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LEGISLATIVE ACTION

Senate

House

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Floor: WD

03/09/2012 09:50 AM

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Senator Smith moved the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (1) of section 538.03, Florida  
Statutes, is reordered and amended, paragraphs (m) through (q)  
of subsection (2) of that section are redesignated as paragraphs  
(l) through (p), respectively, and present paragraphs (k), (l),  
and (n) of that subsection are amended, to read:

538.03 Definitions; applicability.—

(1) As used in this part, the term:

(g)~~(a)~~ "Secondhand dealer" means any person, corporation,  
or other business organization or entity which is not a



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14 secondary metals recycler subject to part II and which is  
15 engaged in the business of purchasing, consigning, or trading  
16 secondhand goods.

17 (f)~~(b)~~ "Precious metals dealer" means a secondhand dealer  
18 who normally or regularly engages in the business of buying used  
19 precious metals for resale. The term does not include those  
20 persons involved in the bulk sale of precious metals from one  
21 secondhand or precious metals dealer to another.

22 (i)~~(e)~~ "Secondhand store" means the place or premises at  
23 which a secondhand dealer is registered to conduct business as a  
24 secondhand dealer or conducts business.

25 (c)~~(d)~~ "Consignment shop" means a shop engaging in the  
26 business of accepting for sale, on consignment, secondhand goods  
27 which, having once been used or transferred from the  
28 manufacturer to the dealer, are then received into the  
29 possession of a third party.

30 (a)~~(e)~~ "Acquire" means to obtain by purchase, consignment,  
31 or trade.

32 (h)~~(f)~~ "Secondhand goods" means personal property  
33 previously owned or used, which is not regulated metals property  
34 regulated under part II and which is purchased, consigned, or  
35 traded as used property. Such secondhand goods do not include  
36 office furniture, pianos, books, clothing, organs, coins, motor  
37 vehicles, costume jewelry, cardio and strength training or  
38 conditioning equipment designed primarily for indoor use, and  
39 secondhand sports equipment that is not permanently labeled with  
40 a serial number. For purposes of this paragraph, "secondhand  
41 sports equipment" does not include golf clubs.

42 (j)~~(g)~~ "Transaction" means any purchase, consignment, or



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43 trade of secondhand goods by a secondhand dealer.

44 (e)~~(h)~~ "Precious metals" means any item containing any  
45 gold, silver, or platinum, or any combination thereof, excluding  
46 any chemical or any automotive, photographic, electrical,  
47 medical, or dental materials or electronic parts.

48 (d)~~(i)~~ "Department" means the Department of Revenue.

49 (b) "Appropriate law enforcement official" means the  
50 sheriff of the county in which a secondhand dealer is located  
51 or, if the secondhand dealer is located within a municipality,  
52 both the police chief of the municipality and the sheriff;  
53 however, the sheriff or police chief may designate as the  
54 appropriate law enforcement official for that county or  
55 municipality, as applicable, any law enforcement officer working  
56 within that respective county or municipality. This paragraph  
57 does not limit the authority or duties of the sheriff.

58 (2) This chapter does not apply to:

59 (k) Any auction business as defined in s. 468.382 operating  
60 as an auction business in the buying and selling of estates,  
61 business inventory, surplus merchandise, or business  
62 liquidations. Any person purchasing, consigning, or trading  
63 secondhand goods at a flea market regardless of whether at a  
64 temporary or permanent business location at the flea market.

65 ~~(l) Any auction business as defined in s. 468.382(1).~~

66 (m)~~(n)~~ A business that contracts with other persons or  
67 entities to offer its secondhand goods for sale, purchase,  
68 consignment, or trade via an Internet website, and that  
69 maintains a shop, store, or other business premises for this  
70 purpose, if all of the following apply:

71 1. The secondhand goods must be available on the website



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72 for viewing by the public at no charge;

73 2. The records of the sale, purchase, consignment, or trade  
74 must be maintained for at least 2 years;

75 3. The records of the sale, purchase, consignment, or  
76 trade, and the description of the secondhand goods as listed on  
77 the website, must contain the serial number of each item, if  
78 any;

79 4. The secondhand goods listed on the website must be  
80 searchable based upon the state or zip code;

81 5. The business must provide the appropriate law  
82 enforcement official ~~agency~~ with the name or names under which  
83 it conducts business on the website;

84 6. The business must allow the appropriate law enforcement  
85 official ~~agency~~ to inspect its business premises at any time  
86 during normal business hours;

87 7. Any payment by the business resulting from such a sale,  
88 purchase, consignment, or trade must be made to the person or  
89 entity with whom the business contracted to offer the goods and  
90 must be made by check or via a money services business licensed  
91 under part II of chapter 560; and

