

SENATE No. 2235

The Commonwealth of Massachusetts

—————
In the One Hundred and Eighty-Ninth General Court
(2015-2016)
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SENATE, April 21, 2016

The committee on Ways and Means, to whom was referred the House Bill regulating secondary metals dealings (House, No. 3806),-- reports, recommending that the same ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2235 (also accompanied by Senate, No. 202) [Estimated cost: \$250,000].

For the committee,
Karen E. Spilka

The Commonwealth of Massachusetts

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

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

3 Section 219. Subject to distribution from the Secondary Metals Registry Trust Fund,
4 established in section 35DDD of chapter 10, the executive office of public safety and security, in
5 cooperation with the department of criminal justice information services, shall utilize an alert
6 system, modeled after the Institute of Scrap Recycling Industries Inc., or ISRI, alert system for
7 state and local law enforcement agencies to track and monitor all secondary raw metals dealing
8 transactions and secondary consumer metals dealing transactions. This alert system shall include
9 all raw metals as defined in chapter 140B¹/₂ and consumer metal as defined in chapter 140B³/₄.

10 The secretary shall adopt regulations, consistent with chapters 140B¹/₂ and 140B³/₄, to
11 maintain the alert system and ensure that state and local law enforcement agencies use the alert
12 system, the ISRI alert system or any successor system. All records transmitted to the executive
13 office of public safety and security under subsection (g) of section 4 of chapter 140B¹/₂ and
14 subsection (g) of section 4 of chapter 140B³/₄, including information contained in any notice
15 from the alert system, shall be open to any law enforcement agency and shall not be a public
16 record under clause Twenty-sixth of section 7 of chapter 4 or section 10 of chapter 66.

17 The secretary shall take all reasonable steps to secure data maintained under this section
18 and shall ensure that no third-party, contractor or subcontractor disseminates the data to a person
19 or organization outside of or other than the holder of the data and those authorized under this
20 section.

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

23 Section 35DDD. There shall be a fund to be known as the Secondary Metals Registry
24 Trust Fund. The fund shall consist of money paid to the commonwealth under chapters 140B $\frac{1}{2}$
25 and 140B $\frac{3}{4}$ and any interest or investment earnings on that money. All available money in the
26 fund that is unexpended at the end of each fiscal year shall not revert to the General Fund and
27 shall be available for expenditure in the subsequent fiscal year. The state treasurer shall be the
28 custodian of the fund and shall receive, deposit and invest all money transmitted under this
29 section and shall credit interest and earnings to the fund. The state treasurer shall annually
30 distribute 50 per cent of any fine collected and transferred to the fund under said chapters 140B $\frac{1}{2}$
31 and 140B $\frac{3}{4}$ to the municipality where the violation of occurred and 50 per cent to the executive
32 office of public safety and security for the alert system established under section 219 of chapter
33 6, without further appropriation.

34 SECTION 3. Section 202 of chapter 140 of the General Laws, as appearing in the 2014
35 Official Edition, is hereby amended by striking out, in line 2, the words “, old metals”.

36 SECTION 4. Said section 202 of said chapter 140, as so appearing, is hereby further
37 amended by inserting after the word “pawnbrokers”, in line 2, the following words:- , secondary
38 raw metals dealers, secondary consumer metals dealers.

39 SECTION 5. The General Laws are hereby amended by inserting after chapter 140B the
40 following 2 chapters:-

41 CHAPTER 140B¹/₂

42 SECONDARY RAW METALS DEALING

43 Section 1. For the purposes of this chapter, the following words shall have the following
44 meanings unless the context clearly requires otherwise:

45 “Business-to-business transaction”, an exchange of raw metals for compensation
46 between 2 or more registered secondary raw metals dealers.

47 “Raw metal”, any substance or article consisting of metal or a metal alloy, but excluding:
48 (i) aluminum beverage containers if the containers have a refund value under section 322 of
49 chapter 94; (ii) firearms, ammunition and large capacity feeding devices, as defined in section
50 121 of chapter 140; and (iii) consumer metals as defined by section 1 of chapter 140B³/₄.

