

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

SECOND REGULAR SESSION-2014

Legislative Document

No. 1846

H.P. 1329

House of Representatives, March 26, 2014

An Act To Require the Licensure of Scrap Metal Recyclers and Mobile Scrap Metal Dealers

(AFTER DEADLINE)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative LONGSTAFF of Waterville.
Cosponsored by Senator PATRICK of Oxford and
Representatives: DION of Portland, ESPLING of New Gloucester, FOWLE of Vassalboro,
GATTINE of Westbrook, HERBIG of Belfast, NADEAU of Winslow, WILSON of Augusta,
Senator: LACHOWICZ of Kennebec.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 29-A MRSA §1101, sub-§1**, as repealed and replaced by PL 1997, c. 776,
3 §33, is repealed.

4 **Sec. 2. 29-A MRSA §1101, sub-§1-A** is enacted to read:

5 **1-A. Definitions.** As used in this subchapter, unless the context otherwise indicates,
6 the following terms have the following meanings.

7 A. "Mobile scrap metal dealer" means a person engaged in the business of
8 purchasing or acquiring scrap metal, as defined in Title 30-A, section 3771,
9 subsection 4, for the purpose of resale or transfer.

10 B. "Recycler" means a person engaged in the business of purchasing or acquiring
11 salvage vehicles for the purpose of:

12 (1) Reselling the vehicle or its component parts;

13 (2) Rebuilding or repairing the vehicle for the purpose of resale;

14 (3) Selling the vehicle's basic materials; or

15 (4) Displaying or storing the vehicle or its parts.

16 C. "Scrap metal recycler" means a person engaged in the business of purchasing or
17 acquiring nonvehicle-related scrap metal, as defined in Title 30-A, section 3771,
18 subsection 4, for the purpose of processing, storing, reselling or transferring that
19 scrap metal.

20 **Sec. 3. 29-A MRSA §1101, sub-§1-B** is enacted to read:

21 **1-B. Prohibition.** A person may not engage in business as a recycler, a mobile scrap
22 metal dealer or a scrap metal recycler without a recycler license, mobile scrap metal
23 dealer license or scrap metal recycler license, respectively, issued under this subchapter.

24 **Sec. 4. 29-A MRSA §1103, sub-§1, ¶¶B and C**, as enacted by PL 1993, c. 683,
25 Pt. A, §2 and affected by Pt. B, §5, are amended to read:

26 B. At which the business of a recycler or scrap metal recycler may be carried on in
27 accordance with all applicable laws, codes, zoning and land use regulations;

28 C. At which the public may contact the recycler or scrap metal recycler at all
29 reasonable times; and

30 **Sec. 5. 29-A MRSA §1103**, as enacted by PL 1993, c. 683, Pt. A, §2 and affected
31 by Pt. B, §5, is amended by adding at the end a new paragraph to read:

32 The requirements of this section do not apply to a mobile scrap metal dealer.

33 **Sec. 6. 29-A MRSA §1103-A** is enacted to read:

1 **§1103-A. Mobile scrap metal dealers**

2 Notwithstanding section 1103, a mobile scrap metal dealer licensed under section
3 1104 must:

4 1. Name. Display the name of the licensee on any vehicle used for conducting
5 business as a mobile scrap metal dealer;

6 2. Business records. Provide business records on demand to a law enforcement
7 officer during normal business hours; and

8 3. Logbook. Maintain a logbook and make it available on demand to a law
9 enforcement officer when transporting scrap metal.

10 **Sec. 7. 29-A MRSA §1104, first ¶**, as enacted by PL 1993, c. 683, Pt. A, §2 and
11 affected by Pt. B, §5, is amended to read:

12 An application for a recycler, mobile scrap metal dealer or scrap metal recycler
13 license must contain the following information in such form as the Secretary of State may
14 prescribe:

15 **Sec. 8. 29-A MRSA §1106, first ¶**, as enacted by PL 1993, c. 683, Pt. A, §2 and
16 affected by Pt. B, §5, is amended to read:

17 The Secretary of State shall act on an application for a ~~recycler~~ license issued under
18 this subchapter or its renewal within 90 days of receipt.

