

property. Such secondhand goods do not include office furniture, pianos, books, clothing, organs, coins, motor vehicles, costume jewelry, and secondhand sports equipment that is not permanently labeled with a serial number. For purposes of this paragraph, ‘secondhand sports equipment’ does not include golf clubs.”¹ This definition does not currently cover exercise equipment, such as treadmills, that have serial numbers.

A secondary metals recycler is a scrap metal dealer. Secondary metals recyclers purchase used metals salvaged from building demolition, remodeling, etc. and refine those metals into raw materials used to make new products. Secondary metals recyclers are currently regulated under ch. 538, Part II, F.S., and must be registered with the Department of Revenue.

An applicant for a secondary metals recycler registration must be a natural person who has reached the age of 18 years or a corporation organized or qualified to do business in the state.² A secondary metals recycler must maintain a legible record of all purchase transactions to which such secondary metals recycler is a party.³ Section 538.19, F.S. provides a list of the information must be maintained for each purchase transaction regarding the identity of the seller and the nature of the transaction. A secondary metals recycler is required to maintain the required information for at least 5 years from the date of the purchase transaction.⁴

Under s. 538.21, F.S., when a law enforcement officer has reasonable cause to believe that certain items of regulated metals property may have been stolen, they may issue a hold notice to the secondary metals recycler. The secondary metals recycler may not remove or process items of regulated metals identified in the notice for 15 days after receipt of the notice. The officer may extend the hold notice for 45 additional days.

Section 538.23, F.S., provides for criminal penalties for a secondary metals recycler who knowingly or intentionally:

- Violates their inspection requirements,⁵
- Violates their requirement to hold metals if notified by law enforcement,⁶
- Engages in a pattern of failing to keep records,⁷
- Purchases regulated metals property from any seller who presents such property for sale at the registered location of the secondary metals recycler when such property was not transported in a motor vehicle unless the seller can prove ownership of the regulated metals property,⁸ or
- Enters into cash transactions in excess of \$1,000 for the purchase of regulated metals property.⁹

¹ Section 538.03(1)(f), F.S.

² Section 538.25, F.S.

³ Section 538.19, F.S.

⁴ Section 538.19, F.S.

⁵ Section 538.20, F.S.

⁶ Section 538.21, F.S.

⁷ Section 538.19, F.S.

⁸ Section 538.26(4), F.S.

⁹ Section 538.235, F.S.

It is a felony for a secondary metals recycler to fail to register under s. 538.25, F.S. The Department of Revenue may impose a fine up to \$10,000 for secondary metals recyclers who are not registered. If the fine is not paid within 60 days, DOR may bring civil action to recover the fine.¹⁰

Section 538.23, F.S., provides for criminal penalties for any person who knowingly gives false verification of ownership or who gives a false or altered identification and who receives money or other consideration in return for regulated metals property.

Section 538.26, F.S., makes it unlawful for a secondary metals recycler to do or allow any of the following acts:

- Purchase regulated metals property between the hours of 9 p.m. and 6 a.m.;
- Fail to pay any sales tax owed to the department or fail to have a sales tax registration number;
- Purchase regulated metals property at a location other than the place of business set forth on the registration;
- Purchase regulated metals property from any seller who presents such property for sale at the registered location of the secondary metals recycler when such property was not transported in a motor vehicle unless the seller can prove ownership of the regulated metals property; or
- Purchase regulated metals property in return for money from a trailer, a vehicle, or any location other than a fixed location or from any person who is required to prove ownership. However, regulated metals may be purchased from a non-fixed location, or from such person, with any negotiable or nonnegotiable instrument, including a check or draft or any other type of instrument purchased with money and sold for the purpose of making payments or transfers to others.¹¹

In 2008, the Legislature passed CS/CS/SB 556 increasing the regulation of secondary metals recyclers by:

- Requiring secondary metals recyclers to gather more in depth information about the sellers of regulated metals and allows that information to be stored on an electronic database.
- Expanding the definition of regulated metals to include stainless steel beer kegs.
- Increasing the penalty for secondary metals recyclers face for repeated noncompliance with statutory requirements from a first degree misdemeanor to a third degree felony.
- Increasing the penalty for sellers of regulated metals who give false information to secondary metals recyclers to second and third degree felonies based on the dollar amount received by the seller.
- Requiring the Department of Revenue to release the names of any registered secondary metals recycler to a law enforcement official upon request.
- Requiring all regulated metals be transported to a secondary metals recycler in a motor vehicle.

¹⁰ Section 120.69, F.S.

¹¹ Section 538.26, F.S.

- Requiring payments for all transactions in excess of \$1000 be made by check.

III. Effect of Proposed Changes:

Section 1 excludes exercise equipment from the definition of secondhand goods in s. 538.03(1)(f), F.S. This will allow exercise equipment that has a serial number to be resold without requiring the business reselling the equipment to keep the detailed records required by s. 538.04, F.S., or to hold the equipment as required by s. 538.06, F.S.

Section 2 preempts local government regulations that set the time period for which a secondary metals recycler must hold the regulated metals after purchase. Section 538.21, F.S., requiring secondary metals recyclers to hold regulated metals upon notice from law enforcement, would set the standard throughout the state.

Section 3 provides that the act shall take effect July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Preemption of local regulation would prevent secondary metals recyclers from having to hold regulated metals for a longer period than dictated by state law.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on March 10, 2009:

- The definition of secondhand goods is revised to exclude exercise equipment.
- The bill is changed to preempt local ordinances only when the local ordinance differs from the requirements of s. 538.21, F.S., which requires that secondary metals recyclers hold regulated metals for a specified time period upon receiving notice from law enforcement that such metals may be stolen.

B. Amendments:

None.