92 8.a. At least 48 hours after the estimated time of  
93 contracting to offer the secondhand goods, the business must  
94 verify that any item having a serial number is not stolen  
95 property by entering the serial number of the item into the  
96 Department of Law Enforcement's stolen article database located  
97 at the Florida Crime Information Center's public access system  
98 website. The business shall record the date and time of such  
99 verification on the contract covering the goods. If such  
100 verification reveals that an item is stolen property, the



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101 business shall immediately remove the item from any website on  
102 which it is being offered and notify the appropriate law  
103 enforcement official ~~agency~~; or

104 b. The business must provide the appropriate law  
105 enforcement official ~~agency~~ with an electronic copy of the name,  
106 address, phone number, driver ~~driver's~~ license number, and  
107 issuing state of the person with whom the business contracted to  
108 offer the goods, as well as an accurate description of the  
109 goods, including make, model, serial number, and any other  
110 unique identifying marks, numbers, names, or letters that may be  
111 on an item, in a format agreed upon by the business and the  
112 appropriate law enforcement official ~~agency~~. This information  
113 must be provided to the appropriate law enforcement official  
114 ~~agency~~ within 24 hours after entering into the contract unless  
115 other arrangements are made between the business and the law  
116 enforcement official ~~agency~~.

117 Section 2. Subsections (1), (6), and (7) of section 538.04,  
118 Florida Statutes, are amended to read:

119 538.04 Recordkeeping requirements; penalties.—

120 (1) A secondhand dealer ~~dealers~~ shall complete a secondhand  
121 dealers transaction form at the time of the actual transaction.  
122 A secondhand dealer shall maintain a copy of a completed  
123 transaction form on the registered premises for at least 1 year  
124 after the date of the transaction. However, the secondhand  
125 dealer shall maintain a copy of the transaction form for not  
126 less than 3 years. Unless other arrangements are ~~have been~~  
127 agreed upon by the secondhand dealer and the appropriate law  
128 enforcement official ~~agency~~, the secondhand dealer shall, within  
129 24 hours after acquiring ~~the acquisition of~~ any secondhand



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130 goods, deliver to such official ~~the police department of the~~  
131 ~~municipality where the goods were acquired or, if the goods were~~  
132 ~~acquired outside of a municipality, to the sheriff's department~~  
133 ~~of the county where the goods were acquired,~~ a record of the  
134 transaction on a form approved by the Department of Law  
135 Enforcement. Such record shall contain:

136 (a) The time, date, and place of the transaction.

137 (b) A complete and accurate description of the goods  
138 acquired, including the following information, if applicable:

139 1. Brand name.

140 2. Model number.

141 3. Manufacturer's serial number.

142 4. Size.

143 5. Color, as apparent to the untrained eye.

144 6. Precious metal type, weight, and content if known.

145 7. Gemstone description, including the number of stones, if  
146 applicable.

147 8. In the case of firearms, the type of action, caliber or  
148 gauge, number of barrels, barrel length, and finish.

149 9. Any other unique identifying marks, numbers, or letters.

150 (c) A description of the person from whom the goods were  
151 acquired, including:

152 1. Full name, current residential address, workplace, and  
153 home and work phone numbers.

154 2. Height, weight, date of birth, race, gender, hair color,  
155 eye color, and any other identifying marks.

156 3. The right thumbprint, free of smudges and smears, of the  
157 person from whom the goods were acquired.

158 (d) Any other information required by the form approved by



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159 the Department of Law Enforcement.

160 (6) If the appropriate law enforcement official agency  
161 supplies a secondhand dealer with appropriate software and the  
162 secondhand dealer has computer capability, the secondhand dealer  
163 must ~~transactions shall be~~ electronically transmit secondhand  
164 dealer transactions required by this section to such official  
165 ~~transferred~~. If a secondhand dealer does not have computer  
166 capability, the appropriate law enforcement official agency may  
167 provide the secondhand dealer with a computer and all equipment  
168 necessary to equipment for the purpose of electronically  
169 transmit transferring secondhand dealer transactions. The  
170 appropriate law enforcement official agency shall retain  
171 ownership of the computer, unless otherwise agreed upon, and  
172 the secondhand dealer shall maintain the computer in good  
173 working order, except for ordinary wear and ~~tear excepted~~. A If  
174 ~~the~~ secondhand dealer who transmits transfers secondhand dealer  
175 transactions electronically, ~~the secondhand dealer~~ is not  
176 required to also deliver ~~to the appropriate law enforcement~~  
177 ~~agency~~ the original or paper copies of the secondhand  
178 transaction forms to the appropriate law enforcement official.  
179 However, such official may, for purposes the purpose of a  
180 criminal investigation, ~~the appropriate law enforcement agency~~  
181 ~~may request that~~ the secondhand dealer to deliver the produce an  
182 original ~~of a~~ transaction form that was has been electronically  
183 transmitted transferred. The secondhand dealer shall deliver the  
184 ~~this~~ form to the appropriate law enforcement official agency  
185 within 24 hours after receipt of the request.

