

1                   A bill to be entitled  
2           An act relating to transactions by secondhand dealers  
3           and secondary metals recyclers; amending s. 538.03,  
4           F.S.; defining the term "appropriate law enforcement  
5           official"; deleting exemptions from regulation as a  
6           secondhand dealer which relate to flea market  
7           transactions and auction businesses; conforming  
8           terminology; amending s. 538.04, F.S., relating to  
9           recordkeeping requirements; conforming terminology and  
10          clarifying provisions; amending s. 538.18, F.S.;  
11          revising and providing definitions; amending s.  
12          319.30, F.S.; conforming a cross-reference; amending  
13          s. 538.19, F.S.; revising requirements for the types  
14          of information that secondary metals recyclers must  
15          obtain and maintain regarding purchase transactions,  
16          including requirements for the maintenance and  
17          transmission of electronic records of such  
18          transactions; revising the period required for  
19          secondary metals recyclers to maintain certain  
20          information regarding purchase transactions involving  
21          regulated metals property; limiting the liability of  
22          secondary metals recyclers for the conversion of motor  
23          vehicles to scrap metal under certain circumstances;  
24          amending s. 538.235, F.S.; revising requirements for  
25          payments made by secondary metals recyclers to sellers  
26          of regulated metals property, to prohibit certain cash  
27          transactions; providing penalties; providing methods  
28          of payment for restricted regulated metals property;

29 requiring that purchases of certain property be made  
30 by check or by electronic payment; providing  
31 procedures; amending s. 538.25, F.S.; requiring an  
32 application for registration as a secondary metals  
33 recycler to contain the address of a fixed business  
34 location; amending s. 538.26, F.S.; prohibiting  
35 secondary metals recyclers from purchasing regulated  
36 metals property, restricted regulated metals property,  
37 or ferrous metals during specified times, from certain  
38 locations, or from certain sellers; prohibiting the  
39 purchase of specified restricted regulated metals  
40 property without obtaining certain proof of the  
41 seller's ownership and authorization to sell the  
42 property; providing penalties; creating s. 538.28,  
43 F.S.; preempting to the state the regulation of  
44 secondary metals recyclers and purchase transactions  
45 involving regulated metals property; exempting county  
46 and municipal ordinances and regulations enacted  
47 before March 1, 2012, from preemption; reenacting and  
48 amending s. 538.23(1)(a), F.S., relating to violations  
49 and penalties, to incorporate the amendments made by  
50 this act to ss. 538.19, 538.235, and 538.26, F.S., in  
51 references thereto; correcting a cross-reference;  
52 amending s. 812.145, F.S.; revising the definition of  
53 the term "utility"; providing that a person who  
54 assists in the taking of certain metals commits a  
55 felony of the first degree; providing that a person  
56 who is found to have illegally taken copper or other

57 nonferrous metals from a utility or communications  
 58 services provider is liable for a specified amount of  
 59 damages; limiting the liability of a public or private  
 60 owner of metal property for injuries occurring during  
 61 the theft or attempted theft of metal property and for  
 62 injuries occurring as the result of the theft or  
 63 attempted theft; providing that no additional duty of  
 64 care is imposed on the owner of metal property;  
 65 providing an effective date.

66  
 67 Be It Enacted by the Legislature of the State of Florida:

68  
 69 Section 1. Subsection (1) of section 538.03, Florida  
 70 Statutes, is amended, paragraphs (m) through (q) of subsection  
 71 (2) of that section are redesignated as paragraphs (k) through  
 72 (o), respectively, and present paragraphs (k), (l), and (n) of  
 73 that subsection are amended, to read:

74 538.03 Definitions; applicability.—

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

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

78 (b) "Appropriate law enforcement official" means the  
 79 sheriff of the county in which a secondhand dealer is located  
 80 or, if the secondhand dealer is located within a municipality,  
 81 both the police chief of the municipality and the sheriff;  
 82 however, the sheriff or police chief may designate as the  
 83 appropriate law enforcement official for that county or  
 84 municipality, as applicable, any law enforcement officer working

85 within that respective county or municipality. This paragraph  
86 does not limit the authority or duties of the sheriff.

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

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

93 (e)~~(h)~~ "Precious metals" means any item containing any  
94 gold, silver, or platinum, or any combination thereof, excluding  
95 any chemical or any automotive, photographic, electrical,  
96 medical, or dental materials or electronic parts.

