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SENATE BILL 431

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Steven P. Neville

AN ACT

RELATING TO TRADE PRACTICES; AMENDING SECTIONS OF THE SALE OF
RECYCLED METALS ACT TO CHANGE THE NAME TO THE RECYCLED METALS
ACT AND TO PROVIDE FOR ADMINISTRATIVE IMPROVEMENTS.

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, as amended by Laws 2012, Chapter 29,
Section 1 and by Laws 2012, Chapter 33, 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, as amended) is amended to read:

"57-30-2. DEFINITIONS.--As used in the [~~Sale of~~] Recycled
Metals Act:

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underscored material = new
~~[bracketed material] = delete~~

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

6 B. "bronze material" means:

7 (1) a cemetery vase, receptacle or memorial
8 made from bronze;

9 (2) bronze statuary; or

10 (3) material readily identifiable as bronze;

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

17 D. "copper or brass material" means:

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

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

25 E. "department" means the regulation and licensing

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1 department;

2 F. "lead material" means:

3 (1) a lead-acid battery; or

4 (2) material readily identifiable as being
5 made of or containing lead;

6 G. "peace officer" means any full-time salaried and
7 commissioned or certified law enforcement officer of a police
8 or sheriff's department that is part of or administered by the
9 state or a political subdivision of the state or a department
10 compliance officer or department inspector duly authorized to
11 assist in enforcing the Recycled Metals Act by inspecting or
12 otherwise engaging secondhand metal dealers as provided in that
13 act;

14 H. "personal identification document" means:

15 (1) a current driver's license or state-issued
16 identification card from any state of the United States;

17 (2) a military identification card from a
18 branch of the military of the United States; or

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

21 I. "physical location" means any permanent or
22 mobile location, storage facility or place where a secondhand
23 metal dealer does business or maintains, stores or processes
24 regulated material;

25 [~~F.~~] J. "regulated material" means:

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

11 signal; or

12 (11) a catalytic converter that is not part of
13 an entire motor vehicle;

14 K. "scrap metal yard" means any yard, plot, space,
15 enclosure, building, mobile facility or other place where scrap
16 metal is collected, gathered together, stored or kept for
17 shipment, sale or transfer;

18 [~~J-~~] L. "secondhand metal dealer", "scrap metal
19 dealer" or "dealer" means a scrap metal processor in the
20 business of operating or maintaining a scrap metal yard in a
21 physical location in which scrap metal or cast-off regulated
22 material is purchased for shipment, sale or transfer;

23 [~~K-~~] M. "steel material" means a product made from
24 steel or an alloy of iron, chromium, nickel or manganese,
25 including stainless steel beer kegs; and

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1 ~~[E.]~~ N. "superintendent" means the superintendent
2 of regulation and licensing."

3 **SECTION 3.** Section 57-30-2.1 NMSA 1978 (being Laws 2012,
4 Chapter 29, Section 13 and Laws 2012, Chapter 33, Section 13)
5 is amended to read:

6 "57-30-2.1. ISSUANCE OF REGISTRATION--PERIOD OF
7 REGISTRATION.--The department is authorized to issue
8 registrations to secondhand metal dealers [~~that buy or sell~~
9 ~~regulated material~~] pursuant to the Recycled Metals Act.
10 Original and renewed registrations shall be valid for a period
11 of [~~three years~~] one year from the date of issuance, unless the
12 registration is suspended or revoked."

13 **SECTION 4.** Section 57-30-2.2 NMSA 1978 (being Laws 2012,
14 Chapter 29, Section 14 and Laws 2012, Chapter 33, Section 14)
15 is amended to read:

16 "57-30-2.2. SECONDHAND METAL DEALERS--REGISTRATION
17 REQUIRED--APPLICATION--FEE.--

18 A. A secondhand metal dealer shall not buy or sell
19 regulated material without a valid registration issued by the
20 department and has no authority to operate as a secondhand
21 metal dealer in the absence of a current valid registration.