51 “Secretary”, the secretary of public safety and security or a designee.

52 “Secondary raw metals dealer” or “dealer”, any business, person, corporation, association
53 or organization engaged in secondary raw metals dealing for profit, whether or not registered
54 under section 2.

55 “Secondary raw metals dealing”, a regular occupation or constant employment of
56 gathering or obtaining raw metal and for which the economic value is based upon the bulk metal
57 content and not a consumer use; provided, however, that “secondary raw metals dealing” shall
58 not include an isolated or occasional transaction.

59 Section 2. (a) No dealer shall carry on the business of secondary raw metals dealing
60 without filing a registration form with the secretary and the chief of police of the municipality in
61 which the person seeks to do business.

62 All registrations under this section shall be made on a form prescribed by the secretary
63 and shall set forth the name of the registrant, the nature of the business and the building or place
64 in the city or town in which business is conducted.

65 The fee for registration shall be \$250 for the first year of operation and \$75 for every year
66 thereafter. Societies, associations or corporations organized solely for religious or charitable
67 purposes shall not be required to pay a fee for registration. A dealer required to be both
68 registered under this chapter and licensed under chapter 140B ³/₄ shall pay a single fee of \$350
69 for the initial license and registration and \$100 for each annual renewal thereafter. Seventy-five
70 per cent of the fees shall be forwarded by the collecting municipality to the state treasurer, who
71 shall deposit the money into the Secondary Metals Registry Trust Fund established in section
72 35DDD of chapter 10.

73 Any registration or renewal shall designate a resident agent for service of process. The
74 designation of a resident agent may be withdrawn but shall be withdrawn in writing and upon the
75 designation of a new resident agent for service of process.

76 A registration shall not be transferred without the prior consent of the chief of police. A
77 registration shall be posted on the registrant's premises in a conspicuous place and manner.

78 A registration issued under this section shall expire on May 1 following the date of issue.

79 (b) The chief of police, or a designee, in the municipality in which a dealer is registered
80 shall enter the premises used by a registrant to engage in secondary raw metals dealing to
81 inspect, in a reasonable manner, the books, records and inventory at least once per calendar year
82 during regular business hours. If the records or inventory contain evidence of a violation of this
83 chapter, the inspecting officer shall take possession of copies of the records. If the registrant does
84 not possess the means to provide copies, the inspecting officer shall arrange to obtain, in a
85 reasonable time and manner, copies of those records that contain evidence of the violation and
86 the costs for obtaining the copies shall be assessed against the owner of the records.

87 (c) A law enforcement officer having jurisdiction may at any time enter a premises being
88 used for secondary raw metals dealing to: (i) determine if the dealer has a valid registration and
89 is operating in accordance with this chapter; (ii) examine all articles received or stored in or upon
90 the premises; and (iii) examine all of the related books, records and inventory. A secondary raw
91 metals dealer shall, upon demand, provide the law enforcement officer with all articles, books or
92 inventory.

93 Section 3. (a) If a dealer was registered under section 2 and violates this section by
94 continuing to operate after the expiration of that registration, the municipality shall provide
95 written notice of the violation to that dealer within 30 days after the violation. If the dealer re-
96 registers or ceases operation not more than 30 days after receiving the notice, that dealer shall be
97 exempt from the penalties under subsection (b).

98 (b) Whoever violates this section shall be punished for a first offense by a fine of not
99 more than \$1,500, for a second offense by a fine of not more than \$3,500 and for a third or

100 subsequent offense by a fine of not more than \$5,000. When a fine is issued pursuant to this
101 section, the issuing law enforcement officer shall report the violation to the secretary.

102 (c) The secretary may suspend or revoke any registration issued under this chapter if the
103 registrant has 3 violations under this section.

104 Section 4. (a) A secondary raw metals dealer registered under section 2 shall comply with
105 this section when purchasing raw metal.