19 **Sec. 9. 29-A MRSA §1106-A**, as enacted by PL 2003, c. 312, §1, is amended to
20 read:

21 **§1106-A. Municipal notification**

22 The Secretary of State shall provide written notice of all license decisions under
23 section 1106 to the code enforcement officer or municipal designee of the municipality in
24 which the applicant for a recycler license or a scrap metal recycler license proposed its
25 facilities to be located. If any proposed location is not within an organized municipality,
26 the Secretary of State shall provide written notice to the county commissioners for that
27 location.

28 **Sec. 10. 29-A MRSA §1107, sub-§1**, as enacted by PL 1993, c. 683, Pt. A, §2
29 and affected by Pt. B, §5, is amended to read:

30 **1. Content.** A recycler or scrap metal recycler license must specify:

31 A. The location of each established place of business and other locations occupied in
32 conducting business;

33 B. The effective and expiration dates of the license; and

34 C. Any other information the Secretary of State considers necessary to implement
35 this section.

1 **Sec. 11. 29-A MRSA §1108**, as amended by PL 1995, c. 65, Pt. A, §98 and
2 affected by Pt. A, §153 and Pt. C, §15 and amended by c. 482, Pt. A, §20 and PL 1997, c.
3 526, §14, is further amended to read:

4 **§1108. Denial, suspension or revocation of a license**

5 **1. Grounds.** The Secretary of State may deny, suspend or revoke a recycler, mobile
6 scrap metal dealer or scrap metal recycler license on the following grounds:

- 7 A. A material misstatement in an application for a license;
- 8 B. Failure to comply with a provision of this subchapter, any lawful rule adopted by
9 the Secretary of State or any provision of Title 17 or Title 17-A or this Title as they
10 relate to being a proper person to be in the business of the sales of vehicles or parts;
- 11 C. Failure to maintain an established place of business. This paragraph does not
12 apply to mobile scrap metal recyclers;
- 13 D. Failure to notify the Secretary of State in writing 30 days prior to moving or
14 ceasing operation;
- 15 E. The defrauding of a buyer, to the buyer's or another's damage, in the conduct of
16 the licensee's business;
- 17 F. Conviction of a fraudulent act in connection with the business of selling motor
18 vehicles or parts or being held liable by a civil judgment involving fraud,
19 misrepresentation or conversion;
- 20 G. Violation of Title 5, sections 206 to 212; Title 17, section 3203; ~~or~~ Title 30-A,
21 sections 3751 to 3760; or Title 30-A, sections 3772 to 3775;
- 22 H. Submission of a check, draft or money order to the Secretary of State that is
23 dishonored or refused upon presentation;
- 24 I. Certification by the State Tax Assessor that a tax, other than property tax,
25 considered final under Title 36, remained unpaid in an amount exceeding \$1,000 for a
26 period greater than 60 days after notice of finality and that the licensee or applicant
27 refused to cooperate with the Bureau of Revenue Services in establishing and
28 remaining in compliance with a reasonable plan for meeting that liability; or
- 29 J. Failure to appear at a hearing required by the Secretary of State or failure to appear
30 in court pursuant to a lawful summons.

31 **1-A. Appeal from action of the Secretary of State.** Any person aggrieved by the
32 act of the Secretary of State to refuse to grant or renew a license under this subchapter or
33 to suspend or revoke a license or by any other act of the Secretary of State that the person
34 alleges to be improper, unreasonable or unlawful under this subchapter may, within 30
35 days' notice of the decision, appeal to the Superior Court for a judicial review, as
36 provided in Title 5, chapter 375, subchapter ~~VII~~ 7.