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

102 (g)~~(a)~~ "Secondhand dealer" means any person, corporation,  
103 or other business organization or entity which is not a  
104 secondary metals recycler subject to part II and which is  
105 engaged in the business of purchasing, consigning, or trading  
106 secondhand goods.

107 (h)~~(f)~~ "Secondhand goods" means personal property  
108 previously owned or used, which is not regulated metals property  
109 regulated under part II and which is purchased, consigned, or  
110 traded as used property. Such secondhand goods do not include  
111 office furniture, pianos, books, clothing, organs, coins, motor  
112 vehicles, costume jewelry, cardio and strength training or

113 conditioning equipment designed primarily for indoor use, and  
114 secondhand sports equipment that is not permanently labeled with  
115 a serial number. For purposes of this paragraph, "secondhand  
116 sports equipment" does not include golf clubs.

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

120 (j)~~(g)~~ "Transaction" means any purchase, consignment, or  
121 trade of secondhand goods by a secondhand dealer.

122 (2) This chapter does not apply to:

123 ~~(k) Any person purchasing, consigning, or trading~~  
124 ~~secondhand goods at a flea market regardless of whether at a~~  
125 ~~temporary or permanent business location at the flea market.~~

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

127 (1)~~(n)~~ A business that contracts with other persons or  
128 entities to offer its secondhand goods for sale, purchase,  
129 consignment, or trade via an Internet website, and that  
130 maintains a shop, store, or other business premises for this  
131 purpose, if all of the following apply:

132 1. The secondhand goods must be available on the website  
133 for viewing by the public at no charge;

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

136 3. The records of the sale, purchase, consignment, or  
137 trade, and the description of the secondhand goods as listed on  
138 the website, must contain the serial number of each item, if  
139 any;

140 4. The secondhand goods listed on the website must be

141 | searchable based upon the state or zip code;

142 |       5. The business must provide the appropriate law  
143 | enforcement official ~~agency~~ with the name or names under which  
144 | it conducts business on the website;

145 |       6. The business must allow the appropriate law enforcement  
146 | official ~~agency~~ to inspect its business premises at any time  
147 | during normal business hours;

148 |       7. Any payment by the business resulting from such a sale,  
149 | purchase, consignment, or trade must be made to the person or  
150 | entity with whom the business contracted to offer the goods and  
151 | must be made by check or via a money services business licensed  
152 | under part II of chapter 560; and

153 |       8.a. At least 48 hours after the estimated time of  
154 | contracting to offer the secondhand goods, the business must  
155 | verify that any item having a serial number is not stolen  
156 | property by entering the serial number of the item into the  
157 | Department of Law Enforcement's stolen article database located  
158 | at the Florida Crime Information Center's public access system  
159 | website. The business shall record the date and time of such  
160 | verification on the contract covering the goods. If such  
161 | verification reveals that an item is stolen property, the  
162 | business shall immediately remove the item from any website on  
163 | which it is being offered and notify the appropriate law  
164 | enforcement official ~~agency~~; or

165 |       b. The business must provide the appropriate law  
166 | enforcement official ~~agency~~ with an electronic copy of the name,  
167 | address, phone number, driver ~~driver's~~ license number, and  
168 | issuing state of the person with whom the business contracted to

169 offer the goods, as well as an accurate description of the  
 170 goods, including make, model, serial number, and any other  
 171 unique identifying marks, numbers, names, or letters that may be  
 172 on an item, in a format agreed upon by the business and the  
 173 appropriate law enforcement official ~~agency~~. This information  
 174 must be provided to the appropriate law enforcement official  
 175 ~~agency~~ within 24 hours after entering into the contract unless  
 176 other arrangements are made between the business and the law  
 177 enforcement official ~~agency~~.