106 (b) A dealer shall require that a person selling the metals shall provide government-issued
107 photo identification and the dealer shall maintain a copy of that identification in the daily record
108 of raw metal transactions. For a business to business transaction, a dealer shall obtain a federal
109 employer identification number and the dealer shall maintain a copy of that number in the record
110 of transaction.

111 (c) A dealer shall keep a daily record of raw metal transactions, which shall include: (i)
112 the name, date of birth and residence of a person who sold the metals or, for a business to
113 business transaction, the name and principal address of the selling dealer; (ii) the date and time
114 of the transaction; (iii) the price the dealer paid for the raw metal; (iv) a description of the raw
115 metal, including the type, weight and quantity; (v) the license plate number and state of
116 registration of the vehicle being used to transport the raw metal to the dealer's place of business;
117 and (vi) a form signed by the person or agent of the dealer offering to sell the raw metal stating
118 that the person or agent is in lawful possession of the raw metal being offered. The form shall be
119 prescribed by the secretary and shall be provided to the seller by the dealer.

120 (d) The dealer shall not knowingly receive: a street sign; a manhole cover; a beer keg; a
121 propane container for fueling forklifts; a street light; a guard rail; a water meter cover; a railroad

122 track; a railroad spike; a funeral or memorial marker; cables used in high voltage transmission
123 lines; a historical marker; full-sized new materials such as those used in construction; equipment
124 or tools used by contractors; bleachers from an athletic field; materials that have been reported
125 stolen through the alert system established under section 219 of chapter 6; a metal item bearing
126 the mark of a government entity, utility company or brewer; a motor vehicle or trailer or a part of
127 a motor vehicle or trailer which the dealer knew or reasonably should have known that the
128 identifying number or mark on the motor vehicle or trailer or a part of the motor vehicle or trailer
129 had been removed, defaced, altered, destroyed or obliterated, except where the destruction was
130 caused by a motor vehicle accident and the vehicle is accompanied by an accident report;
131 provided, however, that this subsection shall not apply to a person who, in the scope of that
132 person's employment, is permitted to refill, reuse or recycle the articles in this subsection.

133 All registered secondary raw metals dealers shall prominently post in their facilities, on a
134 sign as provided by the secretary, the list of the prohibited metals in this subsection.

135 (e) The dealer shall retain the daily record of raw metal transactions required in
136 subsection (c) and any other additional identifying information collected by the dealer for 1 year
137 following the date of the transaction. If the daily record of raw metal transactions is stored
138 electronically, it shall be stored and backed up by electronic means and may be deleted at the
139 completion of the 1-year period. During the 1-year period, the daily record of raw metal
140 transactions shall be open for inspection, upon request, by any law enforcement official with
141 jurisdiction.

142 (f) The dealer shall forward to the secretary, in an electronic format, the daily record of
143 raw metal transactions required in subsection (c) for: (i) business-to-business transactions by not

144 later than the last business day of the month; and (ii) other transactions by not later than 48 hours
145 after the time of receipt of the raw metal.

146 (g) Upon notification, either orally, electronically or in writing, from a law enforcement
147 officer with jurisdiction that a specific raw metal item has been reported stolen, the dealer shall
148 retain that raw metal item for up to 10 days and preserve the raw metal in the exact form in
149 which it was received, without processing, tearing down, shredding, crushing, cutting, recycling,
150 compacting, melting or otherwise altering the raw metal.

151 (h) The dealer shall not knowingly, and with the intent to profit economically, accept a
152 false name, address, date of birth or proof of identification or a false source from which raw
153 metal was obtained from a person seeking to exchange raw metal for money or any other item of
154 value.

155 (i) The dealer shall allow law enforcement officers with jurisdiction to enter onto the
156 premises used for secondary raw metals dealing. The dealer shall not: (i) fail to exhibit, upon
157 demand, all articles, books or inventory; or (ii) willfully hinder, obstruct or prevent law
158 enforcement officers with jurisdiction from entering the premises to conduct an examination of
159 records or inventory or the validity of a registration purportedly issued under section 2.

