

By the Committee on Commerce and Tourism; and Senators Smith, Montford, and Evers

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

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30 restricted regulated metals property; requiring that  
31 purchases of certain property be made by check or by  
32 electronic payment; providing procedures; amending s.  
33 538.26, F.S.; prohibiting secondary metals recyclers  
34 from purchasing regulated metals property, restricted  
35 regulated metals property, or ferrous metals during  
36 specified times or from certain locations; prohibiting  
37 the purchase of specified restricted regulated metals  
38 property without obtaining certain proof of the  
39 seller's ownership and authorization to sell the  
40 property; providing penalties; creating s. 538.28,  
41 F.S.; preempting to the state the regulation of  
42 secondary metals recyclers and purchase transactions  
43 involving regulated metals property; exempting county  
44 and municipal ordinances and regulations enacted  
45 before March 1, 2012, from preemption; reenacting and  
46 amending s. 538.23(1)(a), F.S., relating to violations  
47 and penalties, to incorporate the amendments made by  
48 this act to ss. 538.19 and 538.235, F.S., in  
49 references thereto; correcting a cross-reference;  
50 amending s. 812.145, F.S.; providing that a person who  
51 assists in the taking of certain metals commits a  
52 felony of the first degree; limiting the liability of  
53 a public or private owner of metal property for  
54 injuries occurring during the theft or attempted theft  
55 of metal property and for injuries occurring as the  
56 result of the theft or attempted theft; providing that  
57 no additional duty of care is imposed on the owner of  
58 metal property; providing an effective date.

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

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 (k) through (o), 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 that ~~which~~ is not a secondary metals recycler subject to part II and that ~~which~~ is engaged in the business of purchasing, consigning, or trading secondhand goods. A secondary metals recycler may not act as a secondhand dealer without also conforming to the requirements for a secondhand dealer pursuant to this part.

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

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

(c)~~(d)~~ "Consignment shop" means a shop engaging in the business of accepting for sale, on consignment, secondhand goods that ~~which~~, having once been used or transferred from the manufacturer to the dealer, are then received into the

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88 possession of a third party.

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

91 (h)~~(f)~~ "Secondhand goods" means personal property  
92 previously owned or used, which is not regulated metals property  
93 regulated under part II and which is purchased, consigned, or  
94 traded as used property. Such secondhand goods do not include  
95 office furniture, pianos, books, clothing, organs, coins, motor  
96 vehicles, costume jewelry, cardio and strength training or  
97 conditioning equipment designed primarily for indoor use, and  
98 secondhand sports equipment that is not permanently labeled with  
99 a serial number. For purposes of this paragraph, "secondhand  
100 sports equipment" does not include golf clubs.

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

103 (e)~~(h)~~ "Precious metals" means any item containing any  
104 gold, silver, or platinum, or any combination thereof, excluding  
105 any chemical or any automotive, photographic, electrical,  
106 medical, or dental materials or electronic parts.

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

108 (b) "Appropriate law enforcement official" means the  
109 sheriff of the county in which a secondhand dealer is located  
110 or, if the secondhand dealer is located within a municipality,  
111 both the police chief of the municipality and the sheriff;  
112 however, the sheriff or police chief may designate as the  
113 appropriate law enforcement official for that county or  
114 municipality, as applicable, any law enforcement officer working  
115 within that respective county or municipality. This paragraph  
116 does not limit the authority or duties of the sheriff.

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117 (2) This chapter does not apply to:

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

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

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

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

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

131 3. The records of the sale, purchase, consignment, or  
132 trade, and the description of the secondhand goods as listed on  
133 the website, must contain the serial number of each item, if  
134 any;

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

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

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

143 7. Any payment by the business resulting from such a sale,  
144 purchase, consignment, or trade must be made to the person or  
145 entity with whom the business contracted to offer the goods and

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146 must be made by check or via a money services business licensed  
147 under part II of chapter 560; and

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

160 b. The business must provide the appropriate law  
161 enforcement official ~~agency~~ with an electronic copy of the name,  
162 address, phone number, driver ~~driver's~~ license number, and  
163 issuing state of the person with whom the business contracted to  
164 offer the goods, as well as an accurate description of the  
165 goods, including make, model, serial number, and any other  
166 unique identifying marks, numbers, names, or letters that may be  
167 on an item, in a format agreed upon by the business and the  
168 appropriate law enforcement official ~~agency~~. This information  
169 must be provided to the appropriate law enforcement official  
170 ~~agency~~ within 24 hours after entering into the contract unless  
171 other arrangements are made between the business and the law  
172 enforcement official ~~agency~~.