178 Section 2. Subsections (1), (6), and (7) of section  
 179 538.04, Florida Statutes, are amended to read:

180 538.04 Recordkeeping requirements; penalties.—

181 (1) A secondhand dealer ~~dealers~~ shall complete a  
 182 secondhand dealers transaction form at the time of the actual  
 183 transaction. A secondhand dealer shall maintain a copy of a  
 184 completed transaction form on the registered premises for at  
 185 least 1 year after the date of the transaction. However, the  
 186 secondhand dealer shall maintain a copy of the transaction form  
 187 for not less than 3 years. Unless other arrangements are ~~have~~  
 188 ~~been~~ agreed upon by the secondhand dealer and the appropriate  
 189 law enforcement official ~~agency~~, the secondhand dealer shall,  
 190 within 24 hours after acquiring ~~the acquisition of~~ any  
 191 secondhand goods, deliver to such official ~~the police department~~  
 192 ~~of the municipality where the goods were acquired or, if the~~  
 193 ~~goods were acquired outside of a municipality, to the sheriff's~~  
 194 ~~department of the county where the goods were acquired,~~ a record  
 195 of the transaction on a form approved by the Department of Law  
 196 Enforcement. Such record shall contain:

- 197 (a) The time, date, and place of the transaction.
- 198 (b) A complete and accurate description of the goods  
 199 acquired, including the following information, if applicable:
- 200 1. Brand name.
  - 201 2. Model number.
  - 202 3. Manufacturer's serial number.
  - 203 4. Size.
  - 204 5. Color, as apparent to the untrained eye.
  - 205 6. Precious metal type, weight, and content if known.
  - 206 7. Gemstone description, including the number of stones,  
 207 if applicable.
  - 208 8. In the case of firearms, the type of action, caliber or  
 209 gauge, number of barrels, barrel length, and finish.
  - 210 9. Any other unique identifying marks, numbers, or  
 211 letters.
- 212 (c) A description of the person from whom the goods were  
 213 acquired, including:
- 214 1. Full name, current residential address, workplace, and  
 215 home and work phone numbers.
  - 216 2. Height, weight, date of birth, race, gender, hair  
 217 color, eye color, and any other identifying marks.
  - 218 3. The right thumbprint, free of smudges and smears, of  
 219 the person from whom the goods were acquired.
- 220 (d) Any other information required by the form approved by  
 221 the Department of Law Enforcement.
- 222 (6) If the appropriate law enforcement official ~~agency~~  
 223 supplies a secondhand dealer with appropriate software and the  
 224 secondhand dealer has computer capability, the secondhand dealer

CS/HB 885

2012

225 ~~must transactions shall be~~ electronically transmit secondhand  
226 dealer transactions required by this section to such official  
227 ~~transferred~~. If a secondhand dealer does not have computer  
228 capability, the appropriate law enforcement official agency may  
229 provide the secondhand dealer with a computer and all equipment  
230 necessary to equipment for the purpose of electronically  
231 transmit transferring secondhand dealer transactions. The  
232 appropriate law enforcement official agency shall retain  
233 ownership of the computer, unless otherwise agreed upon, ~~and~~  
234 the secondhand dealer shall maintain the computer in good  
235 working order, except for ordinary wear and ~~tear excepted~~. ~~A~~ If  
236 ~~the~~ secondhand dealer who transmits transfers secondhand dealer  
237 transactions electronically, ~~the secondhand dealer~~ is not  
238 required to also deliver ~~to the appropriate law enforcement~~  
239 ~~agency~~ the original or paper copies of the secondhand  
240 transaction forms to the appropriate law enforcement official.  
241 However, such official may, for purposes ~~the purpose~~ of a  
242 criminal investigation, ~~the appropriate law enforcement agency~~  
243 ~~may request that~~ the secondhand dealer to deliver the produce an  
244 original ~~of a~~ transaction form that was has been electronically  
245 transmitted transferred. The secondhand dealer shall deliver the  
246 ~~this~~ form to the appropriate law enforcement official agency  
247 within 24 hours after receipt of the request.

248 (7) If the original transaction form is lost or destroyed  
249 by the appropriate law enforcement official agency, a copy may  
250 be used by the secondhand dealer as evidence in court. When an  
251 electronic image of a customer's identification is accepted for  
252 a transaction, the secondhand dealer must maintain the

253 | electronic image in order to meet the recordkeeping requirements  
 254 | applicable to the original transaction form. If a criminal  
 255 | investigation occurs, the secondhand dealer shall, upon request,  
 256 | provide a clear and legible copy of the image to the appropriate  
 257 | law enforcement official agency.