186 (7) If the original transaction form is lost or destroyed  
187 by the appropriate law enforcement official agency, a copy may



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188 be used by the secondhand dealer as evidence in court. When an  
189 electronic image of a customer's identification is accepted for  
190 a transaction, the secondhand dealer must maintain the  
191 electronic image in order to meet the recordkeeping requirements  
192 applicable to the original transaction form. If a criminal  
193 investigation occurs, the secondhand dealer shall, upon request,  
194 provide a clear and legible copy of the image to the appropriate  
195 law enforcement official agency.

196 Section 3. Section 538.18, Florida Statutes, is reordered  
197 and amended to read:

198 538.18 Definitions.—As used in this part, the term:

199 (3)~~(1)~~ "Ferrous metals" means any metals containing  
200 significant quantities of iron or steel.

201 (4)~~(2)~~ "Fixed location" means any site occupied by a  
202 secondary metals recycler as owner of the site or as lessee of  
203 the site under a lease or other rental agreement providing for  
204 occupation of the site by the secondary metals recycler for a  
205 total duration of not less than 364 days.

206 (5)~~(3)~~ "Money" means a medium of exchange authorized or  
207 adopted by a domestic or foreign government as part of its  
208 currency.

209 (6)~~(4)~~ "Nonferrous metals" means metals not containing  
210 significant quantities of iron or steel, including, without  
211 limitation, copper, brass, aluminum, bronze, lead, zinc, nickel,  
212 and alloys thereof, excluding precious metals subject to  
213 regulation under part I.

214 (7)~~(5)~~ "Personal identification card" means a valid Florida  
215 driver license, a Florida identification card issued by the  
216 Department of Highway Safety and Motor Vehicles, an equivalent





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217 form of identification issued by another state, a passport, or  
218 an employment authorization issued by the United States Bureau  
219 of Citizenship and Immigration Services that contains an  
220 individual's photograph and current address ~~any government-~~  
221 ~~issued photographic identification card.~~

222 (8)~~(6)~~ "Purchase transaction" means a transaction in which  
223 a secondary metals recycler gives consideration for regulated  
224 metals property.

225 (9)~~(7)~~ "Regulated metals property" means any item composed  
226 primarily of any nonferrous metals, but shall not include  
227 aluminum beverage containers, used beverage containers, or  
228 similar beverage containers. The term shall include stainless  
229 steel beer kegs.

230 (10)~~(8)~~ "Secondary metals recycler" means any person who:

231 (a) Is engaged, from a fixed location or otherwise, in the  
232 business of gathering or obtaining ferrous or nonferrous metals  
233 that have served their original economic purpose or is in the  
234 business of performing the manufacturing process by which  
235 ferrous metals or nonferrous metals are converted into raw  
236 material products consisting of prepared grades and having an  
237 existing or potential economic value; or

238 (b) Has facilities for performing the manufacturing process  
239 by which ferrous metals or nonferrous metals are converted into  
240 raw material products consisting of prepared grades and having  
241 an existing or potential economic value, other than by the  
242 exclusive use of hand tools, by methods including, without  
243 limitation, processing, sorting, cutting, classifying, cleaning,  
244 baling, wrapping, shredding, shearing, or changing the physical  
245 form or chemical content thereof.



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246 (2)~~(9)~~ "Department" means the Department of Revenue.

247 (1) "Appropriate law enforcement official" means the  
248 sheriff of the county in which a secondary metals recycler is  
249 located or, if the secondary metals recycler is located within a  
250 municipality, the police chief of the municipality in which the  
251 secondary metals recycler is located; however, the sheriff or  
252 police chief may designate as the appropriate law enforcement  
253 official for the county or municipality, as applicable, any law  
254 enforcement officer working within that respective county or  
255 municipality. This subsection does not limit the authority or  
256 duties of the sheriff.

257 (11) "Utility" means a public utility or electric utility  
258 as defined in s. 366.02 or a person, firm, corporation,  
259 association, or political subdivision, whether private,  
260 municipal, county, or cooperative, that is engaged in the sale,  
261 generation, provision, or delivery of gas, electricity, heat,  
262 water, oil, sewer service, or telephone, telegraph, radio,  
263 telecommunications, or communications service.

264 Section 4. Paragraph (u) of subsection (1) of section  
265 319.30, Florida Statutes, is amended to read:

266 319.30 Definitions; dismantling, destruction, change of  
267 identity of motor vehicle or mobile home; salvage.—

268 (1) As used in this section, the term:

269 (u) "Secondary metals recycler" means secondary metals  
270 recycler as defined in s. 538.18 ~~538.18(8)~~.