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

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175 538.04 Recordkeeping requirements; penalties.—

176 (1) A secondhand dealer ~~dealers~~ shall complete a secondhand  
177 dealers transaction form at the time of the actual transaction.

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

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

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

195 1. Brand name.

196 2. Model number.

197 3. Manufacturer's serial number.

198 4. Size.

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

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

201 7. Gemstone description, including the number of stones, if  
202 applicable.

203 8. In the case of firearms, the type of action, caliber or

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204 gauge, number of barrels, barrel length, and finish.

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

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

208 1. Full name, current residential address, workplace, and  
209 home and work phone numbers.

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

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

214 (d) Any other information required by the form approved by  
215 the Department of Law Enforcement.

216 (6) If the appropriate law enforcement official agency  
217 supplies a secondhand dealer with appropriate software and the  
218 secondhand dealer has computer capability, the secondhand dealer  
219 must ~~transactions shall be~~ electronically transmit secondhand  
220 dealer transactions required by this section to such official  
221 ~~transferred~~. If a secondhand dealer does not have computer  
222 capability, the appropriate law enforcement official agency may  
223 provide the secondhand dealer with a computer and all equipment  
224 necessary to ~~equipment for the purpose of~~ electronically  
225 transmit ~~transferring~~ secondhand dealer transactions. The  
226 appropriate law enforcement official agency shall retain  
227 ownership of the computer, unless otherwise agreed upon, and  
228 the secondhand dealer shall maintain the computer in good  
229 working order, except for ordinary wear and ~~tear~~ excepted. A ~~If~~  
230 ~~the~~ secondhand dealer who transmits ~~transfers~~ secondhand dealer  
231 transactions electronically, ~~the secondhand dealer~~ is not  
232 required to also deliver ~~to the appropriate law enforcement~~

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233 ~~agency~~ the original or paper copies of the secondhand  
234 transaction forms to the appropriate law enforcement official.  
235 However, such official may, for purposes ~~the purpose~~ of a  
236 criminal investigation, ~~the appropriate law enforcement agency~~  
237 ~~may request that~~ the secondhand dealer to deliver the ~~produce an~~  
238 original ~~of a~~ transaction form that was ~~has been~~ electronically  
239 transmitted ~~transferred~~. The secondhand dealer shall deliver the  
240 ~~this~~ form to the appropriate law enforcement official ~~agency~~  
241 within 24 hours after receipt of the request.

242 (7) If the original transaction form is lost or destroyed  
243 by the appropriate law enforcement official ~~agency~~, a copy may  
244 be used by the secondhand dealer as evidence in court. When an  
245 electronic image of a customer's identification is accepted for  
246 a transaction, the secondhand dealer must maintain the  
247 electronic image in order to meet the recordkeeping requirements  
248 applicable to the original transaction form. If a criminal  
249 investigation occurs, the secondhand dealer shall, upon request,  
250 provide a clear and legible copy of the image to the appropriate  
251 law enforcement official ~~agency~~.

252 Section 3. Section 538.18, Florida Statutes, is reordered  
253 and amended to read:

254 538.18 Definitions.—As used in this part, the term:

255 (1) "Appropriate law enforcement official" means the  
256 sheriff of the county in which a secondary metals recycler is  
257 located or, if the secondary metals recycler is located within a  
258 municipality, the police chief of the municipality in which the  
259 secondary metals recycler is located; however, the sheriff or  
260 police chief may designate as the appropriate law enforcement  
261 official for the county or municipality, as applicable, any law

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262 enforcement officer working within that respective county or  
263 municipality. This subsection does not limit the authority or  
264 duties of the sheriff.

