

SENATE No. 2415

The Commonwealth of Massachusetts

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In the One Hundred and Ninetieth General Court
(2017-2018)
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SENATE, Thursday, April 12, 2018

The committee on Consumer Protection and Professional Licensure, to whom was referred the petition (accompanied by bill, Senate, No. 167) of James E. Timilty for legislation to regulate secondary metals dealing,- reports the accompanying bill (Senate, No. 2415).

For the committee,
Barbara A. L'Italien

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

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 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. This alert system shall include all raw metals as defined in chapter 140B½.

9 The secretary shall adopt regulations, consistent with chapter 140B½, to maintain the
10 alert system and ensure that state and local law enforcement agencies use the alert system, the
11 ISRI alert system or any successor system. All records transmitted to the executive office of
12 public safety and security under subsection (g) of section 4 of chapter 140B ½ including
13 information contained in any notice from the alert system, shall be open to any law enforcement

14 agency and shall not be a public record under clause Twenty-sixth of section 7 of chapter 4 or
15 section 10 of chapter 66.

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

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

22 Section 35DDD. There shall be a fund to be known as the Secondary Metals Registry
23 Trust Fund. The fund shall consist of money paid to the commonwealth under chapter 140B½
24 and any interest or investment earnings on that money. All available money in the fund that is
25 unexpended at the end of each fiscal year shall not revert to the General Fund and shall be
26 available for expenditure in the subsequent fiscal year. The state treasurer shall be the custodian
27 of the fund and shall receive, deposit and invest all money transmitted under this section and
28 shall credit interest and earnings to the fund. The state treasurer shall annually distribute 50 per
29 cent of any fine collected and transferred to the fund under said chapter 140B½ to the
30 municipality where the violation of occurred and 50 per cent to the executive office of public
31 safety and security for the alert system established under section 219 of chapter 6, without
32 further appropriation.

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

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

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

40 CHAPTER 140B½

41 SECONDARY RAW METALS DEALING

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

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

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

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

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

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

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

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

64 The fee for registration shall be \$250 for the first year of operation and \$75 for every year
65 thereafter. Societies, associations or corporations organized solely for religious or charitable
66 purposes shall not be required to pay a fee for registration. Seventy-five per cent of the fees shall
67 be forwarded by the collecting municipality to the state treasurer, who shall deposit the money
68 into the Secondary Metals Registry Trust Fund established in section 35DDD of chapter 10.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

156 (j) In addition to any penalty imposed under section 60 of chapter 266, whoever
157 knowingly violates this section shall be punished for a first offense by a fine of not more than
158 \$1,500, for a second offense by a fine of not more than \$3,000 and for a third or subsequent
159 offense by a fine of not more than \$5,000. Whenever a fine is issued pursuant to this section, the
160 issuing officer shall report the violation to the secretary.

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

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

169 (b) Whoever knowingly violates this section shall be punished for a first offense by a fine
170 of not more than \$750, for a second offense by a fine of not less than \$750 and not more than
171 \$2,500 and for a third or subsequent offense by a fine of not less than \$750 and not more than
172 \$5,000.

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

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

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

182 Section 9. In addition to the penalties in this chapter, a secondary raw metals dealer may
183 be liable if the secondary raw metals dealing premises are deemed to be a public or private
184 nuisance.

185 Section 10. This chapter shall not apply to: (i) vehicles or parts including, but not limited
186 to, catalytic converters, received by an entity in full compliance with the regulations and
187 reporting requirements of the federal National Motor Vehicle Title Information System as set
188 forth in 49 U.S.C. 30501 et. seq.; (ii) a financial institution which is covered by federal or state
189 deposit insurance; (iii) jewelry and silverware manufacturers purchasing precious metals directly
190 from trade suppliers; or (iv) consumer electronics retailers primarily engaged in the business of
191 selling new consumer electronics.

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

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