

## ENROLLED

CS/CS/HB 105, Engrossed 1

2008 Legislature

1                                   A bill to be entitled  
2           An act relating to secondary metals recyclers; amending s.  
3           538.18, F.S.; revising the definition of "personal  
4           identification card"; deleting an exclusion of  
5           transactions under a specified amount from the definition  
6           of "purchase transaction" for specified purposes; revising  
7           the definition of "regulated metals property"; amending s.  
8           538.19, F.S.; revising recordkeeping requirements for  
9           purchase transactions; providing for additional seller  
10          information to be obtained; requiring an image of the  
11          regulated metals being sold; providing an exemption from a  
12          specified recordkeeping provision if the same information  
13          is maintained in an electronic database meeting specified  
14          requirements; providing a substitute recordkeeping  
15          requirement for certain transactions between registered  
16          secondary metals recyclers; amending s. 538.23, F.S.;  
17          providing for enhanced penalties for third or subsequent  
18          violations of a specified provision; providing enhanced  
19          penalties for violations of specified provisions relating  
20          to false verification of ownership or false or altered  
21          identification of a seller of regulated metals;  
22          prohibiting engaging in business as a secondary metals  
23          recycler without registration with the Department of  
24          Revenue under a specified provision; providing criminal  
25          penalties; creating s. 538.235, F.S.; prohibiting  
26          secondary metals recyclers from entering into cash  
27          transactions in certain circumstances; amending s. 538.25,  
28          F.S.; requiring the Department of Revenue to provide a law

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29 enforcement official, upon request, with specified  
 30 information regarding certain secondary metals recyclers;  
 31 amending s. 538.26, F.S.; prohibiting the purchase of any  
 32 regulated metals property when presented at the property  
 33 of a secondary metals recycler and not transported in a  
 34 motor vehicle; providing an effective date.

35  
 36 Be It Enacted by the Legislature of the State of Florida:

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 38 Section 1. Subsections (5), (6), and (7) of section  
 39 538.18, Florida Statutes, are amended to read:

40 538.18 Definitions.--As used in this part, the term:

41 (5) "Personal identification card" means any government-  
 42 issued photographic identification card ~~a driver's license or~~  
 43 ~~identification card issued by the Department of Highway Safety~~  
 44 ~~and Motor Vehicles under s. 322.03 or s. 322.051, or a similar~~  
 45 ~~card issued by another state, a military identification card, a~~  
 46 ~~passport, or an appropriate work authorization issued by the~~  
 47 ~~United States Bureau of Citizenship and Immigration Services.~~

48 (6) "Purchase transaction" means a transaction in which a  
 49 secondary metals recycler gives consideration ~~having a value in~~  
 50 ~~excess of \$10 in exchange~~ for regulated metals property.

51 (7) "Regulated metals property" means any item composed  
 52 primarily of any nonferrous metals, but shall not include  
 53 aluminum beverage containers, used beverage containers, or  
 54 similar beverage containers. The term shall include stainless  
 55 steel beer kegs.

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56 Section 2. Section 538.19, Florida Statutes, is amended to  
57 read:

58 538.19 Records required.--

59 (1) A secondary metals recycler shall maintain a legible  
60 record of all purchase transactions to which such secondary  
61 metals recycler is a party.

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

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

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

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

69 (d) The weight, quantity, or volume, and a description of  
70 the type of regulated metals property purchased in a purchase  
71 transaction.

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

74 (f) A signed statement from the person delivering the  
75 regulated metals property stating that she or he is the rightful  
76 owner of, or is entitled to sell, the regulated metals property  
77 being sold. If the purchase involves a stainless steel beer keg,  
78 the seller must provide written documentation from the  
79 manufacturer that the seller is the owner of the stainless steel  
80 beer keg or is an employee or agent of the manufacturer.

81 (g) The distinctive number from the personal  
82 identification card of the person delivering the regulated  
83 metals property to the secondary metals recycler.

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84 (h) A description of the person from whom the goods were  
 85 acquired, including:

86 1. Full name, current residential address, workplace, and  
 87 home and work phone numbers.

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

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

91 4. Vehicle description to include the make, model, and tag  
 92 number of the vehicle and trailer of the person selling the  
 93 regulated metals property.

94 5. Any other information required by the form approved by  
 95 the Department of Law Enforcement.

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

98 (j)~~(h)~~ A photograph, videotape, or similar likeness of the  
 99 person receiving consideration in which such person's facial  
 100 features are clearly visible.