37 **2. Proximity to veterans' cemetery.** A license may be denied if a place of business
38 is within one mile of a federally owned or state veterans' cemetery, unless the Secretary
39 of State finds that:

1 A. The conduct of the business will not unduly interfere or degrade the purposes of
2 the cemetery;

3 B. The business and location will be adequately screened for sight and noise; and

4 C. There is adequate distance, not less than 1,500 feet, between the cemetery and
5 place of business.

6 **3. Refusal to surrender license.** Any recycler, scrap metal recycler or mobile scrap
7 metal dealer who fails or refuses to surrender the license upon demand of the Secretary of
8 State following the suspension or revocation of that license, commits a Class E crime.

9 **4. Penalties.** Any person who continues to engage in business as a salvage vehicle
10 dealer, recycler ~~or as a scrap processor~~ metal recycler or mobile scrap metal dealer after
11 suspension or revocation of the license issued by the Secretary of State, is guilty of a
12 Class E crime, punishable by a fine of not less than \$200 and that fine may not be
13 suspended.

14 **Sec. 12. 29-A MRSA §1112**, as enacted by PL 1993, c. 683, Pt. A, §2 and
15 affected by Pt. B, §5, is amended to read:

16 **§1112. Identification number**

17 A ~~recycler~~ person licensed under this subchapter may not possess or exercise control
18 over a vehicle or vehicle part that has had the vehicle identification number removed. It
19 is not a defense that the ~~recycler~~ licensee did not know that the vehicle identification
20 number had been removed. Violation of this section is a Class E crime.

21 **Sec. 13. 30-A MRSA §3771, sub-§1-A** is enacted to read:

22 **1-A. Mobile scrap metal dealer.** "Mobile scrap metal dealer" means a person
23 licensed under Title 29-A, chapter 9, subchapter 6 that is engaged in the business of
24 purchasing or acquiring scrap metal for the purpose of resale or transfer to a scrap metal
25 recycler. "Mobile scrap metal dealer" does not include a person who stores scrap metal in
26 a scrap metal yard or processes or keeps scrap metal for shipment.

27 **Sec. 14. 30-A MRSA §3771, sub-§5**, as amended by PL 2011, c. 545, §1, is
28 repealed.

29 **Sec. 15. 30-A MRSA §3771, sub-§§5-B and 5-C** are enacted to read:

30 **5-B. Scrap metal recycler.** "Scrap metal recycler" means a person that is licensed
31 under Title 29-A, chapter 9, subchapter 6 that operates out of a scrap metal yard and is:

32 A. Engaged in the business of buying, processing and selling nonvehicle-related
33 scrap metal; and

34 B. Operating or maintaining a scrap metal yard or a place where scrap metal is stored
35 or kept for sale or transfer.

1 **5-C. Scrap metal yard.** "Scrap metal yard" means a yard, space, enclosure or
2 building where scrap metal is stored, kept for shipment, sale or transfer or processed and
3 where the business of storing and processing scrap metal may be lawfully conducted.

4 "Scrap metal yard" does not include an automobile graveyard as defined in section 3752,
5 subsection 1 or automobile recycling business as defined in section 3752, subsection 1-A.

6 **Sec. 16. 30-A MRSA §3771, sub-§6,** as enacted by PL 2007, c. 549, §1, is
7 amended to read:

8 **6. Seller.** "Seller" means any person that receives in a transaction monetary
9 consideration from a scrap metal ~~processor~~ recycler or a mobile scrap metal dealer in
10 exchange for nonferrous metal, iron or steel, including stainless steel. "Seller" does not
11 include a person that, as part of a commercial enterprise or business, sells pursuant to a
12 written contract or bill of sale scrap metal generated in a manufacturing or production
13 process to a scrap metal ~~processor~~ recycler or mobile scrap metal dealer.

