. 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 this purpose. A license issued under section 54 or 54A of chapter 140 shall not be considered a valid license for engaging in secondary metals dealing. Licenses issued under this section may be revoked and shall be subject to sections 202 to 205, inclusive, of said chapter 140.

(b) A licensing authority shall enter the premises used by any licensee to engage in secondary metals dealing where the records required to be maintained under this chapter are stored or maintained, and inspect, in a reasonable manner, the 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. If the licensee does not possess the means to provide copies, the inspecting officer shall arrange to obtain, in a reasonable time and manner, copies of 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, the licensing authority's authorized agent or a police officer may at any time enter upon premises being used for secondary metals dealing to ascertain whether the operator is validly licensed, whether the enterprise is being operated in accordance with this chapter and to examine all articles received or stored in or upon the premises and all of

its related books, records and inventory. A secondary metals dealer shall exhibit to the licensing authority, the licensing authority's authorized agent or a police officer, upon demand, all articles, books or inventory.

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

Section 3. (a) No person shall engage in secondary metals dealing without a license issued under section 2.

(b) Whoever violates this section shall be punished, for a first offense, by a fine of not more than \$2,500 or by imprisonment for not more than 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, signed by 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 the person does not appear on the identification card, a photograph 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 the article bears an identifying number or mark imprinted or embossed on the article during the manufacturing process and unique to the 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 article shall be sufficiently clear so as to distinguish each article from any other article in the photograph; and provided further, that 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 the 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 the article shall be photographed notwithstanding any unique number or mark on the article;

(4) forward, not later than 48 hours from the time of receipt, the information required under clauses (1) to (3), inclusive, to the criminal record review board on forms provided by the 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 record review board as required under clauses (1) to (3), inclusive, and preserve the metal or article during these 10 days in the exact form in which it was received, without processing, tearing down, shredding, crushing, cutting, recycling, compacting, melting or otherwise altering the metal or article.

(b) No person shall engage in secondary metals dealing and:

(1) knowingly, and with the intent to profit economically, 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;

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

(3) receive, with the intent to profit economically, 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 the 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 the manufacturer or distributor refills, reuses or recycles the articles of its own manufacture or that it distributes; or

(4) receive, with the intent to profit economically, any motor vehicle, trailer or part of a motor vehicle or trailer which the dealer knew or reasonably should have known that the identifying number or mark on the motor vehicle, trailer or part of the motor vehicle or trailer had been removed, defaced, altered, destroyed or obliterated.

(c) No person shall 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 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. Whoever commits a second or subsequent violation of this section shall be punished by a fine of not less than \$2,500 and not 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.

(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 the license and the license revocation may be imposed in addition to any criminal penalties imposed as a result of a violation of this chapter.

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

Section 5. Notwithstanding any general or special law to the contrary, 100 per cent of the fines imposed for violations 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 35ZZ 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, the local police department of the municipality in which the premises are located, the applicable district attorney or the attorney general may apply to the superior court in the county where the secondary metals dealing operation is established or maintained for an injunction to abate the 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 the exchange, including real estate and any other thing of value, and all monies, 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 the 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 the 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 of the conveyance to have been committed or omitted by any person other than the owner while the conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, the commonwealth or any other state; and

(3) no conveyance or real property shall be subject to forfeiture unless the owner of the conveyance or real property knew or should have known that the 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 the municipality's name, in the nature of a proceeding in rem to order forfeiture of property subject to forfeiture under subsection (a). The petition shall be filed in the court having jurisdiction over the 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 suits shall have the burden of proving to the court the existence of probable cause to institute the action and any claimant shall then have the burden of proving that the property is not forfeitable under subsection (a). The owner of the 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 any other persons as appear to have an interest in the property 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 the 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 the hearing, the court shall hear evidence and make conclusions of law and shall issue a final order from which the parties shall have a right of appeal. In all suits in which a final order results in an order of forfeiture, the final order shall provide for disposition of the property by the commonwealth or any of its subdivisions in any manner not prohibited by law, including

official use by authorized law enforcement or other public agency, sale at public auction or by competitive bidding. The proceeds of any sale shall be used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice and the balance of the proceeds shall be distributed as provided in subparagraph (2).