271 Section 5. Section 538.19, Florida Statutes, is amended to  
272 read:

273 538.19 Records required; limitation of liability.—

274 (1) A secondary metals recycler shall maintain a legible



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275 paper record of all purchase transactions to which such  
276 secondary metals recycler is a party. A secondary metals  
277 recycler shall also maintain a legible electronic record, in the  
278 English language, of all such purchase transactions. The  
279 appropriate law enforcement official may provide data  
280 specifications regarding the electronic record format, but such  
281 format must be approved by the Department of Law Enforcement. An  
282 electronic record of a purchase transaction shall be  
283 electronically transmitted to the appropriate law enforcement  
284 official no later than 10 a.m. of the business day following the  
285 date of the purchase transaction. The record transmitted to the  
286 appropriate law enforcement official must not contain the price  
287 paid for the items. A secondary metals recycler who transmits  
288 such records electronically is not required to also deliver the  
289 original or paper copies of the transaction forms to the  
290 appropriate law enforcement official. However, such official  
291 may, for purposes of a criminal investigation, request the  
292 secondary metals recycler to make available the original  
293 transaction form that was electronically transmitted. This  
294 original transaction form must include the price paid for the  
295 items. The secondary metals recycler shall make the form  
296 available to the appropriate law enforcement official within 24  
297 hours after receipt of the request.

298 (2) The following information must be maintained on the a  
299 form approved by the Department of Law Enforcement for each  
300 purchase transaction:

301 (a) The name and address of the secondary metals recycler.

302 (b) The name, initials, or other identification of the  
303 individual entering the information on the ticket.



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- 304 (c) The date and time of the transaction.
- 305 (d) The weight, quantity, or volume, and a description of  
306 the type of regulated metals property purchased in a purchase  
307 transaction.
- 308 (e) The amount of consideration given in a purchase  
309 transaction for the regulated metals property.
- 310 (f) A signed statement from the person delivering the  
311 regulated metals property stating that she or he is the rightful  
312 owner of, or is entitled to sell, the regulated metals property  
313 being sold. If the purchase involves a stainless steel beer keg,  
314 the seller must provide written documentation from the  
315 manufacturer that the seller is the owner of the stainless steel  
316 beer keg or is an employee or agent of the manufacturer.
- 317 (g) The distinctive number from the personal identification  
318 card of the person delivering the regulated metals property to  
319 the secondary metals recycler.
- 320 (h) A description of the person from whom the regulated  
321 metals property was ~~goods were~~ acquired, including:
- 322 1. Full name, current residential address, workplace, and  
323 home and work phone numbers.
  - 324 2. Height, weight, date of birth, race, gender, hair color,  
325 eye color, and any other identifying marks.
  - 326 3. The right thumbprint, free of smudges and smears.
  - 327 4. Vehicle description to include the make, model, and tag  
328 number of the vehicle and trailer of the person selling the  
329 regulated metals property.
  - 330 5. Any other information required by the form approved by  
331 the Department of Law Enforcement.
- 332 (i) A photograph, videotape, or digital image of the



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333 regulated metals being sold.

334 (j) A photograph, videotape, or similar likeness of the  
335 person receiving consideration in which such person's facial  
336 features are clearly visible.

337 ~~(3) Any secondary metals recycler that maintains an~~  
338 ~~electronic database containing the information required in~~  
339 ~~paragraph (2) (h), along with an oath of ownership with a~~  
340 ~~signature of the seller of the secondary metals being purchased~~  
341 ~~by the secondary metals recycler and a right thumbprint that has~~  
342 ~~no smudges and smears on the oath of ownership for each purchase~~  
343 ~~transaction, shall be exempt from the records requirement of~~  
344 ~~paragraph (2) (h).~~ A secondary metals recycler complies with the  
345 requirements of this section if it maintains an electronic  
346 database containing the information required by subsection (2)  
347 ~~paragraph (2) (h)~~ as long as the electronic information required  
348 by subsection (2) ~~paragraph (2) (h)~~, along with an electronic  
349 oath of ownership with an electronic signature of the seller of  
350 the secondary metals being purchased by the secondary metals  
351 recyclers and an electronic image of the seller's right  
352 thumbprint that has no smudges and smears, can be downloaded  
353 onto a paper form in the image of the form approved by the  
354 Department of Law Enforcement as provided in subsection (2).

355 (4) A secondary metals recycler shall maintain or cause to  
356 be maintained the information required by this section for not  
357 less than 3 ~~5~~ years from the date of the purchase transaction.

358 (5) ~~If a purchase transaction involves the transfer of~~  
359 ~~regulated metals property from~~ A secondary metals recycler  
360 registered with the department that purchases a motor vehicle  
361 from a licensed salvage motor vehicle dealer as defined in s.



