

By Senator Constantine

22-00379-08

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1 A bill to be entitled

2 An act relating to secondary metals recycling; amending s.  
3 538.19, F.S.; requiring additional information to be  
4 recorded by secondary metals recyclers; providing audit  
5 authority and enforcement and reporting requirements for  
6 the Department of Revenue; creating s. 538.195, F.S.;  
7 requiring specified information to be reported by  
8 secondary metals recyclers to the Department of Law  
9 Enforcement for specified transactions; providing for  
10 forms; requiring retention of certain metals received for  
11 a specified period; providing penalties for failure to  
12 report; amending s. 538.23, F.S.; providing criminal  
13 penalties for specified violations by secondary metals  
14 recyclers; amending s. 538.25, F.S.; providing specified  
15 administrative penalties for certain violations by  
16 secondary metals recyclers; amending s. 538.26, F.S.;  
17 prohibiting purchases of certain regulated metals from  
18 minors; prohibiting purchases of or removal of insulation  
19 from certain metallic wire; providing exceptions; creating  
20 s. 538.27, F.S.; prohibiting cash payments and payments on  
21 site at the time of the transaction in certain regulated  
22 metals transactions; requiring receipts meeting specified  
23 requirements for certain transactions; providing  
24 exceptions; creating s. 538.28, F.S.; prohibiting sale of  
25 certain items; providing exceptions; providing penalties;  
26 providing an effective date.

27  
28 Be It Enacted by the Legislature of the State of Florida:  
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30 Section 1. Section 538.19, Florida Statutes, is amended to  
31 read:

32 538.19 Records required.--

33 (1) A secondary metals recycler shall maintain a legible  
34 record of all purchase transactions to which such secondary  
35 metals recycler is a party.

36 (2) The following information must be maintained for each  
37 purchase transaction:

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

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

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

42 (d) A photograph of the regulated metals property purchased  
43 ~~The weight, quantity, or volume,~~ and a description, including  
44 weight, quantity, or volume, of the type of regulated metals  
45 property purchased ~~in a purchase transaction.~~

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

48 (f) A signed statement from the person delivering the  
49 regulated metals property stating that she or he is the rightful  
50 owner of, or is entitled to sell, the regulated metals property  
51 being sold.

52 (g) The distinctive number from the personal identification  
53 card of the person delivering the regulated metals property to  
54 the secondary metals recycler.

55 (h) A photograph, videotape, or similar likeness of the  
56 person receiving consideration in which such person's facial  
57 features are clearly visible.

58 (i) The name; physical description, including gender,

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59 height, weight, race, and eye and hair color; physical address;  
60 date of birth; and signature of the person delivering the  
61 regulated metals property and a photocopy of that person's  
62 current personal identification card. The secondary metals  
63 recycler must validate as much of the information provided by the  
64 person delivering the regulated metals property under this  
65 paragraph as possible by using a personal identification card  
66 provided by that person.

67 (j) The sales tax number, if applicable, of the person  
68 delivering the regulated metals property.

69 (k) The number and state of issuance of the license tag on  
70 the motor vehicle used to deliver the regulated metals, if  
71 applicable.

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

75 (4) The department is authorized to perform routine, random  
76 audits of the records of secondary metals recyclers and shall  
77 enforce the provisions of this section and report any suspicious  
78 purchases or sales of metal recorded pursuant to this section to  
79 the applicable local law enforcement agency. Nothing in this  
80 subsection shall be construed to prevent a local law enforcement  
81 agency from enforcing this section in any other manner consistent  
82 with law.

83 Section 2. Section 538.195, Florida Statutes, is created to  
84 read:

85 538.195 Report to the Department of Law Enforcement;  
86 exemption; penalties.--

87 (1) A secondary metals recycler shall deliver to the

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88 Department of Law Enforcement, on a paper or electronic form  
89 designed and made available by that department, a record of the  
90 receipt of regulated metals property within 24 hours after  
91 receipt, unless the metals were received from an industrial  
92 account or a secondary metals recycler for which a record is  
93 required to be kept by s. 538.19. The record of receipt shall  
94 include all information required by s. 538.19(2) (a), (c), (d),  
95 (e), (i), and (k), excluding the signature of the person  
96 delivering the regulated metals property.

97 (2) For receipt of copper or aluminum wire with a diameter  
98 of three-eighths of an inch or larger and for transactions with a  
99 value over \$100, a secondary metals recycler shall hold in its  
100 custody any regulated metal received in a reportable transaction  
101 for 7 days after filing the report required by subsection (1) in  
102 the same size, shape, and condition in which the regulated metal  
103 was received on its business premises. This subsection does not  
104 apply to:

105 (a) Transactions with industrial accounts or other  
106 secondary metals recyclers.

107 (b) Purchases of used aluminum beverage containers or  
108 ferrous regulated metals.

109 (c) Purchases of regulated metal authorized for release by  
110 a law enforcement officer with jurisdiction over the secondary  
111 metals recycler.

112 (3) A person who fails to file a report required by this  
113 section commits:

114 (a) For the first offense, a misdemeanor of the second  
115 degree, punishable as provided in s. 775.082 or s. 775.083.

116 (b) For a second or subsequent offense, a misdemeanor of

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117 the first degree, punishable as provided in s. 775.082 or s.  
118 775.083.

119 Section 3. Subsection (1) of section 538.23, Florida  
120 Statutes, is amended to read:

121 538.23 Violations and penalties.--

122 (1) A secondary metals recycler who ~~shall, upon conviction~~  
123 ~~of~~ knowingly and intentionally:

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

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

127 (c) Violates ~~Violating~~ s. 538.26(4), (6), or (7)

128  
129 ~~commits be guilty of~~ a misdemeanor of the first degree,  
130 punishable as provided in s. 775.082.