258 | Section 3. Section 538.18, Florida Statutes, is amended to  
 259 | read:

260 | 538.18 Definitions.—As used in this part, the term:

261 | (1) "Appropriate law enforcement official" means the  
 262 | sheriff of the county in which a secondary metals recycler is  
 263 | located or, if the secondary metals recycler is located within a  
 264 | municipality, the police chief of the municipality in which the  
 265 | secondary metals recycler is located; however, the sheriff or  
 266 | police chief may designate as the appropriate law enforcement  
 267 | official for the county or municipality, as applicable, any law  
 268 | enforcement officer working within that respective county or  
 269 | municipality. This subsection does not limit the authority or  
 270 | duties of the sheriff.

271 | ~~(2)(9)~~ "Department" means the Department of Revenue.

272 | ~~(3)(1)~~ "Ferrous metals" means any metals containing  
 273 | significant quantities of iron or steel.

274 | ~~(4)(2)~~ "Fixed location" means any site occupied by a  
 275 | secondary metals recycler as owner of the site or as lessee of  
 276 | the site under a lease or other rental agreement providing for  
 277 | occupation of the site by the secondary metals recycler for a  
 278 | total duration of not less than 364 days.

279 | ~~(5)(3)~~ "Money" means a medium of exchange authorized or  
 280 | adopted by a domestic or foreign government as part of its

281 | currency.

282 |        ~~(6)-(4)~~ "Nonferrous metals" means metals not containing  
 283 | significant quantities of iron or steel, including, without  
 284 | limitation, copper, brass, aluminum, bronze, lead, zinc, nickel,  
 285 | and alloys thereof, excluding precious metals subject to  
 286 | regulation under part I.

287 |        ~~(7)-(5)~~ "Personal identification card" means a valid  
 288 | Florida driver license, a Florida identification card issued by  
 289 | the Department of Highway Safety and Motor Vehicles, an  
 290 | equivalent form of identification issued by another state, a  
 291 | passport, or an employment authorization issued by the United  
 292 | States Bureau of Citizenship and Immigration Services that  
 293 | contains an individual's photograph and current address ~~any~~  
 294 | ~~government-issued photographic identification card.~~

295 |        ~~(8)-(6)~~ "Purchase transaction" means a transaction in which  
 296 | a secondary metals recycler gives consideration for regulated  
 297 | metals property.

298 |        ~~(9)-(7)~~ "Regulated metals property" means any item composed  
 299 | primarily of any nonferrous metals. The term does, but shall not  
 300 | include aluminum beverage containers, used beverage containers,  
 301 | or similar beverage containers; however, the term includes  
 302 | ~~shall include~~ stainless steel beer kegs and items made of  
 303 | ferrous metal obtained from any restricted regulated metals  
 304 | property.

305 |        (10) "Restricted regulated metals property" means any  
 306 | regulated metals property listed in s. 538.26(5)(b) the sale of  
 307 | which is restricted as provided in s. 538.26(5)(a).

308 |        ~~(11)-(8)~~ "Secondary metals recycler" means any person who:

309 (a) Is engaged, from a fixed location ~~or otherwise~~, in the  
 310 business of purchase transactions or gathering or obtaining  
 311 ferrous or nonferrous metals that have served their original  
 312 economic purpose or is in the business of performing the  
 313 manufacturing process by which ferrous metals or nonferrous  
 314 metals are converted into raw material products consisting of  
 315 prepared grades and having an existing or potential economic  
 316 value; or

317 (b) Has facilities for performing the manufacturing  
 318 process by which ferrous metals or nonferrous metals are  
 319 converted into raw material products consisting of prepared  
 320 grades and having an existing or potential economic value, other  
 321 than by the exclusive use of hand tools, by methods including,  
 322 without limitation, processing, sorting, cutting, classifying,  
 323 cleaning, baling, wrapping, shredding, shearing, or changing the  
 324 physical form or chemical content thereof.

325 (12) "Utility" means a person, firm, corporation,  
 326 association, or political subdivision, whether private,  
 327 municipal, county, or cooperative, that is engaged in the sale,  
 328 generation, provision, or delivery of gas, electricity, heat,  
 329 water, oil, sewer service, or telephone, telegraph, radio, or  
 330 telecommunications service.