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362 320.27 or to another secondary metals recycler registered with  
363 the department and uses a mechanical crusher to convert the  
364 vehicle to scrap metal must obtain a signed statement from the  
365 seller stating that the seller has surrendered the vehicle's  
366 certificate of title to the Department of Highway Safety and  
367 Motor Vehicles as provided in s. 319.30 or otherwise complied  
368 with the titling requirements provided by law for conversion of  
369 the vehicle to scrap metal. A, the secondary metals recycler is  
370 not liable for the seller's failure to comply with the titling  
371 requirements provided by law for conversion of a motor vehicle  
372 to scrap metal if the secondary metals recycler obtains and  
373 maintains the seller's signed statement receiving the regulated  
374 metals property shall record the name and address of the  
375 secondary metals recycler from which it received the regulated  
376 metals property in lieu of the requirements of paragraph (2) (h).

377 Section 6. Section 538.235, Florida Statutes, is amended to  
378 read:

379 538.235 Method of payment.—

380 (1) A secondary metals recycler may ~~shall~~ not enter into  
381 any cash transaction:

382 (a) In excess of \$1,000 in payment for the purchase of  
383 regulated metals property; or

384 (b) In any amount for the purchase of restricted regulated  
385 metals property.

386 (2) Payment in excess of \$1,000 for the purchase of  
387 regulated metals property shall be made by check issued to the  
388 seller of the metal and payable to the seller.

389 (3) Payment for the purchase of restricted regulated metals  
390 property shall be made by check issued to the seller of the



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391 metal and payable to the seller or by electronic payment to the  
392 seller's bank account or the seller's employer's bank account.

393 (a) Each check shall be mailed by the secondary metals  
394 recycler directly to the street address of the seller that is on  
395 file with the secondary metals recycler unless otherwise  
396 provided in this part. A check may not be mailed to a post  
397 office box. Electronic payments shall be transmitted to an  
398 account for which the seller is listed as an account holder or  
399 an employee or agent of the seller.

400 (b) Each check or electronic payment shall be mailed or  
401 transmitted by the secondary metals recycler to the seller  
402 within 3 days after the purchase transaction unless otherwise  
403 provided in this section.

404 (c) The secondary metals recycler may provide a check at  
405 the time of the purchase transaction, rather than mailing the  
406 check as required in paragraph (a), if the seller is:

407 1. An organization, corporation, or association registered  
408 with the state as a charitable, philanthropic, religious,  
409 fraternal, civic, patriotic, social, or school-sponsored  
410 organization or association, or any nonprofit corporation or  
411 association;

412 2. A law enforcement officer acting in an official  
413 capacity;

414 3. A trustee in bankruptcy, executor, administrator, or  
415 receiver who has presented proof of such status to the secondary  
416 metals recycler;

417 4. A public official acting under judicial process or  
418 authority who has presented proof of such status to the  
419 secondary metals recycler;



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420           5. A sheriff acting under the authority of a court's writ  
421 of execution, or by virtue of any process issued by a court, if  
422 proof thereof has been presented to the secondary metals  
423 recycler; or

424           6. A manufacturing, industrial, or other commercial vendor  
425 that generates regulated materials in the ordinary course of  
426 business.

427           Section 7. Subsection (1) of section 538.25, Florida  
428 Statutes, is amended to read:

429           538.25 Registration.—

430           (1) A ~~No~~ person may not ~~shall~~ engage in business as a  
431 secondary metals recycler at any location without registering  
432 with the department. The department shall accept applications  
433 only from a fixed business address. The department may not  
434 accept an application that provides an address of a hotel room  
435 or motel room, a vehicle, or a post office box.

436           (a) A fee equal to the federal and state costs for  
437 processing required fingerprints must be submitted to the  
438 department with each application for registration. One  
439 application is required for each secondary metals recycler. If a  
440 secondary metals recycler is the owner of more than one  
441 secondary metals recycling location, the application must list  
442 each location, and the department shall issue a duplicate  
443 registration for each location. For purposes of subsections (3),  
444 (4), and (5), these duplicate registrations shall be deemed  
445 individual registrations. A secondary metals recycler shall pay  
446 a fee of \$6 per location at the time of registration and an  
447 annual renewal fee of \$6 per location on October 1 of each year.  
448 All fees collected, less costs of administration, shall be





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449 transferred into the Operating Trust Fund.

450 (b) The department shall forward the full set of  
451 fingerprints to the Department of Law Enforcement for state and  
452 federal processing, provided the federal service is available,  
453 to be processed for any criminal justice information as defined  
454 in s. 943.045. The cost of processing such fingerprints shall be  
455 payable to the Department of Law Enforcement by the department.  
456 The department may issue a temporary registration to each  
457 location pending completion of the background check by state and  
458 federal law enforcement agencies, but shall revoke such  
459 temporary registration if the completed background check reveals  
460 a prohibited criminal background. The Department of Law  
461 Enforcement shall report its findings to the Department of  
462 Revenue within 30 days after the date fingerprint cards are  
463 submitted for criminal justice information.

