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SENATE BILL 325

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Steven P. Neville

AN ACT

RELATING TO BUSINESS; REQUIRING THE LICENSURE OF SECONDHAND METAL DEALERS; PROHIBITING CERTAIN PRACTICES; PROVIDING FOR PENALTIES; CREATING THE RECYCLED METALS LICENSING FUND; 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:

"57-30-1. SHORT TITLE.--~~[This act]~~ 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

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1 aluminum, an aluminum alloy or an aluminum byproduct.

2 "Aluminum material" includes an aluminum beer keg but does not
3 include other types of aluminum cans used to contain a food or
4 beverage;

5 B. "bronze material" means:

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

8 (2) bronze statuary; and

9 (3) material readily identifiable as bronze;

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

16 D. "copper or brass material" means:

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

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

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

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

5 G. "personal identification document" means:

- 6 (1) a driver's license;
7 (2) a military identification card;
8 (3) a passport issued by the United States or
9 by another country and recognized by the United States; and
10 (4) a personal identification certificate
11 issued by the department, or a corresponding card or
12 certificate issued by another state;

13 H. "regulated material" means:

- 14 (1) aluminum material;
15 (2) bronze material;
16 (3) copper or brass material; ~~and~~
17 (4) steel material; and
18 (5) titanium material;

19 I. "secondhand metal dealer" means:

- 20 (1) an auto wrecker, a scrap metal processor
21 or other person that purchases, collects or solicits regulated
22 material; and
23 (2) a person who operates or maintains a scrap
24 metal yard or other place in which scrap metal or cast-off
25 regulated material is collected or kept for shipment, sale or

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1 transfer;

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

5 K. "superintendent" means the superintendent of
6 regulation and licensing; and

7 L. "titanium material" means a product made from
8 titanium or a titanium alloy."

9 SECTION 3. Section 57-30-13 NMSA 1978 (being Laws 2008,
10 Chapter 29, Section 13) is amended to read:

11 "57-30-13. CIVIL PENALTY--CRIMINAL PENALTY.--

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

16 B. Prior to the imposition of a civil penalty, the
17 person being penalized shall be afforded notice and an
18 opportunity to be heard by the superintendent pursuant to the
19 pertinent notice and hearing provisions of the Uniform
20 Licensing Act.

21 C. A secondhand metal dealer that buys or sells
22 regulated material without a license required pursuant to the
23 Sale of Recycled Metals Act is guilty of a misdemeanor and upon
24 conviction shall be sentenced pursuant to the provisions of
25 Section 31-19-1 NMSA 1978."

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1 SECTION 4. A new section of the Sale of Recycled Metals
2 Act is enacted to read:

3 "[NEW MATERIAL] LICENSE REQUIRED.--A secondhand metal
4 dealer shall not buy or sell regulated material without first
5 having obtained a license pursuant to the Sale of Recycled
6 Metals Act."

7 SECTION 5. A new section of the Sale of Recycled Metals
8 Act is enacted to read:

9 "[NEW MATERIAL] LICENSE APPLICATION--FEES--LICENSE
10 ISSUANCE--LICENSE RENEWAL.--

11 A. An application for a license to buy or sell
12 regulated material or for a renewal of a license shall be made
13 under oath, in writing in a form prescribed by the
14 superintendent, and shall include:

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

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

20 (3) any other pertinent data that the
21 superintendent may require by rule.

22 B. An application for a license and for the renewal
23 of a license shall be accompanied by an application or renewal
24 fee of one hundred dollars (\$100). No license application or
25 renewal fee shall be refunded.

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1 C. A written application for the renewal of a
2 license shall be filed on or before November 30 of the year
3 three years following its date of issue. In the event that an
4 application for the renewal of a license is delinquent, the
5 licensee shall also pay a delinquency fee of fifty dollars
6 (\$50.00).

7 D. License fees received through the Sale of
8 Recycled Metals Act are appropriated to the recycled metals
9 licensing fund.

10 E. By accepting a license that is issued or renewed
11 pursuant to the Sale of Recycled Metals Act, a licensee shall
12 be deemed to have consented to be bound by the provisions of
13 that act and all lawful requirements, rules and orders of the
14 superintendent promulgated or issued pursuant to that act."

15 SECTION 6. A new section of the Sale of Recycled Metals
16 Act is enacted to read:

17 "[NEW MATERIAL] REVOCATION, SUSPENSION AND REINSTATEMENT
18 OF LICENSE.--

19 A. The superintendent shall not suspend or revoke a
20 license issued pursuant to the Sale of Recycled Metals Act
21 unless the superintendent first serves upon the licensee a
22 written notice that states in general the grounds therefor,
23 together with the time and place of hearing, which shall be
24 held not less than fifteen days after the mailing of such
25 notice to the licensee by registered mail as provided in this

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1 section. Following the hearing, the superintendent shall
2 suspend or revoke a license if the superintendent finds that
3 the licensee, either knowingly or without the exercise of due
4 care to prevent the same, has violated a provision of the Sale
5 of Recycled Metals Act or a rule or order made pursuant to and
6 within the authority of that act.

7 B. If the superintendent finds that probable cause
8 exists and that enforcement of the Sale of Recycled Metals Act
9 requires immediate suspension of a license pending
10 investigation, the superintendent may, upon three days' written
11 notice by registered mail and a hearing, enter an order
12 suspending a license for a period not exceeding thirty days.

13 C. Whenever the superintendent revokes or suspends
14 a license issued pursuant to the Sale of Recycled Metals Act,
15 the superintendent shall enter an order to that effect and
16 shall forthwith in writing notify the licensee of the
17 revocation or suspension by registered mail, which notice shall
18 state the grounds therefor.

19 D. A licensee may surrender a license by delivering
20 it to the superintendent with written notice of its surrender,
21 but such surrender shall not affect any civil or criminal
22 liability of the licensee for acts committed prior thereto.

23 E. No revocation, suspension or surrender of a
24 license shall impair or affect the obligation of a preexisting
25 lawful contract between the licensee and an obligor thereon.

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1 F. The superintendent may reinstate a suspended
2 license or issue a new license to a person whose license has
3 been revoked if the facts that resulted in the revocation were
4 erroneous.

5 G. Whenever the Sale of Recycled Metals Act
6 provides for service of notice by registered mail, such service
7 shall be deemed complete upon deposit of such notice in the
8 post office. For the purpose of this section, mailing of
9 notice addressed to the person designated as the agent for
10 service of process pursuant to the Sale of Recycled Metals Act
11 or to the manager or person in charge of the licensed office
12 shall be sufficient."

13 SECTION 7. A new section of the Sale of Recycled Metals
14 Act is enacted to read:

15 "[NEW MATERIAL] RECYCLED METALS LICENSING FUND--CREATED--
16 PURPOSE--APPROPRIATION.--The "recycled metals licensing fund"
17 is created as a nonreverting fund in the state treasury and
18 shall be administered by the department. The department may
19 establish procedures and adopt rules as required to administer
20 the recycled metals licensing fund. The fund consists of
21 appropriations, grants, donations and money that otherwise
22 accrues to the fund. Income from investment of the fund shall
23 be credited to the fund. Money in the recycled metals
24 licensing fund shall be appropriated to the department to
25 enforce the provisions of the Sale of Recycled Metals Act.

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1 Money shall be disbursed from the fund only on warrant of the
2 secretary of finance and administration upon vouchers signed by
3 the superintendent or the superintendent's authorized
4 representative. Any unexpended or unencumbered balance
5 remaining at the end of a fiscal year shall not revert to the
6 general fund."

7 SECTION 8. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is July 1, 2011.

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