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HOUSE BILL 118

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Debbie A. Rodella

AN ACT

RELATING TO THE SALE OF RECYCLED METALS; REQUIRING SECONDHAND METAL DEALERS TO BE REGISTERED WITH THE REGULATION AND LICENSING DEPARTMENT; PRESCRIBING DUTIES FOR SECONDHAND METAL DEALERS; PROVIDING FOR THE SUSPENSION OR REVOCATION OF REGISTRATION; REDUCING THE WAITING PERIOD FOR RESALE OF REGULATED MATERIAL; ALLOWING HOLDS IN CERTAIN CIRCUMSTANCES; REDUCING THE TIME FOR PRESERVATION OF RECORDS; EXPANDING THE SCOPE OF REGULATED MATERIAL; REQUIRING UPLOADS TO AN ELECTRONIC DATABASE; REQUIRING ADDITIONAL DOCUMENTATION FOR CERTAIN TRANSACTIONS; AMENDING AND ENACTING SECTIONS OF THE SALE OF RECYCLED METALS ACT; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 57-30-1 NMSA 1978 (being Laws 2008, Chapter 29, Section 1) is amended to read:

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1 "57-30-1. SHORT TITLE.--~~[This act]~~ Chapter 57, Article 30
2 NMSA 1978 may be cited as the "Sale of Recycled Metals Act"."

3 SECTION 2. Section 57-30-2 NMSA 1978 (being Laws 2008,
4 Chapter 29, Section 2) is amended to read:

5 "57-30-2. DEFINITIONS.--As used in the Sale of Recycled
6 Metals Act:

7 A. "aluminum material" means a product made from
8 aluminum, an aluminum alloy or an aluminum byproduct.
9 "Aluminum material" includes an aluminum beer keg but does not
10 include other types of aluminum cans used to contain a food or
11 beverage;

12 B. "bronze material" means:
13 (1) a cemetery vase, receptacle or memorial
14 made from bronze;
15 (2) bronze statuary; ~~and~~ or
16 (3) material readily identifiable as bronze;

17 C. "business day" means any calendar day except
18 Sunday ~~or~~ and the following ~~[business]~~ holidays: New Year's
19 day, Washington's birthday, Memorial day, Independence day,
20 Labor day, Columbus day, Veterans' day, Thanksgiving day,
21 Christmas day, Martin Luther King, Jr.'s birthday and any other
22 legal public holiday of the state of New Mexico or the United
23 States;

24 D. "copper or brass material" means:
25 (1) insulated or noninsulated copper wire,

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1 hardware or cable of the type used by a public utility,
2 commercial mobile radio service carrier or common carrier that
3 consists of at least twenty-five percent copper; ~~and~~ or

4 (2) a copper or brass item of a type commonly
5 used in construction or by a public utility, commercial mobile
6 radio service carrier or common carrier;

7 E. "department" means the regulation and licensing
8 department;

9 F. "peace officer" means any full-time salaried and
10 commissioned or certified law enforcement officer of a police
11 or sheriff's department that is part of or administered by the
12 state or ~~any~~ a political subdivision of the state;

13 G. "personal identification document" means:

14 (1) a driver's license;

15 (2) a military identification card; or

16 (3) a passport issued by the United States or
17 by another country and recognized by the United States; ~~and~~

18 ~~(4) a personal identification certificate~~
19 ~~issued by the department, or a corresponding card or~~
20 ~~certificate issued by another state;]~~

21 H. "regulated material" means:

22 (1) aluminum material;

23 (2) bronze material;

24 (3) copper or brass material; ~~and~~

25 (4) steel material;

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- 1 (5) a utility access cover;
2 (6) a water meter cover;
3 (7) a road or bridge guard rail;
4 (8) a highway or street sign;
5 (9) a traffic directional or control sign or
6 signal; or
7 (10) a catalytic converter that is not part of
8 an entire motor vehicle;

9 I. "secondhand metal dealer" means
10 ~~[(1) an auto wrecker]~~ a scrap metal processor
11 ~~[or other person that purchases, collects or solicits regulated~~
12 ~~material; and~~

13 ~~(2) a person who operates or maintains a scrap~~
14 ~~metal yard, or other place]~~ in the business of operating or
15 maintaining a scrap metal yard in a physical location in which
16 scrap metal or cast-off regulated material is ~~[collected or~~
17 ~~kept]~~ purchased for shipment, sale or transfer;

18 J. "steel material" means a product made from an
19 alloy of iron, chromium, nickel or manganese, including
20 stainless steel beer kegs; and