464 (c) An applicant for a secondary metals recycler  
465 registration must be a natural person who has reached the age of  
466 18 years or a corporation organized or qualified to do business  
467 in the state.

468 1. If the applicant is a natural person, the registration  
469 must include a complete set of her or his fingerprints,  
470 certified by an authorized law enforcement officer, and a recent  
471 fullface photographic identification card of herself or himself.

472 2. If the applicant is a partnership, all the partners must  
473 make application for registration.

474 3. If the applicant is a corporation, the registration must  
475 include the name and address of such corporation's registered  
476 agent for service of process in the state and a certified copy  
477 of statement from the Secretary of State that the corporation is



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478 duly organized in the state or, if the corporation is organized  
479 in a state other than Florida, a certified copy of the statement  
480 that the corporation is duly qualified to do business in this  
481 state.

482 Section 8. Section 538.26, Florida Statutes, is amended to  
483 read:

484 538.26 Certain acts and practices prohibited.—It is  
485 unlawful for a secondary metals recycler to do or allow any of  
486 the following acts:

487 (1) Purchase regulated metals property, restricted  
488 regulated metals property, or ferrous metals before 7 a.m. or  
489 after 7 p.m. between the hours of 9 p.m. and 6 a.m.

490 ~~(2) Fail to pay any sales tax owed to the department or~~  
491 ~~fail to have a sales tax registration number.~~

492 ~~(3) Purchase regulated metals property at a location other~~  
493 ~~than the place of business set forth on the registration.~~

494 (2)(4) Purchase regulated metals property, restricted  
495 regulated metals property, or ferrous metals from any seller who  
496 presents such property for sale at the registered location of  
497 the secondary metals recycler when such property was not  
498 transported in a motor vehicle.

499 (3)(5) Purchase regulated metals property, restricted  
500 regulated metals property, or ferrous metals ~~in return for money~~  
501 ~~from a trailer, a vehicle, or any location other than a fixed~~  
502 ~~location or from any person who is required to prove ownership~~  
503 ~~pursuant to subsection (4). However, regulated metals may be~~  
504 ~~purchased from a nonfixed location, or from such person, with~~  
505 ~~any negotiable or nonnegotiable instrument, including a check or~~  
506 ~~draft or any other type of instrument purchased with money and~~



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507 ~~sold for the purpose of making payments or transfers to others.~~

508 (4) Purchase regulated metals property from a seller who:

509 (a) Uses a name other than his or her own name or the

510 registered name of the seller's business;

511 (b) Is younger than 18 years of age; or

512 (c) Is visibly or apparently under the influence of drugs  
513 or alcohol.

514 (5) (a) Purchase any restricted regulated metals property  
515 listed in paragraph (b) unless the secondary metals recycler  
516 obtains reasonable proof that the seller:

517 1. Owns such property. Reasonable proof of ownership may  
518 include, but is not limited to, a receipt or bill of sale; or

519 2. Is an employee, agent, or contractor of the property's  
520 owner who is authorized to sell the property on behalf of the  
521 owner. Reasonable proof of authorization to sell the property  
522 includes, but is not limited to, a signed letter on the owner's  
523 letterhead, dated no later than 90 days before the sale,  
524 authorizing the seller to sell the property.

525 (b) The purchase of any of the following regulated metals  
526 property is subject to the restrictions provided in paragraph

527 (a):

528 1. A manhole cover.

529 2. An electric light pole or other utility structure and  
530 its fixtures, wires, and hardware that are readily identifiable  
531 as connected to the utility structure.

532 3. A guard rail.

533 4. A street sign, traffic sign, or traffic signal and its  
534 fixtures and hardware.

535 5. Communication, transmission, distribution, and service



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- 536 wire from a utility, including copper or aluminum bus bars,  
537 connectors, grounding plates, or grounding wire.
- 538 6. A funeral marker or funeral vase.
- 539 7. A historical marker.
- 540 8. Railroad equipment, including, but not limited to, a tie  
541 plate, signal house, control box, switch plate, E clip, or rail  
542 tie junction.
- 543 9. Any metal item that is observably marked upon reasonable  
544 inspection with any form of the name, initials, or logo of a  
545 governmental entity, utility company, cemetery, or railroad.
- 546 10. A copper, aluminum, or aluminum-copper condensing or  
547 evaporator coil, including its tubing or rods, from an air-  
548 conditioning or heating unit, excluding coils from window air-  
549 conditioning or heating units and motor vehicle air-conditioning  
550 or heating units.
- 551 11. An aluminum or stainless steel container or bottle  
552 designed to hold propane for fueling forklifts.
- 553 12. A stainless steel beer keg.
- 554 13. A catalytic converter or any nonferrous part of a  
555 catalytic converter unless purchased as part of a motor vehicle.
- 556 14. Metallic wire that has been burned in whole or in part  
557 to remove insulation.
- 558 15. A brass or bronze commercial valve or fitting, referred  
559 to as a "fire department connection and control valve" or an  
560 "FDC valve," that is commonly used on structures for access to  
561 water for the purpose of extinguishing fires.
- 562 16. A brass or bronze commercial potable water backflow  
563 preventer valve that is commonly used to prevent backflow of  
564 potable water from commercial structures into municipal domestic