22 B. An individual application for registration of
23 each location of the applicant's business shall be completed by
24 the owner of the business, duly authorized officer of the
25 business or executive management of the business, under penalty

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1 of perjury, on a form designed and provided by the department
2 and shall include:

3 (1) the full name, ~~[and]~~ business address and
4 contact information of the applicant [~~(2) a list of all~~
5 ~~locations at which the applicant engages or will engage in the~~
6 ~~business of buying or selling regulated material; and]~~ in the
7 business of operating or maintaining a scrap metal yard for
8 which registration is made and the full name and business
9 address of the scrap metal yard;

10 (2) proof of ownership of the business,
11 whether by tax identification number, business license or other
12 requirement; and

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

15 C. An application for registration or for renewal
16 of a registration shall be accompanied by a nonrefundable
17 application fee [~~in an amount~~] not to exceed [~~twenty-five~~
18 ~~dollars (\$25.00)]~~ one hundred dollars (\$100) annually. Failure
19 to renew a registration prior to its expiration date shall
20 result in the imposition of a twenty percent late fee, and such
21 registration shall not be considered valid until the date of
22 payment of the renewal fee and the late penalty, along with all
23 other requirements for registration and renewal.

24 D. Upon a change of address for the location of the
25 scrap metal yard as provided in the application, the scrap

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1 metal dealer is prohibited from transacting business involving
2 regulated material until the department has been notified of
3 the new address in writing, by email or other written form.

4 E. A scrap metal dealer who ceases or intends to
5 cease business within the next succeeding thirty days, or who
6 has ceased business, shall provide to the department a letter
7 signed by the dealer containing a statement of closing or
8 intent to close and the date or anticipated date of closing
9 before the end of the month in which such closing occurs or is
10 anticipated to occur."

11 SECTION 5. Section 57-30-2.3 NMSA 1978 (being Laws 2012,
12 Chapter 29, Section 15 and Laws 2012, Chapter 33, Section 15)
13 is amended to read:

14 "57-30-2.3. DUTIES OF SECONDHAND METAL DEALERS.--

15 A. A secondhand metal dealer shall:

16 (1) maintain a valid registration, issued by
17 the department, and comply with the requirements of the [~~sale~~
18 ~~of~~] Recycled Metals Act and rules promulgated pursuant to that
19 act;

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

22 (3) register for the metal theft alert system
23 maintained by the institute of scrap recycling industries or
24 its successor organization; [~~and~~]

25 (4) keep all employees who are involved in the

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1 purchasing or receiving of regulated material apprised of
2 alerts received on theft of regulated material in the
3 geographic area;

4 (5) post all notices and information required
5 under the Recycled Metals Act;

6 (6) record all purchases of regulated material
7 in accordance with the provisions of the Recycled Metals Act
8 and maintain all records pertaining to such transactions
9 according to the provisions of that act; and

10 (7) report to the department all changes in
11 application information within ten business days of receiving
12 actual knowledge of the changes.

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

18 SECTION 6. Section 57-30-4 NMSA 1978 (being Laws 2008,
19 Chapter 29, Section 4, as amended by Laws 2012, Chapter 29,
20 Section 3 and by Laws 2012, Chapter 33, Section 3) is amended
21 to read:

22 "57-30-4. INFORMATION PROVIDED BY SELLER AND DEALER'S
23 OBLIGATIONS.--

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

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

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

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

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

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

17 C. A secondhand metal dealer is prohibited from
18 purchasing or obtaining regulated material from a person who
19 refuses to provide any of the information required by this
20 section."

21 SECTION 7. Section 57-30-5 NMSA 1978 (being Laws 2008,
22 Chapter 29, Section 5, as amended) is amended to read:

23 "57-30-5. RECORD OF PURCHASE.--

24 A. A secondhand metal dealer in this state shall
25 keep an accurate and legible written record, in a form approved

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1 by the department, of each purchase made in the course of the
2 dealer's business of:

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

7 [~~or~~]

8 (5) steel material in excess of one ton,
9 except that a written record shall be kept of each purchase of
10 a [~~stainless steel~~] beer keg; or

11 (6) any material otherwise defined as
12 regulated material.