160 (j) In addition to any penalty imposed under section 60 of chapter 266, whoever
161 knowingly violates this section shall be punished for a first offense by a fine of not more than
162 \$1,500, for a second offense by a fine of not more than \$3,000 and for a third or subsequent
163 offense by a fine of not more than \$5,000. Whenever a fine is issued pursuant to this section, the
164 issuing officer shall report the violation to the secretary.

165 (k) It shall not be a violation of this section for a dealer to receive raw metals prohibited
166 under subsection (d) for the purpose of reporting the transaction and turning over all relative
167 records and prohibited metals to the chief of police in the municipality in which the dealer is
168 registered; provided, however, that the dealer shall not profit from the transaction.

169 Section 5. (a) No person or dealer shall knowingly provide a false name, address, date of
170 birth, proof of identification, source from which raw metal was obtained, a statement regarding
171 the presence of prohibited materials or a misleading account of articles presented to a secondary
172 raw metals dealer with the intent to exchange those raw metals for money or any item of value.

173 (b) Whoever knowingly violates this section shall be punished for a first offense by a fine
174 of not more than \$750, for a second offense by a fine of not less than \$750 and not more than
175 \$2,500 and for a third or subsequent offense by a fine of not less than \$750 and not more than
176 \$5,000.

177 Section 6. Whenever the secretary has reason to believe that a registrant has committed a
178 criminal violation of this chapter, the secretary shall promptly report all pertinent facts to the
179 district attorney in the county where the violation is believed to have occurred.

180 Section 7. This chapter shall be enforced by the department of state police, municipal
181 police departments and the district attorney of jurisdiction.

182 Section 8. Notwithstanding any general or special law to the contrary, 100 per cent of the
183 fines imposed for violations of this chapter shall be transferred to the state treasurer for deposit
184 into the Secondary Metals Registry Trust Fund established in section 35DDD of chapter 10.

204 “Consumer metal”, consumer electronics, precious metals, or any metal articles for which
205 the economic value is based upon the potential for reuse rather than the worth of the raw
206 material.

207 “Licensing authority”, the chief of police, the board or officer having control of the
208 police in a city or town or a designee.

209 “Precious metal”, gold, silver, platinum group metals, or precious stones, or any articles
210 containing those items, other than coins purchased for their numismatic value rather than their
211 metal content.

212 “Secondary consumer metals dealer” or “dealer”, any business, person, corporation,
213 association or organization engaged in secondary consumer metals dealing for profit, whether or
214 not licensed under section 2.

215 “Secondary consumer metals dealing”, a regular occupation or constant employment of
216 gathering or obtaining consumer metals; provided, however, that “secondary consumer metals
217 dealing” shall not include an isolated or occasional transaction.

218 “Secretary”, the secretary of public safety and security or a designee.

219 Section 2. (a) The licensing authority in a city or town may license suitable persons to
220 engage in secondary consumer metals dealing within the borders of the municipality.

221 A licensing authority may make additional rules, regulations and restrictions, consistent
222 with this chapter, which shall be expressed in all licenses issued under this section; provided,
223 however, that the rules, regulations or restrictions shall include a requirement that: (i) a license
224 issued under this section shall expire 1 year from the date of issuance; (ii) a license may be

225 renewed; and (iii) a licensee pay a fee of \$250 for the initial license and \$75 for the annual
226 renewal of the license. A dealer required to be registered under chapter 140B ½ and licensed
227 under this chapter shall pay a single fee of \$350 for the initial license and registration and \$100
228 for each annual renewal thereafter. Seventy-five per cent of the fees shall be forwarded by the
229 licensing authority to the state treasurer who shall deposit the money into the Secondary Metals
230 Registry Trust Fund established in section 35DDD of chapter 10.

231 An application for a license or for renewal of a license shall designate a resident agent for
232 service of process. The designation may be withdrawn but shall be withdrawn in writing and
233 upon the designation of a new resident agent for service of process.

234 A license shall not be transferred without the prior consent of the chief of police. A
235 license shall be posted on the licensee's premises in a conspicuous place and manner.

236 A license issued under section 54 or 54A of chapter 140 shall not be considered a valid
237 license for engaging in secondary consumer metals dealing.