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565 water service systems.  
566 17. A shopping cart.  
567 18. A brass water meter.  
568 19. A storm grate.  
569 20. A brass sprinkler head used in commercial agriculture.  
570 Section 9. Section 538.28, Florida Statutes, is created to  
571 read:  
572 538.28 Local government regulation.—  
573 (1) The regulation of purchase transactions involving  
574 regulated metals property is preempted to the state. Except as  
575 provided in subsection (2), an ordinance or regulation adopted  
576 by a county or municipality relating to the purchase or sale of  
577 regulated metals property or the registration or licensure of  
578 secondary metals recyclers is void.  
579 (2) This part does not preempt an ordinance or regulation  
580 originally enacted by a county or municipality before March 1,  
581 2012. Such ordinance or regulation may subsequently be amended  
582 to incorporate any provision of this part.  
583 (3) This section does not apply to a county as defined in  
584 s. 125.011(1) until July 1, 2013.  
585 Section 10. Subsection (1) of section 538.23, Florida  
586 Statutes, is amended to read:  
587 538.23 Violations and penalties.—  
588 (1) (a) Except as provided in paragraph (b), a secondary  
589 metals recycler who knowingly and intentionally:  
590 1. Violates s. 538.20 or s. 538.21;  
591 2. Engages in a pattern of failing to keep records required  
592 by s. 538.19;  
593 3. Violates s. 538.26(4); or



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594 4. Violates s. 538.235,  
595  
596 commits a felony of the third ~~misdemeanor of the first~~ degree,  
597 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

598 (b) A secondary metals recycler who commits a third or  
599 subsequent violation of paragraph (a) commits a felony of the  
600 first ~~third~~ degree, punishable as provided in s. 775.082, s.  
601 775.083, or s. 775.084.

602 Section 11. Section 812.145, Florida Statutes, is amended  
603 to read:

604 812.145 Theft of copper or other nonferrous metals.—

605 (1) As used in this section, the term ~~terms~~:

606 (a) "Communications services" means the transmission,  
607 conveyance, or routing of voice, data, audio, video, or any  
608 other information or signals, including cable services, to a  
609 point, or between or among points, by or through any electronic,  
610 radio, satellite, cable, optical, microwave, or other medium or  
611 method now in existence or hereafter devised, regardless of the  
612 protocol used for such transmission or conveyance. The term  
613 includes such transmission, conveyance, or routing in which  
614 computer processing applications are used to act on the form,  
615 code, or protocol of the content for purposes of transmission,  
616 conveyance, or routing without regard to whether such service is  
617 referred to as voice-over-Internet-protocol services or is  
618 classified by the Federal Communications Commission as enhanced  
619 or value-added.

620 (b) "Communications services provider" includes any person,  
621 firm, corporation, or political subdivision, whether private,  
622 municipal, county, or cooperative, which is engaged in the sale,



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623 generation, provision, or delivery of communications services.

624 (c) "Copper or other nonferrous metals" means metals not  
625 containing significant quantities of iron or steel, including,  
626 without limitation, copper, copper alloy, copper utility or  
627 communications service wire, brass, aluminum, bronze, lead,  
628 zinc, nickel, and alloys thereof.

629 (d) "Electrical substation" means a facility that takes  
630 electricity from the transmission grid and converts it to a  
631 lower voltage so it can be distributed to customers in the local  
632 area on the local distribution grid through one or more  
633 distribution lines less than 69 kilovolts in size.

634 (e)-~~d~~ "Utility" means a public utility or electric utility  
635 as defined in s. 366.02, or a person, firm, corporation,  
636 association, or political subdivision, whether private,  
637 municipal, county, or cooperative, which is engaged in the sale,  
638 generation, provision, or delivery of gas, electricity, heat,  
639 water, oil, sewer service, or telephone, telegraph, radio,  
640 telecommunications, or communications service. The term includes  
641 any person, firm, corporation, association, or political  
642 subdivision, whether private, municipal, county, or cooperative,  
643 which is engaged in the sale, generation, provision, or delivery  
644 of gas or electricity services.

645 (f)-~~e~~ "Utility service" means electricity for light, heat,  
646 or power and natural or manufactured gas for light, heat, or  
647 power, including the transportation, delivery, transmission, and  
648 distribution of electricity or natural or manufactured gas.