21 K. "superintendent" means the superintendent of
22 regulation and licensing."

23 SECTION 3. Section 57-30-4 NMSA 1978 (being Laws 2008,
24 Chapter 29, Section 4) is amended to read:

25 "57-30-4. INFORMATION PROVIDED BY SELLER.--

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1 A. A person attempting to sell regulated material
2 to a secondhand metal dealer shall:

3 (1) display to the secondhand metal dealer the
4 person's personal identification document;

5 (2) sign a written statement provided by the
6 secondhand metal dealer that the person is the legal owner of
7 or is lawfully entitled to sell the regulated material offered
8 for sale; ~~and~~

9 (3) provide to the secondhand metal dealer the
10 year, make, model and license plate number of the motor vehicle
11 used to transport the regulated material; and

12 (4) allow the secondhand metal dealer to take
13 a photograph of the seller and the regulated material.

14 B. The secondhand metal dealer or the dealer's
15 agent shall visually verify the accuracy of the personal
16 identification document and vehicle identification presented by
17 the seller at the time of the dealer's purchase of regulated
18 material."

19 SECTION 4. Section 57-30-5 NMSA 1978 (being Laws 2008,
20 Chapter 29, Section 5) is amended to read:

21 "57-30-5. RECORD OF PURCHASE.--

22 A. A secondhand metal dealer in this state shall
23 keep an accurate and legible written record, in a form approved
24 by the department, of each purchase made in the course of the
25 dealer's business ~~[from a person]~~ of:

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- 1 (1) copper or brass material;
2 (2) bronze material;
3 (3) aluminum material in excess of ten pounds;

4 or

- 5 (4) steel material in excess of one ton,
6 except that a written record shall be kept of each purchase of
7 a stainless steel beer keg.

8 B. The record shall be in English and shall
9 include:

- 10 (1) the place and date of the purchase;
11 (2) the name and address of each person from
12 whom the regulated material is purchased or obtained;
13 (3) the identifying number of the personal
14 identification document of each person from whom the regulated
15 material is purchased or obtained;
16 (4) the year, make, model and license plate
17 number of the motor vehicle used to transport the regulated
18 material;
19 (5) a description made in accordance with the
20 custom of the trade of the type and quantity of regulated
21 material purchased; ~~and~~
22 (6) the statement required by Paragraph (2) of
23 Subsection A of Section ~~[4 of the Sale of Recycled Metals Act]~~
24 57-30-4 NMSA 1978; and
25 (7) the written documentation required for

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1 certain transactions pursuant to Section 16 of this 2012 act,
2 if applicable.

3 C. A secondhand metal dealer may take a digital
4 photograph, with a date and time stamp, of:

5 (1) the seller of the regulated material; and

6 (2) the regulated material in the form in
7 which it was purchased or obtained by the secondhand metal
8 dealer."

9 SECTION 5. Section 57-30-6 NMSA 1978 (being Laws 2008,
10 Chapter 29, Section 6) is amended to read:

11 "57-30-6. PRESERVATION OF RECORDS.--A secondhand metal
12 dealer shall preserve each record required by Section [~~5 of the~~
13 ~~Sale of Recycled Metals Act~~] 57-30-5 NMSA 1978 until the
14 [~~third~~] first anniversary of the date the record was made."

15 SECTION 6. Section 57-30-7 NMSA 1978 (being Laws 2008,
16 Chapter 29, Section 7) is amended to read:

17 "57-30-7. INSPECTION OF RECORDS BY PEACE OFFICERS [~~AND~~
18 ~~DEPARTMENT~~]--HOLDS ON PROPERTY.--

19 A. Upon request, a secondhand metal dealer shall
20 produce to a peace officer [~~or an authorized employee of the~~
21 ~~department~~] during the dealer's usual business hours the
22 requested record of purchase as required by Section [~~5 of the~~
23 ~~Sale of Recycled Metals Act~~] 57-30-5 NMSA 1978.

24 B. If a peace officer has probable cause to believe
25 that property in the possession of a secondhand metal dealer is

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1 stolen or constitutes evidence in a criminal investigation, the
2 peace officer may place a hold on the property prohibiting the
3 sale or removal of the property from the premises. The hold
4 may remain in effect for up to five days or until the hold is
5 lifted or the property is seized, whichever occurs earlier.

6 [B.] C. The inspecting peace officer [~~or authorized~~
7 ~~employee of the department~~] shall inform the secondhand metal
8 dealer of the person's status as a peace officer [~~or authorized~~
9 ~~employee of the department~~]."