238 (b) The licensing authority shall enter the premises used by a licensee to engage in
239 secondary consumer metals dealing to inspect, in a reasonable manner, the books, records and
240 inventory at least once per calendar year during regular business hours. If the records or
241 inventory contain evidence of a violation of this chapter, the licensing authority shall take
242 possession of copies of the records. If the licensee does not possess the means to provide copies,
243 the licensing authority shall arrange to obtain, in a reasonable time and manner, copies of those
244 records that contain evidence of the violation and the costs for obtaining the copies shall be
245 assessed against the owner of the records.

246 (c) The licensing authority may at any time enter a premises being used for secondary
247 consumer metals dealing to: (i) determine if the dealer has a valid license and is operating in
248 accordance with this chapter; (ii) examine all articles received or stored in or upon the premises;
249 and (iii) examine all of the related books, records and inventory. A secondary consumer metals
250 dealer shall, upon demand, provide the licensing authority with all articles, books or inventory.

251 Section 3. (a) If a dealer was licensed under section 2 and violates this section by
252 continuing to operate after the expiration of that license, the municipality shall provide written
253 notice of the violation to the dealer within 30 days after the violation. If the dealer renews its
254 license or ceases operation not more than 30 days after receiving the notice, that dealer shall be
255 exempt from the penalties under subsection (b).

256 (b) Whoever violates this section shall be punished for a first offense by a fine of not
257 more than \$1,500, for a second offense by a fine of not more than \$3,500 and for a third or
258 subsequent offense by a fine of not more than \$5,000.

259 (c) The licensing authority may suspend or revoke any license issued under this chapter if
260 the licensee has 3 violations under this section.

261 Section 4. (a) A secondary consumer metals dealer licensed under section 2 shall comply
262 with this section when purchasing consumer metal.

263 (b) A dealer shall require that a person selling the consumer metal shall provide
264 government-issued photo identification and the dealer shall maintain a copy of that identification
265 in the record of transaction. If applicable, a dealer shall obtain a federal employer identification
266 number and the dealer shall maintain a copy of that number in the record of transaction.

267 (c) A dealer shall keep a daily record of consumer metal transactions recording consumer
268 metal purchases which shall include: (i) the name, date of birth and residence of a person who
269 sold the consumer metal or, if the consumer metals are sold by a dealer, the name and principal
270 address of that dealer; (ii) the date and time of the transaction; (iii) the price the dealer paid for
271 the consumer metal; (iv) a description of the consumer metal, including the type, weight and
272 quantity; (v) the license plate number and state of registration of the vehicle used to transport the
273 consumer metal to the dealer's place of business; and (vi) a form signed by the person or agent of
274 the dealer offering to sell the consumer metal stating that the person or agent is in lawful
275 possession of consumer metal being offered. The form shall be prescribed by the secretary and
276 shall be provided to the seller by the dealer.

277 (d) The dealer shall not knowingly receive: a street sign; a manhole cover; a beer keg; a
278 propane container for fueling forklifts; a street light; a guard rail; a water meter cover; a railroad
279 track; a railroad spike; a funeral or memorial marker; cables used in high voltage transmission
280 lines; a historical marker; full-sized new materials such as those used in construction; equipment
281 or tools used by contractors; bleachers from an athletic field; materials that have been reported
282 stolen through the alert system established under section 219 of chapter 6; a metal item bearing
283 the mark of a government entity, utility company or brewer; a motor vehicle or trailer or a part
284 of a motor vehicle or trailer which the dealer knew or reasonably should have known that the
285 identifying number or mark on the motor vehicle or trailer or a part of the motor vehicle or trailer
286 had been removed, defaced, altered, destroyed or obliterated, except where the destruction was
287 caused by a motor vehicle accident and the vehicle is accompanied by an accident report;
288 provided, however, that this subsection shall not apply to a person who, in the scope of that
289 person's employment, is permitted to refill, reuse or recycle these articles.

290 All licensed secondary consumer metals dealing facilities shall prominently post, on a
291 sign as provided by the secretary, the list of the prohibited metals in this subsection.