265 (3)~~(1)~~ "Ferrous metals" means any metals containing  
266 significant quantities of iron or steel.

267 (4)~~(2)~~ "Fixed location" means any site occupied by a  
268 secondary metals recycler as owner of the site or as lessee of  
269 the site under a lease or other rental agreement providing for  
270 occupation of the site by the secondary metals recycler for a  
271 total duration of not less than 364 days.

272 (5)~~(3)~~ "Money" means a medium of exchange authorized or  
273 adopted by a domestic or foreign government as part of its  
274 currency.

275 (6)~~(4)~~ "Nonferrous metals" means metals not containing  
276 significant quantities of iron or steel, including, without  
277 limitation, copper, brass, aluminum, bronze, lead, zinc, nickel,  
278 and alloys thereof, excluding precious metals subject to  
279 regulation under part I.

280 (7)~~(5)~~ "Personal identification card" means a valid Florida  
281 driver license, a Florida identification card issued by the  
282 Department of Highway Safety and Motor Vehicles, an equivalent  
283 form of identification issued by another state, a passport, or  
284 an employment authorization issued by the United States Bureau  
285 of Citizenship and Immigration Services that contains an  
286 individual's photograph and current address ~~any government-~~  
287 ~~issued photographic identification card.~~

288 (8)~~(6)~~ "Purchase transaction" means a transaction in which  
289 a secondary metals recycler gives consideration for regulated  
290 metals property.

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291        (9)~~(7)~~ "Regulated metals property" means any item composed  
292 primarily of any nonferrous metals. The term does, ~~but shall~~ not  
293 include aluminum beverage containers, used beverage containers,  
294 or similar beverage containers; however, ~~-~~ the term includes  
295 ~~shall include~~ stainless steel beer kegs and items made of  
296 ferrous metal obtained from any restricted regulated metals  
297 property.

298        (11)~~(8)~~ "Secondary metals recycler" means any person who:

299        (a) Is engaged, from a fixed location or otherwise, in the  
300 business of purchase transactions, gathering or obtaining  
301 ferrous or nonferrous metals that have served their original  
302 economic purpose, or is in the business of performing the  
303 manufacturing process by which ferrous metals or nonferrous  
304 metals are converted into raw material products consisting of  
305 prepared grades and having an existing or potential economic  
306 value; or

307        (b) Has facilities for performing the manufacturing process  
308 by which ferrous metals or nonferrous metals are converted into  
309 raw material products consisting of prepared grades and having  
310 an existing or potential economic value, other than by the  
311 exclusive use of hand tools, by methods including, without  
312 limitation, processing, sorting, cutting, classifying, cleaning,  
313 baling, wrapping, shredding, shearing, or changing the physical  
314 form or chemical content thereof.

315

316 A secondary metals recycler may not act as a secondhand dealer  
317 without also conforming to the requirements of a secondhand  
318 dealer pursuant to this part.

319        (2)~~(9)~~ "Department" means the Department of Revenue.

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320 (10) "Restricted regulated metals property" means any  
321 regulated metals property listed in s. 538.26(4)(b) the sale of  
322 which is restricted as provided in s. 538.26(4)(a).

323 (12) "Utility" means a public utility or electric utility  
324 as defined in s. 366.02 or a person, firm, cooperative,  
325 association, or political subdivision, whether private,  
326 municipal, county, or cooperative, which is engaged in the sale,  
327 generation, provision, or delivery of heat, water, oil, sewer  
328 service, or telephone, telegraph, radio, telecommunications, or  
329 communications service.