10 SECTION 7. Section 57-30-8 NMSA 1978 (being Laws 2008,
11 Chapter 29, Section 8) is amended to read:

12 "57-30-8. FURNISHING OF REPORT TO DEPARTMENT.--

13 A. As of January 1, 2014, a secondhand metal dealer
14 shall, not later than the second business day after the date of
15 the purchase or other acquisition of regulated material for
16 which a record is required pursuant to Section [~~5 of the Sale~~
17 ~~of Recycled Metals Act a secondhand metal dealer shall mail to~~
18 ~~or file with~~] 57-30-5 NMSA 1978, upload to the database
19 maintained by the department a report containing the
20 information required to be recorded pursuant to that section.

21 B. A local governmental entity shall not require
22 secondhand metal dealers to provide any additional reports on
23 the purchase or acquisition of regulated material."

24 SECTION 8. Section 57-30-9 NMSA 1978 (being Laws 2008,
25 Chapter 29, Section 9) is amended to read:

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1 "57-30-9. [~~PUBLIC~~] DATABASE.--The department shall
2 establish and maintain an electronic database containing the
3 records required to be preserved pursuant to Section [~~6 of the~~
4 ~~Sale of Recycled Metals Act~~] 57-30-6 NMSA 1978, which database
5 shall be accessible to [~~the public~~] law enforcement agencies
6 and the department. Records received by the department
7 pursuant to Section [~~8 of the Sale of Recycled Metals Act~~]
8 57-30-8 NMSA 1978 shall be available in the database by the end
9 of the second business day following receipt by the
10 department."

11 SECTION 9. Section 57-30-10 NMSA 1978 (being Laws 2008,
12 Chapter 29, Section 10) is amended to read:

13 "57-30-10. POWERS AND DUTIES OF SUPERINTENDENT.--The
14 superintendent has authority to promulgate reasonable
15 regulations for the administration and enforcement of the Sale
16 of Recycled Metals Act and is expressly authorized to make
17 regulations regarding records of purchase of regulated material
18 and the [~~public~~] database required pursuant to that act."

19 SECTION 10. Section 57-30-11 NMSA 1978 (being Laws 2008,
20 Chapter 29, Section 11) is amended to read:

21 "57-30-11. WAITING PERIOD FOR DISPOSAL OF REGULATED
22 MATERIAL.--A secondhand metal dealer shall not process or
23 permit to be removed from the dealer's premises regulated
24 material until [~~the fifth business day after the date on which~~]
25 at least twenty-four hours have elapsed since the dealer

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1 acquired the regulated material."

2 SECTION 11. Section 57-30-12 NMSA 1978 (being Laws 2008,
3 Chapter 29, Section 12) is amended to read:

4 "57-30-12. PROHIBITED ACTS.--A person shall not, with the
5 intent to deceive:

6 A. display to a secondhand metal dealer a false or
7 invalid personal identification document in connection with the
8 person's attempted sale of regulated material; ~~[or]~~

9 B. make a false material statement or
10 representation to a secondhand metal dealer in connection with:

11 (1) that person's execution of a written
12 statement required by Subsection A of Section ~~[4 of the Sale of~~
13 ~~Recycled Metals Act; or]~~ 57-30-4 NMSA 1978;

14 (2) the dealer's efforts to obtain the
15 information required pursuant to Subsection B of Section ~~[5 of~~
16 ~~the Sale of Recycled Metals Act]~~ 57-30-5 NMSA 1978; or

17 (3) the written documentation required for
18 certain transactions pursuant to Section 16 of this 2012 act;
19 or

20 C. deliberately remove or alter a manufacturer's
21 make, model, serial or personal identification number or other
22 identifying marks engraved or etched upon property that is
23 regulated material."

24 SECTION 12. Section 57-30-13 NMSA 1978 (being Laws 2008,
25 Chapter 29, Section 13) is amended to read:

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1 "57-30-13. CIVIL PENALTY--SUSPENSION OR REVOCATION OF
2 REGISTRATION.--

3 A. A person who violates any provision of the Sale
4 of Recycled Metals Act may be assessed a civil penalty by the
5 superintendent not to exceed one thousand dollars (\$1,000) per
6 violation.

7 B. The superintendent may suspend or revoke the
8 registration of a secondhand metal dealer when the
9 superintendent finds that the dealer has intentionally violated
10 a provision of the Sale of Recycled Metals Act.