649 (2) A person who knowingly and intentionally takes copper  
650 or other nonferrous metals from a utility or communications  
651 services provider, thereby causing damage to the facilities of a



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652 utility or communications services provider, interrupting or  
653 interfering with utility service or communications services, or  
654 interfering with the ability of a utility or communications  
655 services provider to provide service, commits a felony of the  
656 first degree, punishable as provided in s. 775.082, s. 775.083,  
657 or s. 775.084.

658 (3) A person who is found in a civil action to have  
659 illegally taken copper or other nonferrous metals from a utility  
660 or communications services provider based on a conviction for a  
661 violation of subsection (2) is liable to the utility or  
662 communications services provider for damages in an amount equal  
663 to three times the actual damages sustained by the utility or  
664 communications services provider due to any personal injury,  
665 wrongful death, or property damage caused by the illegal taking  
666 of the nonferrous metals or an amount equal to three times any  
667 claim made against the utility or communications services  
668 provider for any personal injury, wrongful death, or property  
669 damage caused by the malfunction of the facilities of the  
670 utility or communications services provider resulting from the  
671 violation of subsection (2), whichever is greater.

672 (4) A person who knowingly and intentionally removes copper  
673 or other nonferrous metals from an electrical substation without  
674 authorization of the utility commits a felony of the first  
675 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
676 775.084.

677 Section 12. (1) A public or private owner of metal property  
678 is not civilly liable to a person who is injured during the  
679 theft or attempted theft of metal property.

680 (2) A public or private owner of metal property is not





681 civilly liable to a person for injuries caused by a dangerous  
682 condition created as a result of the theft or attempted theft of  
683 the owner's metal property when the owner did not know, and  
684 could not have reasonably known, of the dangerous condition.

685 (3) This section does not create or impose a duty of care  
686 upon an owner of metal property which would not otherwise exist  
687 under common law.

688 Section 13. This act shall take effect July 1, 2012.

689  
690 ===== T I T L E A M E N D M E N T =====

691 And the title is amended as follows:

692 Delete everything before the enacting clause  
693 and insert:

694 A bill to be entitled

695 An act relating to transactions by secondhand dealers  
696 and secondary metals recyclers; amending s. 538.03,  
697 F.S.; reordering paragraphs and defining the term  
698 "appropriate law enforcement official"; deleting  
699 exemptions from regulation as a secondhand dealer  
700 which relate to flea market transactions and auction  
701 businesses; conforming terminology; amending s.  
702 538.04, F.S., relating to recordkeeping requirements;  
703 conforming terminology and clarifying provisions;  
704 amending s. 538.18, F.S.; revising, reordering, and  
705 providing definitions; amending s. 319.30, F.S.;  
706 conforming a cross-reference; amending s. 538.19,  
707 F.S.; revising requirements for the types of  
708 information that secondary metals recyclers must  
709 obtain and maintain regarding purchase transactions,



710 including requirements for the maintenance and  
711 transmission of electronic records of such  
712 transactions; revising the period required for  
713 secondary metals recyclers to maintain certain  
714 information regarding purchase transactions involving  
715 regulated metals property; limiting the liability of  
716 secondary metals recyclers for the conversion of motor  
717 vehicles to scrap metal under certain circumstances;  
718 amending s. 538.235, F.S.; revising requirements for  
719 payments made by secondary metals recyclers to sellers  
720 of regulated metals property, to prohibit certain cash  
721 transactions; providing penalties; providing methods  
722 of payment for restricted regulated metals property;  
723 requiring that purchases of certain property be made  
724 by check or by electronic payment; providing  
725 procedures; amending s. 538.25, F.S.; requiring an  
726 application for registration as a secondary metals  
727 recycler to contain the address of a fixed business  
728 location; amending s. 538.26, F.S.; prohibiting  
729 secondary metals recyclers from purchasing regulated  
730 metals property, restricted regulated metals property,  
731 or ferrous metals during specified times, from certain  
732 locations, or from certain sellers; prohibiting the  
733 purchase of specified restricted regulated metals  
734 property without obtaining certain proof of the  
735 seller's ownership and authorization to sell the  
736 property; providing penalties; creating s. 538.28,  
737 F.S.; preempting to the state the regulation of  
738 secondary metals recyclers and purchase transactions



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739 involving regulated metals property; providing  
740 exceptions; providing for applicability; amending s.  
741 538.23, F.S.; increasing the criminal penalties for  
742 specified violations relating to secondary metals  
743 recycling; providing increased criminal penalties for  
744 third and subsequent criminal violations; amending s.  
745 812.145, F.S., relating to theft of copper or other  
746 nonferrous metals from a utility or communications  
747 services provider; revising and providing definitions;  
748 providing civil liability and penalties; prohibiting  
749 removing copper or other nonferrous metals from an  
750 electrical substation site without authorization of  
751 the utility; providing criminal penalties; providing  
752 an effective date.