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SENATE BILL 381

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Clinton D. Harden

AN ACT

RELATING TO THE SALE OF RECYCLED METALS; ENACTING THE SALE OF RECYCLED METALS ACT; REGULATING THE SALE OF CERTAIN RECYCLED METALS; PROVIDING FOR PENALTIES.

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

Section 1. SHORT TITLE.--This act may be cited as the "Sale of Recycled Metals Act".

Section 2. DEFINITIONS.--As used in the Sale of Recycled Metals Act:

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

B. "bronze material" means:

(1) a cemetery vase, receptacle or memorial

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[bracketed material] = delete

1 made from bronze;

2 (2) bronze statuary; and

3 (3) material readily identifiable as bronze;

4 C. "copper or brass material" means:

5 (1) insulated or noninsulated copper wire or
6 cable of the type used by a public utility or common carrier
7 that consists of at least fifty percent copper; and

8 (2) a copper or brass item of a type commonly
9 used in construction or by a public utility;

10 D. "department" means the department of public
11 safety;

12 E. "peace officer" means any full-time salaried and
13 commissioned or certified law enforcement officer of a police
14 or sheriff's department that is part of or administered by the
15 state or any political subdivision of the state;

16 F. "personal identification document" means:

17 (1) a driver's license;

18 (2) a military identification card;

19 (3) a passport issued by the United States or
20 by another country and recognized by the United States; and

21 (4) a personal identification certificate
22 issued by the department, or a corresponding card or
23 certificate issued by another state;

24 G. "regulated material" means:

25 (1) aluminum material;

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- 1 (2) bronze material; and
- 2 (3) copper or brass material; and

3 H. "secondhand metal dealer" means:

4 (1) an auto wrecker, a scrap metal processor
5 or other person or organization that purchases, collects or
6 solicits regulated material; and

7 (2) a person who operates or maintains a scrap
8 metal yard or other place in which scrap metal or cast-off
9 regulated material is collected or kept for shipment, sale or
10 transfer.

11 Section 3. NOTICE TO SELLERS.--

12 A. A secondhand metal dealer shall at all times
13 maintain in a prominent place in the dealer's place of
14 business, in open view to a seller of regulated material, a
15 notice in two-inch lettering that:

16 (1) includes the following language:

17 "A PERSON ATTEMPTING TO SELL REGULATED MATERIAL MUST
18 PRESENT SUFFICIENT IDENTIFICATION AS REQUIRED BY STATE LAW.

19 WARNING: STATE LAW PROVIDES A CRIMINAL PENALTY FOR A
20 PERSON WHO INTENTIONALLY PROVIDES A FALSE DOCUMENT OF
21 IDENTIFICATION OR OTHER FALSE INFORMATION TO A SECONDHAND METAL
22 DEALER WHILE ATTEMPTING TO SELL REGULATED MATERIAL."; and

23 (2) states the secondhand metal dealer's usual
24 business hours.

25 B. The notice required by this section may be

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1 contained on a sign that contains another notice if the
2 secondhand metal dealer is required to display another notice
3 pursuant to applicable law.

4 Section 4. INFORMATION PROVIDED BY SELLER.--

5 A. A person attempting to sell regulated material
6 to a secondhand metal dealer shall:

7 (1) display to the secondhand metal dealer the
8 person's personal identification document or sign a statement
9 that the person does not possess such a document; and

10 (2) sign a written statement provided by the
11 secondhand metal dealer that the person is the legal owner of
12 or is lawfully entitled to sell the regulated material offered
13 for sale.

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

18 Section 5. RECORD OF PURCHASE.--

19 A. A secondhand metal dealer in this state shall
20 keep an accurate and legible written record of each purchase
21 made in the course of the dealer's business from an individual
22 of:

23 (1) copper or brass material in excess of
24 twenty-five pounds;

25 (2) bronze material; or

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1 (3) aluminum material in excess of forty
2 pounds.

3 B. The record shall be in English and shall
4 include:

5 (1) the place and date of the purchase;

6 (2) the name and address of each individual
7 from whom the regulated material is purchased or obtained;

8 (3) the identifying number of the personal
9 identification document of each individual from whom the
10 regulated material is purchased or obtained;

11 (4) a description made in accordance with the
12 custom of the trade of the type and quantity of regulated
13 material purchased; and

14 (5) the statement required by Paragraph (2) of
15 Subsection A of Section 4 of the Sale of Recycled Metals Act.

16 Section 6. PRESERVATION OF RECORDS.--A secondhand metal
17 dealer shall preserve each record required by Section 5 of the
18 Sale of Recycled Metals Act until the third anniversary of the
19 date the record was made.