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

332 319.30 Definitions; dismantling, destruction, change of  
333 identity of motor vehicle or mobile home; salvage.—

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

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

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

339 538.19 Records required; limitation of liability.—

340 (1) A secondary metals recycler shall maintain a legible  
341 paper record of all purchase transactions to which such  
342 secondary metals recycler is a party. A secondary metals  
343 recycler shall also maintain a legible electronic record, in the  
344 English language, of all such purchase transactions. The  
345 appropriate law enforcement official may provide data  
346 specifications regarding the electronic record format, but such  
347 format must be approved by the Department of Law Enforcement. An  
348 electronic record of a purchase transaction shall be

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349 electronically transmitted to the appropriate law enforcement  
350 official no later than 10 a.m. of the business day following the  
351 date of the purchase transaction. A secondary metals recycler  
352 who transmits such records electronically is not required to  
353 also deliver the original or paper copies of the transaction  
354 forms to the appropriate law enforcement official. However, such  
355 official may, for purposes of a criminal investigation, request  
356 the secondary metals recycler to deliver the original  
357 transaction form that was electronically transmitted. The  
358 secondary metals recycler shall deliver the form to the  
359 appropriate law enforcement official within 24 hours after  
360 receipt of the request.

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

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

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

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

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

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

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

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378 manufacturer that the seller is the owner of the stainless steel  
379 beer keg or is an employee or agent of the manufacturer.

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

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

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

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

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

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

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

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

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

400 ~~(3) Any secondary metals recycler that maintains an~~  
401 ~~electronic database containing the information required in~~  
402 ~~paragraph (2) (h), along with an oath of ownership with a~~  
403 ~~signature of the seller of the secondary metals being purchased~~  
404 ~~by the secondary metals recycler and a right thumbprint that has~~  
405 ~~no smudges and smears on the oath of ownership for each purchase~~  
406 ~~transaction, shall be exempt from the records requirement of~~

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407 ~~paragraph (2)(h)~~. A secondary metals recycler complies with the  
408 requirements of this section if it maintains an electronic  
409 database containing the information required by subsection (2)  
410 ~~paragraph (2)(h)~~ as long as the electronic information required  
411 by subsection (2) ~~paragraph (2)(h)~~, along with an electronic  
412 oath of ownership with an electronic signature of the seller of  
413 the secondary metals being purchased by the secondary metals  
414 recyclers and an electronic image of the seller's right  
415 thumbprint that has no smudges and smears, can be downloaded  
416 onto a paper form in the image of the form approved by the  
417 Department of Law Enforcement as provided in subsection (2).

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

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

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436 obtains and maintains the seller's signed statement ~~receiving~~  
437 ~~the regulated metals property shall record the name and address~~  
438 ~~of the secondary metals recycler from which it received the~~  
439 ~~regulated metals property in lieu of the requirements of~~  
440 ~~paragraph (2) (h).~~

441 Section 6. Section 538.235, Florida Statutes, is amended to  
442 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 metals  
454 property shall be made by check issued to the seller of the  
455 metal and payable to the seller or by electronic payment to the  
456 seller's bank account or the seller's employer's bank account.

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

464 (b) Each check or electronic payment shall be mailed or

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465 transmitted by the secondary metals recycler to the seller  
466 within 3 days after the purchase transaction, unless otherwise  
467 provided in this section.

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

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

476 2. A law enforcement officer acting in an official  
477 capacity;

478 3. A trustee in bankruptcy or an executor, administrator,  
479 or receiver who has presented proof of such status to the  
480 secondary metals recycler;

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

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

488 6. A manufacturing, industrial, or other commercial vendor  
489 that generates regulated materials in the ordinary course of  
490 business.

491 Section 7. Section 538.26, Florida Statutes, is amended to  
492 read:

493 538.26 Certain acts and practices prohibited.—It is

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494 unlawful for a secondary metals recycler to do or allow any of  
495 the following acts:

496 (1) Purchase regulated metals property, restricted  
497 regulated metals property, or ferrous metals on weekdays before  
498 7 a.m. or after 6 p.m., on Saturdays before 7 a.m. or after 1  
499 p.m., or on Sundays. ~~between the hours of 9 p.m. and 6 a.m.~~

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

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

504 (2)~~(4)~~ Purchase regulated metals property, restricted  
505 regulated metals property, or ferrous metals from any seller who  
506 presents such property for sale at the registered location of  
507 the secondary metals recycler when such property was not  
508 transported in a motor vehicle.

