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HOUSE BILL 497

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

INTRODUCED BY

Jim R. Trujillo

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; MAKING AN APPROPRIATION.

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.

"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:

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

3 (2) bronze statuary; and

4 (3) material readily identifiable as bronze;

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

11 D. "copper or brass material" means:

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

15 (2) a copper or brass item of a type commonly  
16 used in construction or by a public utility or common carrier;

17 E. "department" means the department of public  
18 safety;

19 F. "peace officer" means any full-time salaried and  
20 commissioned or certified law enforcement officer of a police  
21 or sheriff's department that is part of or administered by the  
22 state or any political subdivision of the state;

23 G. "personal identification document" means:

24 (1) a driver's license;

25 (2) a military identification card;

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

3 (4) a personal identification certificate  
4 issued by the department, or a corresponding card or  
5 certificate issued by another state;

6 H. "regulated material" means:

7 (1) aluminum material;

8 (2) bronze material;

9 (3) copper or brass material; and

10 (4) steel material;

11 I. "secondhand metal dealer" means:

12 (1) an auto wrecker, a scrap metal processor  
13 or other person that purchases, collects or solicits regulated  
14 material; and

15 (2) a person who operates or maintains a scrap  
16 metal yard or other place in which scrap metal or cast-off  
17 regulated material is collected or kept for shipment, sale or  
18 transfer; and

19 J. "steel material" means a product made from an  
20 alloy of iron, chromium, nickel or manganese.

21 Section 3. NOTICE TO SELLERS.--

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

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1 (1) includes the following language:

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

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

8 (2) states the secondhand metal dealer's usual  
9 business hours.

10 B. The notice required by this section may be  
11 contained on a sign that contains another notice if the  
12 secondhand metal dealer is required to display another notice  
13 pursuant to applicable law.

14 Section 4. INFORMATION PROVIDED BY SELLER.--

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

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

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

23 (3) provide to the secondhand metal dealer the  
24 make, model and license plate number of the motor vehicle used  
25 to transport the regulated material.

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1           B. The secondhand metal dealer or the dealer's  
2 agent shall visually verify the accuracy of the personal  
3 identification document and vehicle identification presented by  
4 the seller at the time of the dealer's purchase of regulated  
5 material.

6           Section 5. RECORD OF PURCHASE.--

7           A. A secondhand metal dealer in this state shall  
8 keep an accurate and legible written record of each purchase  
9 made in the course of the dealer's business from a person of:

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

13 or

- 14                   (4) steel material in excess of ten pounds.

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

- 17                   (1) the place and date of the purchase;
- 18                   (2) the name and address of each person from  
19 whom the regulated material is purchased or obtained;
- 20                   (3) the identifying number of the personal  
21 identification document of each person from whom the regulated  
22 material is purchased or obtained;
- 23                   (4) the make, model and license plate number  
24 of the motor vehicle used to transport the regulated material;
- 25                   (5) a description made in accordance with the

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1 custom of the trade of the type and quantity of regulated  
2 material purchased; and

3 (6) the statement required by Paragraph (2) of  
4 Subsection A of Section 4 of the Sale of Recycled Metals Act.

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

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

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

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

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

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

19 Section 8. FURNISHING OF REPORT TO DEPARTMENT.--Not later  
20 than the second business day after the date of the purchase or  
21 other acquisition of regulated material for which a record is  
22 required pursuant to Section 5 of the Sale of Recycled Metals  
23 Act, a secondhand metal dealer shall mail to or file with the  
24 department a report containing the information required to be  
25 recorded pursuant to that section.

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1           Section 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, which database shall be accessible  
5 to the public. Records received by the department pursuant to  
6 Section 8 of the Sale of Recycled Metals Act shall be available  
7 in the database by the end of the second business day following  
8 receipt by the department.

9           Section 10. POWERS AND DUTIES OF SECRETARY.--The  
10 secretary of public safety has authority to promulgate  
11 reasonable regulations for the administration and enforcement  
12 of the Sale of Recycled Metals Act and is expressly authorized  
13 to make regulations regarding records of purchase of regulated  
14 material and the public database required pursuant to that act.

15           Section 11. WAITING PERIOD FOR DISPOSAL OF REGULATED  
16 MATERIAL.--A secondhand metal dealer shall not process or  
17 permit to be removed from the dealer's premises regulated  
18 material until the fifth business day after the date on which  
19 the dealer acquired the regulated material.

20           Section 12. PROHIBITED ACTS.--A person shall not, with  
21 the intent to deceive:

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

25           B. make a false material statement or

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1 representation to a secondhand metal dealer in connection with:

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

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

8 Section 13. PENALTIES.--

9 A. A person who knowingly violates the provisions  
10 of the Sale of Recycled Metals Act is guilty of a misdemeanor  
11 and shall be sentenced pursuant to the provisions of Section  
12 31-19-1 NMSA 1978.

13 B. A person who knowingly violates the provisions  
14 of the Sale of Recycled Metals Act a second or subsequent time  
15 within a thirty-six-month period following a prior violation of  
16 that act is guilty of a fourth degree felony and shall be  
17 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
18 1978.

19 C. On the conviction of a secondhand metal dealer  
20 for an offense punishable pursuant to Subsection B of this  
21 section, a court, in addition to imposing any other applicable  
22 penalty, may order that the dealer cease doing business as a  
23 secondhand metal dealer for a period not to exceed thirty days  
24 from the date of the order for each violation that forms the  
25 basis of the conviction.

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1           Section 14. APPROPRIATION.--One hundred thousand dollars  
2 (\$100,000) is appropriated from the general fund to the  
3 department of public safety for expenditure in fiscal year 2009  
4 to carry out the provisions of the Sale of Recycled Metals Act.  
5 Any unexpended or unencumbered balance remaining at the end of  
6 fiscal year 2009 shall revert to the general fund.

7           Section 15. SEVERABILITY.--If any part or application of  
8 the Sale of Recycled Metals Act is held invalid, the remainder  
9 or its application to other situations or persons shall not be  
10 affected.

11           Section 16. APPLICABILITY.--The provisions of the Sale of  
12 Recycled Metals Act shall not apply to a purchase of regulated  
13 material from a manufacturing, industrial or other commercial  
14 vendor that sells regulated material in the ordinary course of  
15 the vendor's business.

16           Section 17. EFFECTIVE DATE.--The effective date of the  
17 provisions of this act is July 1, 2008.