(2) The final order of the court shall provide that the monies and proceeds of any sale conducted under 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 the 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 the 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 under this subsection shall be deposited into the appropriate 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 the prosecuting district attorney considers appropriate.

All such monies and proceeds received by any police department under this subsection 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 other law enforcement purposes as the colonel of state police or applicable chief of police considers appropriate, but the 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 the property subject to forfeiture under this chapter shall keep and maintain full and complete records showing from whom it received the property, under what authority it held or received or disposed of the property, to whom it delivered the property, the date and manner of destruction or disposition of the property and the exact kind, quantity and form of the 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 the property under court order shall report under oath to the court the exact circumstances of the disposition.

(g)(1) During the pendency of forfeiture proceedings, the court may, at the request of the petitioner, ex parte, issue any preliminary order or process necessary to seize or secure the property for which forfeiture is sought and to provide for its custody, including, but not limited to: (i) an order that the petitioner shall remove the property, if possible, and shall safeguard it in a secure location in a reasonable fashion; (ii) that monies shall be deposited in an interest-bearing escrow account; and (iii) that a substitute custodian shall be appointed to manage the property or a business enterprise. Property taken or detained under this section shall not be replevable, but once seized shall be lawfully in the custody of the petitioner pending forfeiture, subject only to the orders and decrees of the court having jurisdiction over the property. Process for seizure of

the property shall issue only upon a showing of probable cause and the application for probable cause and the issuance, execution, and return 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 under this chapter, in a reasonable fashion, dispose of the property upon a judgment ordering forfeiture issued under this chapter and enter into contracts to preserve, manage and dispose of the property. The office of seized property management shall be funded by a portion of the proceeds of each sale of the 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 the 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 the principal domicile, if any, shall be forfeited as provided in this section. The 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, the use and occupation of the real property or the buildings on the real property shall not have any effect except against the parties to the forfeiture proceeding and persons having actual notice of the forfeiture proceeding until a memorandum containing the names of the parties to the proceeding, the name of the municipality where the affected real property lies and a description of the real property sufficiently accurate for identification is recorded in the registry of deeds for the county or

district where 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 the matter, the clerk of the court shall issue a certificate of the judgment, discontinuance, dismissal or other final disposition and that certificate shall be recorded in the registry in which the original memorandum recorded under this section was filed.

SECTION 6. Chapter 266 of the General Laws is hereby amended by striking out section 142A.

SECTION 7. Section 70C of chapter 277 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by inserting after the second sentence the following sentence:- This section shall apply to a violator of chapter 140B½ once only; provided, however, that the violator who agrees to treat the 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 the fine shall be forwarded to the state treasurer for deposit into the Secondary Metals Registry Trust Fund established under section 35ZZ of chapter 10.

SECTION 8. Notwithstanding any general or special law to the contrary, the commissioner of banks shall establish a 2-year pilot program to implement a state “Massachusetts abandoned property registry”, hereinafter referred to as MAP. The 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 municipal police departments shall have access to the MAP.

336 The commissioner of banks shall enforce the pilot program, including, but not limited to,
337 the authority to impose civil assessments. The commissioner shall establish rules and regulations
338 governing the implementation and administration of the MAP pilot program.

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

341 SECTION 9. The provisions set forth in this act shall not apply to vehicles received by
342 an entity subject to the regulation and reporting requirements of the federal National Motor
343 Vehicle Title Information System, as set forth in 49 U.S.C. § 30501.

344 SECTION 10. Section 2 of chapter 140B½ of the General Laws shall take effect 6
345 months after the effective date of this act.

346 SECTION 11. Unless otherwise specified, this act shall take effect 1 year after its
347 passage.