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

- 15 (1) the place and date of the purchase
16 completed by the dealer;
- 17 (2) the name and address of each person from
18 whom the regulated material is purchased or obtained;
- 19 (3) a clear copy of the personal
20 identification document that includes the identifying number of
21 the personal identification document of each person from whom
22 the regulated material is purchased or obtained;
- 23 (4) the year, make, model, color and license
24 plate number of the motor vehicle used to transport the
25 regulated material;

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

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

6 (7) the written documentation required for
7 certain transactions pursuant to Section 57-30-2.4 NMSA 1978,
8 if applicable.

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

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

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

15 SECTION 8. Section 57-30-6 NMSA 1978 (being Laws 2008,
16 Chapter 29, Section 6, as amended by Laws 2012, Chapter 29,
17 Section 5 and by Laws 2012, Chapter 33, Section 5) is amended
18 to read:

19 "57-30-6. PRESERVATION OF RECORDS.--A secondhand metal
20 dealer shall preserve at the location as shown on the
21 registration each record required by Section 57-30-5 NMSA 1978
22 until the [~~first~~] second anniversary of the date the record was
23 made."

24 SECTION 9. Section 57-30-7 NMSA 1978 (being Laws 2008,
25 Chapter 29, Section 7, as amended by Laws 2012, Chapter 29,

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1 Section 6 and by Laws 2012, Chapter 33, Section 6) is amended
2 to read:

3 "57-30-7. INSPECTION OF RECORDS BY PEACE OFFICERS AND
4 DEPARTMENT INSPECTORS--HOLDS ON PROPERTY.--

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

9 B. If a peace officer or department inspector
10 determines, through an investigation or examination of the
11 records kept by the secondhand metal dealer, that the dealer
12 may be in possession of stolen property or property that
13 constitutes evidence in a criminal investigation, the peace
14 officer or department inspector may place a hold on the
15 property prohibiting the sale or removal of the property from
16 the premises. The hold may remain in effect for up to [~~five~~]
17 ten days or until the hold is lifted or the property is seized,
18 whichever occurs earlier.

19 C. The inspecting peace officer or department
20 inspector shall inform the secondhand metal dealer of the
21 person's status as a peace officer or department inspector."

22 SECTION 10. Section 57-30-8 NMSA 1978 (being Laws 2008,
23 Chapter 29, Section 8, as amended by Laws 2012, Chapter 29,
24 Section 7 and by Laws 2012, Chapter 33, Section 7) is amended
25 to read:

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1 "57-30-8. FURNISHING OF REPORT TO DEPARTMENT.--

2 A. As of January 1, 2014, a secondhand metal dealer
3 shall, not later than the second business day after the date of
4 the purchase or other acquisition of regulated material for
5 which a record is required pursuant to Section 57-30-5 NMSA
6 1978, upload to the database maintained by the department a
7 report containing the information required to be recorded
8 pursuant to that section.

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

12 SECTION 11. Section 57-30-10 NMSA 1978 (being Laws 2008,
13 Chapter 29, Section 10, as amended by Laws 2012, Chapter 29,
14 Section 9 and by Laws 2012, Chapter 33, Section 9) is amended
15 to read:

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

22 SECTION 12. Section 57-30-11 NMSA 1978 (being Laws 2008,
23 Chapter 29, Section 11, as amended by Laws 2012, Chapter 29,
24 Section 10 and by Laws 2012, Chapter 33, Section 10) is amended
25 to read:

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1 "57-30-11. WAITING PERIOD FOR DISPOSAL OF REGULATED
2 MATERIAL.--A secondhand metal dealer shall not process or
3 permit to be removed from the dealer's premises regulated
4 material until at least twenty-four hours have elapsed since
5 the dealer [~~acquired the regulated material~~] uploaded to the
6 department's database the information required to be reported."

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