14 **Sec. 17. 30-A MRSA §3772,** as amended by PL 2013, c. 141, §1, is further
15 amended to read:

16 **§3772. Records of purchases maintained by scrap metal recyclers and mobile scrap**
17 **metal dealers**

18 **1. Maintenance of records requirement.** Except as provided in subsection 2, a
19 scrap metal ~~processor~~ recycler or mobile scrap metal dealer doing business in the State
20 shall maintain an accurate and legible record of each scrap metal purchase transaction.

21 **1-A. Form and method of payment.** A scrap metal ~~processor~~ recycler or mobile
22 scrap metal dealer shall provide payment to a seller only in the form of a credit card, as
23 defined in Title 9-A, section 1-301, subsection 16, a debit card, as defined in Title 10,
24 section 1271, subsection 3, or a check. If payment is made by check, the scrap metal
25 ~~processor~~ recycler or mobile scrap metal dealer shall maintain a record of the payee,
26 check number and name of the financial institution upon which the check is drawn.

27 **2. Exception.** A scrap metal ~~processor~~ recycler or mobile scrap metal dealer doing
28 business in the State is not required to maintain individual records for a series of scrap
29 metal purchase transactions made pursuant to a written contract or bill of sale.

30 **3. Information required.** The record of each scrap metal purchase transaction
31 required under subsection 1 must contain the following information:

32 A. The name, address and gender of the seller. The scrap metal ~~processor~~ recycler or
33 mobile scrap metal dealer shall require the seller to provide proof of identification
34 with a driver's license, military identification card, passport or other form of
35 government-issued photo identification. The scrap metal ~~processor~~ recycler or
36 mobile scrap metal dealer shall photocopy the form of photo identification presented
37 and record the distinct identifying number of that photo identification. If the proof
38 of identification contains a photograph that is faded, out of date or otherwise
39 indiscernible, the scrap metal ~~processor~~ recycler or mobile scrap metal dealer shall
40 photograph the seller. A scrap metal ~~processor~~ recycler or mobile scrap metal dealer

1 shall keep these proof of identification records in a secure, nonpublic location and,
2 unless otherwise permitted by law, may not publish, reproduce, distribute or disclose
3 these records for any other purpose than that described in section 3773, subsection 2.
4 Information required under this paragraph may be maintained for repeat sellers in a
5 relational database that allows the scrap metal ~~processor~~ recycler or mobile scrap
6 metal dealer to record the information one time and relate future purchase records to
7 that information;

8 B. The date of the scrap metal purchase transaction;

9 C. A general description of the predominant types of scrap metal purchased, which
10 must be made in accordance with the custom of the trade;

11 D. A general description of the configuration of the scrap metal and whether the
12 material is insulated;

13 E. The weight, quantity or volume, recorded in accordance with the custom of the
14 trade, of the scrap metal purchased;

15 F. The consideration paid;

16 G. A signed statement that the seller is the owner or is otherwise authorized to sell
17 the scrap metal on a form provided by the buyer that conspicuously bears the warning
18 that making a false statement is a Class D crime under Title 17-A, section 453; and

19 H. The make, model and number and state of issue of the license plate of the vehicle
20 being used to deliver the scrap metal.

21 **Sec. 18. 30-A MRSA §3775, first ¶**, as enacted by PL 2007, c. 549, §1, is
22 amended to read:

23 A seller may not sell and a scrap metal ~~processor~~ recycler or a mobile scrap metal
24 dealer may not purchase the following scrap metal unless the seller provides to the scrap
25 metal ~~processor~~ recycler or mobile scrap metal dealer, in addition to the requirements of
26 section 3772, subsection 3, a signed statement at the time of sale that the property subject
27 to this transaction is not stolen property to the best of the seller's knowledge, and that the
28 seller is the owner or is otherwise authorized to sell the scrap metal:

29 **Sec. 19. 30-A MRSA §3775, last ¶**, as enacted by PL 2007, c. 549, §1, is
30 amended to read:

31 This section does not apply to transactions in which a scrap metal ~~processor~~ recycler
32 purchases, transfers or otherwise conveys scrap metal to another scrap metal ~~processor~~
33 recycler.