331 Section 4. Paragraph (u) of subsection (1) of section  
 332 319.30, Florida Statutes, is amended to read:

333 319.30 Definitions; dismantling, destruction, change of  
 334 identity of motor vehicle or mobile home; salvage.—

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

336 (u) "Secondary metals recycler" means secondary metals

337 | recycler as defined in s. 538.18 ~~538.18(8)~~.

338 |       Section 5. Section 538.19, Florida Statutes, is amended to  
339 | read:

340 |       538.19 Records required; limitation of liability.—

341 |       (1) A secondary metals recycler shall maintain a legible  
342 | paper record of all purchase transactions to which such  
343 | secondary metals recycler is a party. A secondary metals  
344 | recycler shall also maintain a legible electronic record, in the  
345 | English language, of all such purchase transactions. The  
346 | appropriate law enforcement official may provide data  
347 | specifications regarding the electronic record format, but such  
348 | format must be approved by the Department of Law Enforcement. An  
349 | electronic record of a purchase transaction shall be  
350 | electronically transmitted to the appropriate law enforcement  
351 | official no later than 10 a.m. of the business day following the  
352 | date of the purchase transaction. A secondary metals recycler  
353 | who transmits such records electronically is not required to  
354 | also deliver the original or paper copies of the transaction  
355 | forms to the appropriate law enforcement official. However, such  
356 | official may, for purposes of a criminal investigation, request  
357 | the secondary metals recycler to deliver the original  
358 | transaction form that was electronically transmitted. The  
359 | secondary metals recycler shall make the form available to the  
360 | appropriate law enforcement official within 24 hours after  
361 | receipt of the request.

362 |       (2) The following information must be maintained on the a  
363 | form approved by the Department of Law Enforcement for each  
364 | purchase transaction:

CS/HB 885

2012

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

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

368 (c) The date and time of the transaction.

369 (d) The weight, quantity, or volume, and a description of  
370 the type of regulated metals property purchased in a purchase  
371 transaction.

372 (e) The amount of consideration given in a purchase  
373 transaction for the regulated metals property.

374 (f) A signed statement from the person delivering the  
375 regulated metals property stating that she or he is the rightful  
376 owner of, or is entitled to sell, the regulated metals property  
377 being sold. If the purchase involves a stainless steel beer keg,  
378 the seller must provide written documentation from the  
379 manufacturer that the seller is the owner of the stainless steel  
380 beer keg or is an employee or agent of the manufacturer.

381 (g) The distinctive number from the personal  
382 identification card of the person delivering the regulated  
383 metals property to the secondary metals recycler.

384 (h) A description of the person from whom the regulated  
385 metals property was ~~goods were~~ acquired, including:

386 1. Full name, current residential address, workplace, and  
387 home and work phone numbers.

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

390 3. The right thumbprint, free of smudges and smears.

391 4. Vehicle description to include the make, model, and tag  
392 number of the vehicle and trailer of the person selling the

393 regulated metals property.

394 5. Any other information required by the form approved by  
395 the Department of Law Enforcement.

396 (i) A photograph, videotape, or digital image of the  
397 regulated metals being sold.

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

401 ~~(3) Any secondary metals recycler that maintains an~~  
402 ~~electronic database containing the information required in~~  
403 ~~paragraph (2) (h), along with an oath of ownership with a~~  
404 ~~signature of the seller of the secondary metals being purchased~~  
405 ~~by the secondary metals recycler and a right thumbprint that has~~  
406 ~~no smudges and smears on the oath of ownership for each purchase~~  
407 ~~transaction, shall be exempt from the records requirement of~~  
408 ~~paragraph (2) (h).~~ A secondary metals recycler complies with the  
409 requirements of this section if it maintains an electronic  
410 database containing the information required by subsection (2)  
411 ~~paragraph (2) (h)~~ as long as the electronic information required  
412 by subsection (2) ~~paragraph (2) (h)~~, along with an electronic  
413 oath of ownership with an electronic signature of the seller of  
414 the secondary metals being purchased by the secondary metals  
415 recyclers and an electronic image of the seller's right  
416 thumbprint that has no smudges and smears, can be downloaded  
417 onto a paper form in the image of the form approved by the  
418 Department of Law Enforcement as provided in subsection (2).

419 (4) A secondary metals recycler shall maintain or cause to  
420 be maintained the information required by this section for not

421 less than 3 ~~5~~ years from the date of the purchase transaction.