101 (3) Any secondary metals recycler that maintains an  
 102 electronic database containing the information required in  
 103 paragraph (2) (h), along with an oath of ownership with a  
 104 signature of the seller of the secondary metals being purchased  
 105 by the secondary metals recycler and a right thumbprint that has  
 106 no smudges and smears on the oath of ownership for each purchase  
 107 transaction, shall be exempt from the records requirement of  
 108 paragraph (2) (h). A secondary metals recycler complies with the  
 109 requirements of this section if it maintains an electronic  
 110 database containing the information required by paragraph (2) (h)  
 111 as long as the electronic information required by paragraph

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112 (2) (h), along with an electronic oath of ownership with an  
 113 electronic signature of the seller of the secondary metals being  
 114 purchased by the secondary metals recyclers and an electronic  
 115 image of the seller's right thumbprint that has no smudges and  
 116 smears, can be downloaded onto a paper form in the image of the  
 117 form approved by the Department of Law Enforcement as provided  
 118 in subsection (2).

119 ~~(4)(3)~~ A secondary metals recycler shall maintain or cause  
 120 to be maintained the information required by this section for  
 121 not less than 5 years from the date of the purchase transaction.

122 (5) If a purchase transaction involves the transfer of  
 123 regulated metals property from a secondary metals recycler  
 124 registered with the department to another secondary metals  
 125 recycler registered with the department, the secondary metals  
 126 recycler receiving the regulated metals property shall record  
 127 the name and address of the secondary metals recycler from which  
 128 it received the regulated metals property in lieu of the  
 129 requirements of paragraph (2) (h).

130 Section 3. Subsections (1), (3), and (4) of section  
 131 538.23, Florida Statutes, are amended, and subsection (5) is  
 132 added to that section, to read:

133 538.23 Violations and penalties.--

134 (1) (a) Except as provided in paragraph (b), a secondary  
 135 metals recycler who shall, upon conviction of knowingly and  
 136 intentionally:

137 1. (a) Violates ~~Violating~~ s. 538.20 or s. 538.21;

138 2. (b) Engages ~~Engaging~~ in a pattern of failing to keep  
 139 records as required by s. 538.19; ~~or~~

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~~3.(e) Violates~~ Violating s. 538.26(4); ~~or~~

4. Violates s. 538.235,

~~commits be guilty of~~ a misdemeanor of the first degree,  
punishable as provided in s. 775.082.

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

(3) Any person who knowingly gives false verification of  
ownership or who gives a false or altered identification and who  
receives money or other consideration from a secondary metals  
recycler in return for regulated metals property ~~commits shall,~~  
~~upon conviction, be guilty of:~~

(a) A ~~felony misdemeanor~~ of the third ~~first~~ degree,  
punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s.  
775.084, if the value of the money or other consideration  
received is less than \$300.

(b) A felony of the second ~~third~~ degree, punishable as  
provided in s. 775.082, s. 775.083, or s. 775.084, if the value  
of the money or other consideration received is \$300 or more.

(4) If ~~When~~ a lawful owner recovers stolen regulated  
metals property from a secondary metals recycler who has  
complied with ~~the provisions of~~ this part, and the person who  
sold the regulated metals property to the secondary metals  
recycler is convicted of theft, a violation of this section, or  
dealing in stolen property, the court shall order the defendant  
to make full restitution, including, without limitation,

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168 attorneys' fees, court costs, and other expenses to the  
 169 secondary metals recycler pursuant to s. 775.089.

170 (5) A person acting as a secondary metals recycler who is  
 171 not registered with the department under s. 538.25 commits a  
 172 felony of the third degree, punishable as provided in s.  
 173 775.082, s. 775.083, or s. 775.084.

174 Section 4. Section 538.235, Florida Statutes, is created  
 175 to read:

176 538.235 Method of payment.--A secondary metals recycler  
 177 shall not enter into any cash transaction in excess of \$1,000 in  
 178 payment for the purchase of regulated metals property. Payment  
 179 in excess of \$1,000 for the purchase of regulated metals  
 180 property shall be made by check issued to the seller of the  
 181 metal and payable to the seller.

182 Section 5. Subsection (6) is added to section 538.25,  
 183 Florida Statutes, to read:

184 538.25 Registration.--

185 (6) Upon the request of a law enforcement official, the  
 186 Department of Revenue shall release to the official the name and  
 187 address of any secondary metals recycler registered to do  
 188 business within the official's jurisdiction.

189 Section 6. Subsection (4) of section 538.26, Florida  
 190 Statutes, is amended to read:

191 538.26 Certain acts and practices prohibited.--It is  
 192 unlawful for a secondary metals recycler to do or allow any of  
 193 the following acts:

194 (4) Purchase regulated metals property from any seller who  
 195 presents such property for sale at the registered location of

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196 | the secondary metals recycler when such property was not  
197 | transported in a motor vehicle ~~unless the seller can prove~~  
198 | ~~ownership of the regulated metals property.~~

199 |       Section 7. This act shall take effect October 1, 2008.