11 [~~B.~~] C. Prior to the imposition of a civil penalty
12 or the suspension or revocation of a registration, the [~~person~~
13 ~~being penalized~~] superintendent shall [~~be afforded~~] provide
14 notice and an opportunity to be heard [~~by the superintendent~~]
15 pursuant to the pertinent notice and hearing provisions of the
16 Uniform Licensing Act."

17 **SECTION 13.** A new section of the Sale of Recycled Metals
18 Act is enacted to read:

19 "[NEW MATERIAL] ISSUANCE OF REGISTRATION--PERIOD OF
20 REGISTRATION.--The department is authorized to issue
21 registrations to secondhand metal dealers that buy or sell
22 regulated material. Original and renewed registrations shall
23 be valid for a period of three years from the date of issuance,
24 unless the registration is suspended or revoked."

25 **SECTION 14.** A new section of the Sale of Recycled Metals

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1 Act is enacted to read:

2 "[NEW MATERIAL] SECONDHAND METAL DEALERS--REGISTRATION
3 REQUIRED--APPLICATION--FEE.--

4 A. A secondhand metal dealer shall not buy or sell
5 regulated material without a valid registration issued by the
6 department.

7 B. An application for registration shall be
8 completed, under penalty of perjury, on a form designed and
9 provided by the department and shall include:

10 (1) the full name and business address of the
11 applicant;

12 (2) a list of all locations at which the
13 applicant engages or will engage in the business of buying or
14 selling regulated material; and

15 (3) any other information the department may
16 require by rule.

17 C. An application for registration or for renewal
18 of a registration shall be accompanied by a nonrefundable
19 application fee in an amount not to exceed twenty-five dollars
20 (\$25.00)."

21 SECTION 15. A new section of the Sale of Recycled Metals
22 Act is enacted to read:

23 "[NEW MATERIAL] DUTIES OF SECONDHAND METAL DEALERS.--

24 A. A secondhand metal dealer shall:

25 (1) maintain a valid registration, issued by

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1 the department, and comply with the requirements of the Sale of
2 Recycled Metals Act and rules promulgated pursuant to that act;

3 (2) comply with all federal requirements for
4 scrap metal dealers, including maintaining storm water permits;

5 (3) register for the metal theft alert system,
6 maintained by the institute of scrap recycling industries or
7 its successor organization; and

8 (4) keep all employees who are involved in the
9 purchasing or receiving of regulated material apprised of
10 alerts received on theft of regulated material in the
11 geographic area.

12 B. A secondhand metal dealer who becomes aware that
13 the dealer is in possession of regulated material that was
14 stolen or unlawfully obtained shall not remove the material
15 from the dealer's premises and shall report the same to a local
16 law enforcement agency within twenty-four hours."

17 SECTION 16. A new section of the Sale of Recycled Metals
18 Act is enacted to read:

19 "[NEW MATERIAL] RESTRICTED TRANSACTIONS--ADDITIONAL
20 DOCUMENTATION REQUIRED.--

21 A. A secondhand metal dealer shall not purchase any
22 of the following without written documentation indicating that
23 the seller is the rightful owner or has permission from the
24 rightful owner or that the material was otherwise lawfully
25 obtained:

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1 (1) infrastructure grade regulated material
2 that has been burned to remove insulation, unless the seller
3 can produce written proof that the regulated material was
4 lawfully burned;

5 (2) regulated material where the
6 manufacturer's make, model, serial or personal identification
7 number or other identifying marks engraved or etched upon the
8 material have been conspicuously removed or altered;

9 (3) regulated material marked with the name,
10 initials or otherwise identified as the property of an
11 electrical company, a telephone company, a cable company, a
12 water company or other utility company, a railroad or a
13 governmental entity;

14 (4) a utility access cover;

15 (5) a water meter cover;

16 (6) a road or bridge guard rail;

17 (7) a highway or street sign;

18 (8) a traffic directional or control sign or
19 signal;

20 (9) a metal beer keg that is clearly marked as
21 being the property of the beer manufacturer; or

22 (10) a catalytic converter that is not part of
23 an entire motor vehicle.

24 B. The department shall promulgate rules that more
25 specifically describe the type of documentation required before

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1 a secondhand metal dealer may engage in a transaction described
2 in this section."

3 SECTION 17. APPROPRIATION.--Three hundred thousand
4 dollars (\$300,000) is appropriated from the general fund to the
5 regulation and licensing department for expenditure in fiscal
6 years 2013 and 2014 to build a database and carry out the
7 provisions of the Sale of Recycled Metals Act. Any unexpended
8 or unencumbered balance remaining at the end of fiscal year
9 2014 shall revert to the general fund.

10 SECTION 18. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2012.