422 (5) ~~If a purchase transaction involves the transfer of~~  
 423 ~~regulated metals property from~~ A secondary metals recycler  
 424 registered with the department that purchases a motor vehicle  
 425 from a licensed salvage motor vehicle dealer as defined in s.  
 426 320.27 or to another secondary metals recycler registered with  
 427 the department and uses a mechanical crusher to convert the  
 428 vehicle to scrap metal must obtain a signed statement from the  
 429 seller stating that the seller has surrendered the vehicle's  
 430 certificate of title to the Department of Highway Safety and  
 431 Motor Vehicles as provided in s. 319.30 or otherwise complied  
 432 with the titling requirements provided by law for conversion of  
 433 the vehicle to scrap metal. A, the secondary metals recycler is  
 434 not liable for the seller's failure to comply with the titling  
 435 requirements provided by law for conversion of a motor vehicle  
 436 to scrap metal if the secondary metals recycler obtains and  
 437 maintains the seller's signed statement receiving the regulated  
 438 ~~metals property shall record the name and address of the~~  
 439 ~~secondary metals recycler from which it received the regulated~~  
 440 ~~metals property in lieu of the requirements of paragraph (2) (h).~~

441 Section 6. Section 538.235, Florida Statutes, is amended  
 442 to read:

443 538.235 Method of payment.—

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

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

448 (b) In any amount for the purchase of restricted regulated

449 metals property.

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

453 (3) Payment for the purchase of restricted regulated  
454 metals property shall be made by check issued to the seller of  
455 the metal and payable to the seller or by electronic payment to  
456 the seller's bank account or the seller's employer's bank  
457 account.

458 (a) Each check shall be mailed by the secondary metals  
459 recycler directly to the street address of the seller that is on  
460 file with the secondary metals recycler unless otherwise  
461 provided in this part. A check may not be mailed to a post  
462 office box. Electronic payments shall be transmitted to an  
463 account for which the seller is listed as an account holder or  
464 an employee or agent of the seller.

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

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

472 1. An organization, corporation, or association registered  
473 with the state as a charitable, philanthropic, religious,  
474 fraternal, civic, patriotic, social, or school-sponsored  
475 organization or association, or any nonprofit corporation or  
476 association;

- 477           2. A law enforcement officer acting in an official  
 478 capacity;
- 479           3. A trustee in bankruptcy, executor, administrator, or  
 480 receiver who has presented proof of such status to the secondary  
 481 metals recycler;
- 482           4. A public official acting under judicial process or  
 483 authority who has presented proof of such status to the  
 484 secondary metals recycler;
- 485           5. A sheriff acting under the authority of a court's writ  
 486 of execution, or by virtue of any process issued by a court, if  
 487 proof thereof has been presented to the secondary metals  
 488 recycler; or
- 489           6. A manufacturing, industrial, or other commercial vendor  
 490 that generates regulated materials in the ordinary course of  
 491 business.

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

494           538.25 Registration.—

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

501           (a) A fee equal to the federal and state costs for  
 502 processing required fingerprints must be submitted to the  
 503 department with each application for registration. One  
 504 application is required for each secondary metals recycler. If a

505 secondary metals recycler is the owner of more than one  
506 secondary metals recycling location, the application must list  
507 each location, and the department shall issue a duplicate  
508 registration for each location. For purposes of subsections (3),  
509 (4), and (5), these duplicate registrations shall be deemed  
510 individual registrations. A secondary metals recycler shall pay  
511 a fee of \$6 per location at the time of registration and an  
512 annual renewal fee of \$6 per location on October 1 of each year.  
513 All fees collected, less costs of administration, shall be  
514 transferred into the Operating Trust Fund.

515 (b) The department shall forward the full set of  
516 fingerprints to the Department of Law Enforcement for state and  
517 federal processing, provided the federal service is available,  
518 to be processed for any criminal justice information as defined  
519 in s. 943.045. The cost of processing such fingerprints shall be  
520 payable to the Department of Law Enforcement by the department.  
521 The department may issue a temporary registration to each  
522 location pending completion of the background check by state and  
523 federal law enforcement agencies, but shall revoke such  
524 temporary registration if the completed background check reveals  
525 a prohibited criminal background. The Department of Law  
526 Enforcement shall report its findings to the Department of  
527 Revenue within 30 days after the date fingerprint cards are  
528 submitted for criminal justice information.