292 (e) The dealer shall retain the record file from the daily record of consumer metal
293 transactions required in subsection (c) and any other additional identifying information collected
294 by the dealer for a period of 1 year following the date of the transaction. If the daily record of
295 consumer metal transactions is stored electronically, it shall be stored and backed-up by
296 electronic means and may be deleted at the completion of the 1-year period.

297 (f) The dealer shall forward to the secretary, in an electronic format, the daily record of
298 consumer metal transactions required in subsection (c) for all transactions not later than 48 hours
299 after the time of receipt of the consumer metal.

300 (g) The dealer shall retain any consumer metal received and shall preserve the item in the
301 exact form in which it was received, without processing, tearing down, shredding, crushing,
302 cutting, recycling, compacting, melting or otherwise altering the item for 10 calendar days.

303 (h) The dealer shall not knowingly, and with the intent to profit economically, accept a
304 false name, address, date of birth or proof of identification or a false source from which
305 consumer metals were obtained from a person or dealer seeking to exchange consumer metal for
306 money or any other item of value.

307 (i) The dealer shall allow the licensing authority to enter onto the premises used for
308 secondary consumer metals dealing. The dealer shall not: (i) fail to exhibit, upon demand, all
309 articles, books or inventory; or (ii) willfully hinder, obstruct or prevent the licensing authority
310 from entering the premises to conduct an examination of records or inventory or the validity of
311 any license purportedly issued under section 2.

312 (j) In addition to any penalty imposed under section 60 of chapter 266, whoever
313 knowingly violates this section shall be punished for a first offense by a fine of not more than
314 \$1,500, for a second offense by a fine of not more than \$3,000 and for a third or subsequent
315 offense by a fine of not more than \$5,000.

316 (k) The licensing authority may suspend or revoke any license issued under this chapter
317 for 3 violations of this section.

318 (l) It shall not be a violation of this section for a dealer to receive metals prohibited under
319 subsection (d) for the purpose of reporting the transaction and turning over all relative records
320 and prohibited metals to the licensing authority; provided, however, that the dealer shall not
321 profit from the transaction.

322 Section 5. (a) No person or dealer shall knowingly provide a false name, address, date of
323 birth, proof of identification, source from which consumer metals were obtained, a statement
324 regarding the presence of prohibited materials or a misleading account of articles presented to a
325 secondary consumer metals dealer with the intent to exchange those consumer metals for money
326 or any other item of value.

327 (b) Whoever knowingly violates this section shall be punished for a first offense by a fine
328 of not more than \$750, for a second offense by a fine of not less than \$750 and not more than
329 \$2,500 and for a third or subsequent offense by a fine of not less than \$750 and not more than
330 \$5,000.

331 Section 6. Notwithstanding any general or special law to the contrary, 100 per cent of the
332 fines imposed for violations of this chapter shall be transferred to the state treasurer for deposit
333 into the Secondary Metals Registry Trust Fund established in section 35DDD of chapter 10.

334 Section 7. Whenever the licensing authority has reason to believe that a licensee has
335 committed a criminal violation of this chapter, it shall promptly report all pertinent facts to the
336 district attorney in the county where the violation is believed to have occurred.

337 Section 8. This chapter shall be enforced by the licensing authority, the state police and
338 the district attorney of jurisdiction.

339 Section 9. This chapter shall not apply to: (i) vehicles or parts including, but not limited
340 to, catalytic converters, received by an entity in full compliance with the regulations and
341 reporting requirements of the federal National Motor Vehicle Title Information System as set
342 forth in 49 U.S.C. 30501 et. seq.; (ii) a financial institution which is covered by federal or state
343 deposit insurance; (iii) jewelry and silverware manufacturers purchasing precious metals directly
344 from trade suppliers; or (iv) consumer electronics retailers primarily engaged in the business of
345 selling new consumer electronics.

346 SECTION 6. Sections 142 and 142A of chapter 266 of the General Laws are hereby
347 repealed.

348 SECTION 7. This act shall take effect 1 year after its passage.