

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.

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:

"57-30-1. SHORT TITLE.--Chapter 57, Article 30 NMSA 1978 may be cited as the "Sale of Recycled Metals Act"."

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

"57-30-2. 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.

"Aluminum material" 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 made from bronze;

(2) bronze statuary; or

(3) material readily identifiable as bronze;

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

D. "copper or brass material" means:

(1) insulated or noninsulated copper wire, hardware or cable of the type used by a public utility, commercial mobile radio service carrier or common carrier that consists of at least twenty-five percent copper; or

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

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

F. "peace officer" means any full-time salaried

and commissioned or certified law enforcement officer of a police or sheriff's department that is part of or administered by the state or a political subdivision of the state;

G. "personal identification document" means:

- (1) a driver's license;
- (2) a military identification card; or
- (3) a passport issued by the United States

or by another country and recognized by the United States;

H. "regulated material" means:

- (1) aluminum material;
- (2) bronze material;
- (3) copper or brass material;
- (4) steel material;
- (5) a utility access cover;
- (6) a water meter cover;
- (7) a road or bridge guard rail;
- (8) a highway or street sign;
- (9) a traffic directional or control sign or

signal; or

(10) a catalytic converter that is not part of an entire motor vehicle;

I. "secondhand metal dealer" means a scrap metal processor in the business of operating or maintaining a scrap metal yard in a physical location in which scrap metal or

cast-off regulated material is purchased for shipment, sale or

transfer;

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

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

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

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

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

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

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

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

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

B. The secondhand metal dealer or the dealer's agent shall visually verify the accuracy of the personal identification document and vehicle identification presented

by the seller at the time of the dealer's purchase of regulated material."

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

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

A. A secondhand metal dealer in this state shall keep an accurate and legible written record, in a form approved by the department, of each purchase made in the course of the dealer's business of:

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

pounds; or

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

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

- (1) the place and date of the purchase;
- (2) the name and address of each person from whom the regulated material is purchased or obtained;
- (3) the identifying number of the personal identification document of each person from whom the regulated material is purchased or obtained;

- (4) the year, make, model and license plate

number of the motor vehicle used to transport the regulated material;

(5) a description made in accordance with the custom of the trade of the type and quantity of regulated material purchased;

(6) the statement required by Paragraph (2) of Subsection A of Section 57-30-4 NMSA 1978; and

(7) the written documentation required for certain transactions pursuant to Section 16 of this 2012 act, if applicable.

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

(1) the seller of the regulated material;
and

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

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

"57-30-6. PRESERVATION OF RECORDS.--A secondhand metal dealer shall preserve each record required by Section 57-30-5 NMSA 1978 until the first anniversary of the date the record was made."

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

"57-30-7. INSPECTION OF RECORDS BY PEACE OFFICERS--
HOLDS ON PROPERTY.--

A. Upon request, a secondhand metal dealer shall produce to a peace officer during the dealer's usual business hours the requested record of purchase as required by Section 57-30-5 NMSA 1978.

B. If a peace officer determines, through an investigation or examination of the records kept by the secondhand metal dealer, that the dealer may be in possession of stolen property or property that constitutes evidence in a criminal investigation, the peace officer may place a hold on the property prohibiting the sale or removal of the property from the premises. The hold may remain in effect for up to five days or until the hold is lifted or the property is seized, whichever occurs earlier.

C. The inspecting peace officer shall inform the secondhand metal dealer of the person's status as a peace officer."

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

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

A. As of January 1, 2014, a secondhand metal dealer shall, not later than the second business day after the date of the purchase or other acquisition of regulated material for which a record is required pursuant to Section

57-30-5 NMSA 1978, upload to the database maintained by the department a report containing the information required to be recorded pursuant to that section.

B. A local governmental entity shall not impose any reporting requirements on secondhand metal dealers regarding the purchase or acquisition of regulated material."

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

"57-30-9. DATABASE.--The department shall establish and maintain an electronic database containing the records required to be preserved pursuant to Section 57-30-6 NMSA 1978, which database shall be accessible to law enforcement agencies and the department. Records received by the department pursuant to Section 57-30-8 NMSA 1978 shall be available in the database by the end of the second business day following receipt by the department."

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

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

SECTION 10. Section 57-30-11 NMSA 1978 (being Laws

2008, Chapter 29, Section 11) is amended to read:

"57-30-11. WAITING PERIOD FOR DISPOSAL OF REGULATED MATERIAL.--A secondhand metal dealer shall not process or permit to be removed from the dealer's premises regulated material until at least twenty-four hours have elapsed since the dealer acquired the regulated material."

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

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

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

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

(1) that person's execution of a written statement required by Subsection A of Section 57-30-4 NMSA 1978;

(2) the dealer's efforts to obtain the information required pursuant to Subsection B of Section 57-30-5 NMSA 1978; or

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

or

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

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

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

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

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

C. Prior to the imposition of a civil penalty or the suspension or revocation of a registration, the superintendent shall provide notice and an opportunity to be heard pursuant to the pertinent notice and hearing provisions of the Uniform Licensing Act."

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

"ISSUANCE OF REGISTRATION--PERIOD OF REGISTRATION.--The department is authorized to issue registrations to secondhand

metal dealers that buy or sell regulated material. Original and renewed registrations shall be valid for a period of three years from the date of issuance, unless the registration is suspended or revoked."

SECTION 14. A new section of the Sale of Recycled Metals Act is enacted to read:

"SECONDHAND METAL DEALERS--REGISTRATION REQUIRED--APPLICATION--FEE.--

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

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

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

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

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

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

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

"DUTIES OF SECONDHAND METAL DEALERS.--

A. A secondhand metal dealer shall:

(1) maintain a valid registration, issued by the department, and comply with the requirements of the Sale of Recycled Metals Act and rules promulgated pursuant to that act;

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

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

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

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

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

"RESTRICTED TRANSACTIONS--ADDITIONAL DOCUMENTATION
REQUIRED.--

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

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

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

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

(4) a utility access cover;

(5) a water meter cover;

(6) a road or bridge guard rail;

(7) a highway or street sign;

(8) a traffic directional or control sign or

signal;

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

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

B. The department shall promulgate rules that more specifically describe the type of documentation required before a secondhand metal dealer may engage in a transaction described in this section."

SECTION 17. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2012. _____