529 (c) An applicant for a secondary metals recycler  
530 registration must be a natural person who has reached the age of  
531 18 years or a corporation organized or qualified to do business  
532 in the state.

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

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

539 3. If the applicant is a corporation, the registration  
 540 must include the name and address of such corporation's  
 541 registered agent for service of process in the state and a  
 542 certified copy of statement from the Secretary of State that the  
 543 corporation is duly organized in the state or, if the  
 544 corporation is organized in a state other than Florida, a  
 545 certified copy of the statement that the corporation is duly  
 546 qualified to do business in this state.

547 Section 8. Section 538.26, Florida Statutes, is amended to  
 548 read:

549 538.26 Certain acts and practices prohibited.—It is  
 550 unlawful for a secondary metals recycler to do or allow any of  
 551 the following acts:

552 (1) Purchase regulated metals property, restricted  
 553 regulated metals property, or ferrous metals on weekdays before  
 554 7 a.m. or after 6 p.m., on Saturdays before 7 a.m. or after 3  
 555 p.m., and on Sundays. ~~between the hours of 9 p.m. and 6 a.m.~~

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

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

560 (2)-(4) Purchase regulated metals property, restricted

561 regulated metals property, or ferrous metals from any seller who  
 562 presents such property for sale at the registered location of  
 563 the secondary metals recycler when such property was not  
 564 transported in a motor vehicle.

565 ~~(3)(5) Purchase regulated metals property, restricted~~  
 566 ~~regulated metals property, or ferrous metals in return for money~~  
 567 ~~from a trailer, a vehicle, or any location other than a fixed~~  
 568 ~~location or from any person who is required to prove ownership~~  
 569 ~~pursuant to subsection (4). However, regulated metals may be~~  
 570 ~~purchased from a nonfixed location, or from such person, with~~  
 571 ~~any negotiable or nonnegotiable instrument, including a check or~~  
 572 ~~draft or any other type of instrument purchased with money and~~  
 573 ~~sold for the purpose of making payments or transfers to others.~~

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

- 575 (a) Uses a name other than his or her own name or the
- 576 registered name of the seller's business;
- 577 (b) Is younger than 18 years of age; or
- 578 (c) Is visibly or apparently under the influence of drugs
- 579 or alcohol.

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

- 583 1. Owns such property. Reasonable proof of ownership may
- 584 include, but is not limited to, a receipt or bill of sale; or
- 585 2. Is an employee, agent, or contractor of the property's
- 586 owner who is authorized to sell the property on behalf of the
- 587 owner. Reasonable proof of authorization to sell the property
- 588 includes, but is not limited to, a signed letter on the owner's

589 letterhead, dated no later than 90 days before the sale,  
590 authorizing the seller to sell the property.

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

593 (a):

594 1. A manhole cover.

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

598 3. A guard rail.

599 4. A street sign, traffic sign, or traffic signal and its  
600 fixtures and hardware.

601 5. Communication, transmission, distribution, and service  
602 wire from a utility, including copper or aluminum bus bars,  
603 connectors, grounding plates, or grounding wire.

604 6. A funeral marker or funeral vase.

605 7. A historical marker.

606 8. Railroad equipment, including, but not limited to, a  
607 tie plate, signal house, control box, switch plate, E clip, or  
608 rail tie junction.

609 9. Any metal item that is observably marked upon  
610 reasonable inspection with any form of the name, initials, or  
611 logo of a governmental entity, utility company, cemetery, or  
612 railroad.

613 10. A copper, aluminum, or aluminum-copper condensing or  
614 evaporator coil, including its tubing or rods, from an air-  
615 conditioning or heating unit, excluding coils from window air-  
616 conditioning or heating units and motor vehicle air-conditioning

CS/HB 885

2012

617 or heating units.

618 11. An aluminum or stainless steel container or bottle  
619 designed to hold propane for fueling forklifts.

620 12. A stainless steel beer keg.

621 13. A catalytic converter or any nonferrous part of a  
622 catalytic converter unless purchased as part of a motor vehicle.

623 14. Metallic wire that has been burned in whole or in part  
624 to remove insulation.