34 **Sec. 20. 30-A MRSA §3775-A**, as enacted by PL 2011, c. 545, §8, is amended to
35 read:

36 **§3775-A. Holding period; inspection**

37 **1. Seven-day hold.** If a law enforcement officer has a reasonable suspicion that
38 scrap metal being held by a scrap metal ~~processor~~ recycler or mobile scrap metal dealer is
39 stolen or related to criminal activity, the officer may issue a written order to the scrap

1 metal ~~processor~~ recycler or mobile scrap metal dealer, specifying the scrap metal that
2 must be retained and the length of time, which may not exceed 7 days, that the scrap
3 metal ~~processor~~ recycler or mobile scrap metal dealer must retain the identified scrap
4 metal.

5 **2. Additional 7-day hold.** Prior to the expiration of the time period of the hold
6 pursuant to subsection 1, a law enforcement officer may impose an additional hold
7 period, which may not exceed 7 days. The law enforcement officer imposing the
8 additional hold shall provide the scrap metal ~~processor~~ recycler or mobile scrap metal
9 dealer with a written description of the scrap metal to be retained and the length of time
10 the scrap metal ~~processor~~ recycler or mobile scrap metal dealer must retain the identified
11 scrap metal.

12 **Sec. 21. 30-A MRSA §3776**, as enacted by PL 2007, c. 549, §1, is amended to
13 read:

14 **§3776. Sales by minors**

15 **1. Prohibition.** A scrap metal ~~processor~~ recycler or mobile scrap metal dealer may
16 not purchase scrap metal from a minor unless:

17 A. The minor is accompanied by the minor's parent or guardian; and

18 B. The parent or guardian provides a written statement to the scrap metal ~~processor~~
19 recycler or mobile scrap metal dealer that the transaction is taking place with the
20 parent's or guardian's full knowledge and consent.

21 **2. Retention of statement.** A scrap metal ~~processor~~ recycler or mobile scrap metal
22 dealer shall preserve and keep on file and make available for inspection to any law
23 enforcement office of the State or of any municipality or county the written statement
24 required by subsection 1, paragraph B for not less than 3 years.

25 **Sec. 22. 30-A MRSA §3778, sub-§2, ¶C**, as enacted by PL 2011, c. 545, §10, is
26 amended to read:

27 C. A person who violates this subchapter after having previously been adjudicated of
28 violating this subchapter more than once commits a civil violation for which a fine of
29 \$4,500 must be adjudged and is prohibited from acting as a scrap metal ~~processor~~
30 recycler or mobile scrap metal dealer for 6 months.

31 **Sec. 23. 30-A MRSA §3779** is enacted to read:

32 **§3779. Rules**

33 The Secretary of State shall adopt rules establishing standards for scrap metal
34 recyclers and mobile scrap metal dealers under this subchapter. Rules adopted pursuant
35 to this section are routine technical rules as defined in Title 5, chapter 375, subchapter
36 2-A.

37 **Sec. 24. Maine Revised Statutes headnote amended; revision clause.** In
38 the Maine Revised Statutes, Title 30-A, chapter 183, subchapter 1-A, in the subchapter

1 headnote, the words "scrap metal processors" are amended to read "scrap metal recyclers
2 and mobile scrap metal dealers" and the Revisor of Statutes shall implement this revision
3 when updating, publishing or republishing the statutes.

4 **SUMMARY**

5 This bill requires scrap metal recyclers and mobile scrap metal dealers, as defined in
6 the bill, to be licensed. The bill repeals the provision of law defining "scrap metal
7 processor," but requires scrap metal recyclers and mobile scrap metal dealers to meet the
8 same record-keeping requirements and restrictions as scrap metal processors.

9 This bill requires the Secretary of State to adopt routine technical rules establishing
10 standards for scrap metal recyclers and mobile scrap metal dealers.

11 This bill also corrects cross-references and makes other technical changes.