131 Section 4. Subsection (4) of section 538.25, Florida  
132 Statutes, is amended to read:

133 538.25 Registration.--

134 (4) In addition to the fine provided in subsection (3),  
135 registration under this section may be denied or any registration  
136 granted may be revoked, restricted, or suspended by the  
137 department if, ~~after October 2, 1989,~~ and within a 24-month  
138 period immediately preceding such denial, revocation,  
139 restriction, or suspension:

140 (a) The applicant or registrant has been convicted of  
141 knowingly and intentionally:

142 1. Violating s. 538.195, s. 538.20, ~~or~~ s. 538.21, s.  
143 538.27, or s. 538.28;

144 2. Engaging in a pattern of failing to keep records as  
145 required by s. 538.19;

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146 3. Making a material false statement in the application for  
147 registration; or

148 4. Engaging in a fraudulent act in connection with any  
149 purchase or sale of regulated metals property;

150 (b) The applicant or registrant has been convicted of, or  
151 entered a plea of guilty or nolo contendere to, a felony  
152 committed by the secondary metals recycler against the laws of  
153 the state or of the United States involving theft, larceny,  
154 dealing in stolen property, receiving stolen property, burglary,  
155 embezzlement, obtaining property by false pretenses, possession  
156 of altered property, or any felony drug offense or of knowingly  
157 and intentionally violating the laws of the state relating to  
158 registration as a secondary metals recycler; or

159 (c) The applicant has, after receipt of written notice from  
160 the department of failure to pay sales tax, failed or refused to  
161 pay, within 30 days after the secondary metals recycler's receipt  
162 of such written notice, any sales tax owed to the department.

163 Section 5. Subsections (6) and (7) are added to section  
164 538.26, Florida Statutes, to read:

165 538.26 Certain acts and practices prohibited.--It is  
166 unlawful for a secondary metals recycler to do or allow any of  
167 the following acts:

168 (6) Purchase regulated metals from a minor, other than used  
169 aluminum beverage containers or materials consisting of a metal  
170 product in its original manufactured form that is comprised of no  
171 more than 20 percent by weight of nonferrous metal.

172 (7) (a) Purchase or otherwise receive metallic wire that was  
173 burned in whole or in part to remove insulation unless the  
174 secondary metals recycler receives from the regulated metal

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175 seller written evidence that identifies the person delivering the  
176 wire and written evidence that the wire was lawfully burned.

177 (b) Accept aluminum wire or copper wire with a diameter of  
178 three-eighths of an inch or larger that has had the insulation  
179 removed.

180 (c) Remove the insulation from aluminum wire or copper wire  
181 with a diameter of three-eighths of an inch or larger until after  
182 the 7-day period prescribed by s. 538.195(2).

183

184 This subsection does not apply to transactions with industrial  
185 accounts or between secondary metals recyclers.

186 Section 6. Section 538.27, Florida Statutes, is created to  
187 read:

188 538.27 Payment.--

189 (1) A secondary metals recycler shall not:

190 (a) Provide payment for any regulated metals on site at the  
191 time of the regulated metals transaction. Payment shall be made  
192 by mailing a check or money order to a physical address provided  
193 by the seller through personal identification as provided in s.  
194 538.19(2)(i). The check or money order shall be made payable to  
195 the business name for an industrial account. This paragraph  
196 applies to:

197 1. All transactions with an industrial account, unless the  
198 industrial account annually preregisters employees with the  
199 secondary metals recycler who shall be authorized sellers on  
200 behalf of the industrial account.

201 2. All transactions, except transactions with industrial  
202 accounts exempted under subparagraph 1., which are purchases of:

203 a. Copper or aluminum wire with a diameter of three-eighths

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204 of an inch or larger; or

205 b. Three hundred dollars or more.

206 (b) Conduct a series of transactions for one vehicle load  
207 of regulated metals to avoid the requirements of this section.

208 (c) Participate in more than one cash transaction per day  
209 for regulated metals with any one seller.

210 (2) For each regulated metals transaction, the secondary  
211 metals recycler shall provide a receipt to the person delivering  
212 the regulated metals on site at the time of the transaction that  
213 includes the following information:

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

215 (b) An identifying description and weight of the specific  
216 regulated metals received.

217 (c) The dollar amount of the transaction.

218 (3) This section does not apply to transactions involving  
219 used aluminum beverage containers or materials consisting of a  
220 metal product in its original manufactured form that is comprised  
221 of no more than 20 percent by weight of nonferrous metal.

222 Section 7. Section 538.28, Florida Statutes, is created to  
223 read:

224 538.28 Sales of certain items prohibited.--

225 (1) Notwithstanding any provision of law, rule, or  
226 regulation to the contrary, it is unlawful to sell, offer for  
227 sale, or purchase as junk any metal item bearing markings of any  
228 governmental entity, utility company, cemetery, or railroad,  
229 including street signs, propane containers for fueling forklifts,  
230 or funeral markers.

231 (2) This section does not apply to the sale, offer for  
232 sale, or purchase as junk of such items by a duly authorized

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233 | employee or representative of any governmental entity acting  
234 | within his or her official capacity or by a duly authorized  
235 | employee or representative of a utility company, cemetery, or  
236 | railroad authorized to act on behalf of his or her employer.

237 | (3) A person who violates this section commits a  
238 | misdemeanor of the first degree, punishable as provided in s.  
239 | 775.082 or s. 775.083.

240 | Section 8. This act shall take effect July 1, 2008.