625 15. A brass or bronze commercial valve or fitting,  
626 referred to as a "fire department connection and control valve"  
627 or an "FDC valve," that is commonly used on structures for  
628 access to water for the purpose of extinguishing fires.

629 16. A brass or bronze commercial potable water backflow  
630 preventer valve that is commonly used to prevent backflow of  
631 potable water from commercial structures into municipal domestic  
632 water service systems.

633 17. A shopping cart.

634 18. A brass water meter.

635 19. A storm grate.

636 20. A brass sprinkler head used in commercial agriculture.

637 Section 9. Section 538.28, Florida Statutes, is created to  
638 read:

639 538.28 Local government regulation; preemption.—

640 (1) The regulation of purchase transactions involving  
641 regulated metals property is preempted to the state. Except as  
642 provided in subsection (2), an ordinance or regulation adopted  
643 by a county or municipality relating to the purchase or sale of  
644 regulated metals property or the registration or licensure of

645 secondary metals recyclers is void.

646 (2) This part does not preempt an ordinance or regulation  
 647 originally enacted by a county or municipality before March 1,  
 648 2012. Such an ordinance or regulation may subsequently be  
 649 amended to meet or exceed the requirements of this part.

650 Section 10. For the purpose of incorporating the  
 651 amendments made by this act to sections 538.19, 538.235, and  
 652 538.26, Florida Statutes, in references thereto, paragraph (a)  
 653 of subsection (1) of section 538.23, Florida Statutes, is  
 654 reenacted and amended to read:

655 538.23 Violations and penalties.—

656 (1)(a) Except as provided in paragraph (b), a secondary  
 657 metals recycler who knowingly and intentionally:

- 658 1. Violates s. 538.20 or s. 538.21;
- 659 2. Engages in a pattern of failing to keep records  
 660 required by s. 538.19;
- 661 3. Violates s. 538.26(2) ~~538.26(4)~~; or
- 662 4. Violates s. 538.235,

663  
 664 commits a misdemeanor of the first degree, punishable as  
 665 provided in s. 775.082.

666 Section 11. Paragraph (d) of subsection (1) and subsection  
 667 (2) of section 812.145, Florida Statutes, are amended, and  
 668 subsection (3) is added to that section, to read:

669 812.145 Theft of copper or other nonferrous metals.—

670 (1) As used in this section, the terms:

671 (d) "Utility" means a public utility or electric utility  
 672 as defined in s. 366.02, or a ~~includes any person, firm,~~

673 corporation, association, or political subdivision, whether  
 674 private, municipal, county, or cooperative, which is engaged in  
 675 the sale, generation, provision, or delivery of gas, ~~or~~  
 676 electricity, heat, water, oil, sewer service, or telephone,  
 677 telegraph, radio, or telecommunications service services.

678 (2) A person who knowingly and intentionally takes or  
 679 assists in the taking of copper or other nonferrous metals from  
 680 a utility or communications services provider, thereby causing  
 681 damage to the facilities of a utility or communications services  
 682 provider, interrupting or interfering with utility service or  
 683 communications services, or interfering with the ability of a  
 684 utility or communications services provider to provide service,  
 685 commits a felony of the first degree, punishable as provided in  
 686 s. 775.082, s. 775.083, or s. 775.084.

687 (3) A person who is found in a civil action to have  
 688 illegally taken copper or other nonferrous metals from a utility  
 689 or communications services provider based on a conviction for a  
 690 violation of subsection (2) is liable to the utility or  
 691 communications services provider for damages in an amount equal  
 692 to three times the actual damages sustained by the utility or  
 693 communications services provider due to any personal injury,  
 694 wrongful death, or property damage caused by the illegal taking  
 695 of the nonferrous metals or an amount equal to three times any  
 696 claim made against the utility or communications services  
 697 provider for any personal injury, wrongful death, or property  
 698 damage caused by the malfunction of the facilities of the  
 699 utility or communications services provider resulting from the  
 700 violation of subsection (2), whichever is greater.

CS/HB 885

2012

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

704           (2) A public or private owner of metal property is not  
705 civilly liable to a person for injuries caused by a dangerous  
706 condition created as a result of the theft or attempted theft of  
707 the owner's metal property when the owner did not know, and  
708 could not have reasonably known, of the dangerous condition.

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

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