20 Section 7. INSPECTION OF RECORDS BY PEACE OFFICERS.--

21 A. Upon request, a secondhand metal dealer shall
22 permit a peace officer of this state to inspect during the
23 dealer's usual business hours:

24 (1) records required by Section 5 of the Sale
25 of Recycled Metals Act; and

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1 (2) regulated material in the dealer's
2 possession.

3 B. The inspecting peace officer shall inform the
4 dealer of the officer's status as a peace officer.

5 Section 8. FURNISHING OF REPORT TO DEPARTMENT.--

6 A. Except as provided by Subsection B of this
7 section, not later than the seventh day after the date of the
8 purchase or other acquisition of material for which a record is
9 required pursuant to Section 5 of the Sale of Recycled Metals
10 Act, a secondhand metal dealer shall mail to or file with the
11 department a report containing the information required to be
12 recorded pursuant to that section.

13 B. If a secondhand metal dealer purchases bronze
14 material that is a cemetery vase, receptacle or memorial or
15 bronze statuary; or aluminum material that is a pipe that can
16 reasonably be identified as aluminum irrigation pipe, the
17 dealer shall:

18 (1) not later than the close of business on
19 the dealer's first working day after the purchase date, orally
20 notify the department; and

21 (2) not later than the fifth day after the
22 purchase date, mail to or file with the department a report
23 containing the information required to be recorded pursuant to
24 Section 5 of the Sale of Recycled Metals Act.

25 C. Subsection B of this section does not apply to a

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1 purchase from:

2 (1) the manufacturer or fabricator of the
3 bronze material or pipe;

4 (2) a seller bearing a bill of sale for the
5 bronze material or pipe; or

6 (3) the owner of the bronze material or pipe.

7 Section 9. PLACEMENT OF ITEMS ON HOLD.--

8 A. A peace officer who has reasonable suspicion to
9 believe that an item of regulated material in the possession of
10 a secondhand metal dealer is stolen may place the item on hold
11 by issuing to the dealer a written notice that:

12 (1) specifically identifies the item alleged
13 to be stolen and subject to the hold; and

14 (2) informs the dealer of the requirements of
15 Subsection B of this section.

16 B. On receiving the notice, the secondhand metal
17 dealer shall not process or remove from the dealer's premises
18 the identified item before the eleventh day after the date the
19 notice is issued unless the hold is released at an earlier time
20 in writing by a peace officer or by a court order.

21 C. After the holding period expires, the secondhand
22 metal dealer may dispose of the item unless disposition
23 violates a court order.

24 Section 10. PROHIBITED ACTS.--A person shall not, with
25 the intent to deceive:

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1 A. display to a secondhand metal dealer a false or
2 invalid personal identification document in connection with the
3 person's attempted sale of regulated material; or

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

6 (1) that person's execution of a written
7 statement required by Subsection A of Section 4 of the Sale of
8 Recycled Metals Act; or

9 (2) the dealer's efforts to obtain the
10 information required pursuant to Subsection B of Section 5 of
11 the Sale of Recycled Metals Act.

12 Section 11. PENALTIES.--

13 A. A person commits an offense if the person
14 knowingly violates the Sale of Recycled Metals Act.

15 B. A person who violates the provisions of
16 Subsection A of this section is:

17 (1) upon the first conviction, guilty of a
18 petty misdemeanor and shall be sentenced pursuant to the
19 provisions of Section 31-19-1 NMSA 1978; and

20 (2) upon a second or subsequent conviction
21 within the thirty-six months preceding the date of the offense,
22 guilty of a misdemeanor and shall be sentenced pursuant to the
23 provisions of Section 31-19-1 NMSA 1978.

24 C. On the conviction of a secondhand metal dealer
25 for an offense punishable pursuant to Paragraph (2) of

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1 Subsection B of this section, a court, in addition to imposing
2 any other applicable penalty, may order that the dealer cease
3 doing business as a secondhand metal dealer for a period not to
4 exceed thirty days from the date of the order for each
5 violation that forms the basis of the conviction.

6 Section 12. SEVERABILITY.--If any part or application of
7 the Sale of Recycled Metals Act is held invalid, the remainder
8 or its application to other situations or persons shall not be
9 affected.

10 Section 13. APPLICABILITY.--The provisions of the Sale of
11 Recycled Metals Act shall not apply to a purchase of regulated
12 material from a manufacturing, industrial or other commercial
13 vendor that sells regulated material in the ordinary course of
14 the vendor's business.

15 Section 14. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2008.