509 (3)~~(5)~~ Purchase regulated metals property, restricted  
510 regulated metals property, or ferrous metals in return for money  
511 from a trailer, a vehicle, or any location other than a fixed  
512 location or from any person who is required to prove ownership  
513 pursuant to subsection (4). However, regulated metals may be  
514 purchased from a nonfixed location, or from such person, with  
515 any negotiable or nonnegotiable instrument, including a check or  
516 draft or any other type of instrument purchased with money and  
517 sold for the purpose of making payments or transfers to others.

518 (4) (a) Purchase any restricted regulated metals property  
519 listed in paragraph (b), unless the secondary metals recycler  
520 obtains reasonable proof that the seller:

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

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

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

531 (a):

532       1. A manhole cover.

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

536       3. A guard rail.

537       4. A street sign, traffic sign, or traffic signal and its  
538 fixtures and hardware.

539       5. Communication, transmission, distribution, and service  
540 wire from a utility, including copper or aluminum bus bars,  
541 connectors, grounding plates, or grounding wire.

542       6. A funeral marker or funeral vase.

543       7. A historical marker.

544       8. Railroad equipment, including, but not limited to, a tie  
545 plate, signal house, control box, switch plate, E clip, or rail  
546 tie junction.

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

550       10. A copper, aluminum, or aluminum-copper condensing or  
551 evaporator coil, including its tubing or rods, from an air-

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552 conditioning or heating unit, excluding coils from window air-  
553 conditioning or heating units and motor vehicle air-conditioning  
554 or heating units.

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

557 12. A stainless steel beer keg.

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

560 14. Metallic wire that has been burned in whole or in part  
561 to remove insulation.

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

566 16. A brass or bronze commercial potable water backflow  
567 preventer valve that is commonly used to prevent backflow of  
568 potable water from commercial structures into municipal domestic  
569 water service systems.

570 17. A shopping cart.

571 18. A brass water meter.

572 19. A storm grate.

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

574 Section 8. Section 538.28, Florida Statutes, is created to  
575 read:

576 538.28 Local government regulation; preemption.-

577 (1) The regulation of purchase transactions involving  
578 regulated metals property is preempted to the state. Except as  
579 provided in subsection (2), an ordinance or regulation adopted  
580 by a county or municipality relating to the purchase or sale of

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581 regulated metals property or the registration or licensure of  
582 secondary metals recyclers is void.

583 (2) This part does not preempt an ordinance or regulation  
584 originally enacted by a county or municipality before March 1,  
585 2012. Such an ordinance or regulation may subsequently be  
586 amended to meet or exceed the requirements of this part.

587 Section 9. For the purpose of incorporating the amendments  
588 made by this act to sections 538.19 and 538.235, Florida  
589 Statutes, in references thereto, paragraph (a) of subsection (1)  
590 of section 538.23, Florida Statutes, is reenacted and amended to  
591 read:

592 538.23 Violations and penalties.—

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

- 595 1. Violates s. 538.20 or s. 538.21;  
596 2. Engages in a pattern of failing to keep records required  
597 by s. 538.19;  
598 3. Violates s. 538.26(2) ~~538.26(4)~~; or  
599 4. Violates s. 538.235,

600

601 commits a misdemeanor of the first degree, punishable as  
602 provided in s. 775.082.

603 Section 10. Subsection (2) of s. 812.145, Florida Statutes,  
604 is amended to read:

605 812.145 Theft of copper or other nonferrous metals.—

606 (2) A person who knowingly and intentionally takes or  
607 assists with the taking of copper or other nonferrous metals  
608 from a utility or communications services provider, thereby  
609 causing damage to the facilities of a utility or communications

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610 services provider, interrupting or interfering with utility  
611 service or communications services, or interfering with the  
612 ability of a utility or communications services provider to  
613 provide service, commits a felony of the first degree,  
614 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

615 Section 11. (1) A public or private owner of metal property  
616 is not civilly liable to a person who is injured during the  
617 theft or attempted theft of metal property.

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

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

626 Section 12. This act shall take effect July 1, 2012.