

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/CS/CS/SB 478

INTRODUCER: Criminal Justice Committee, Commerce Committee, Community Affairs Committee,  
and Senators Baker and Lynn

SUBJECT: Secondhand Dealers/Secondary Metals Recyclers

DATE: April 21, 2009                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	Fav/CS
2.	O'Callaghan	Cooper	CM	Fav/CS
3.	Clodfelter	Cannon	CJ	Fav/CS
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

This committee substitute (CS) excludes “cardio and strength training or conditioning equipment designed primarily for indoor use” from the definition of secondhand goods, thereby exempting sellers of this type of exercise equipment from the regulatory requirements of part I, ch. 538, F.S.

This CS also preempts local government regulations enacted after December 31, 2008, that require specific holding periods for metals purchased by secondary metals recyclers.

This CS amends sections 538.03 and 538.21, F.S.

**II. Present Situation:**

Chapter 538, F.S., regulates secondhand dealers and secondary metals recyclers. Specifically, part I of ch. 538, F.S., regulates “secondhand dealers,” while part II of ch. 538, F.S., regulates “secondary metals recyclers.” These laws discourage theft and assist law enforcement in recovering stolen goods, because they require secondhand dealers and secondary metals

recyclers to keep certain records, require that goods are held for a certain length of time, and provide for penalties for certain prohibited acts.

### ***Secondhand Dealers/Secondhand Goods***

Part I of ch. 538, F.S., which governs secondhand dealers, regulates those who deal in secondhand goods, with certain delineated exceptions (e.g. flea markets, garage sales, and charitable organizations).

The term “secondhand goods” is defined as personal property previously owned or used, but does not include metals regulated under part II of ch. 538, F.S., and which is purchased, consigned, or traded as used property.<sup>1</sup> 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.<sup>2</sup> Additionally, “secondhand sports equipment” does not include golf clubs.<sup>3</sup>

Currently used exercise equipment, such as treadmills, that are permanently labeled with a serial number, are considered secondhand goods.

### ***Registration***

Secondhand dealers may not engage in the business of purchasing, consigning, or trading secondhand goods without first registering with the Department of Revenue (DOR).

An applicant for a secondhand dealer registration must be a natural person who has reached the age of 18 years and if:

- The applicant is a partnership, all the partners must apply.
- The applicant is a joint venture, association, or other entity (except a corporation), all members of such joint venture, association, or other entity must make application for registration as natural persons.
- The applicant is a corporation, the registration must include the name and address of such corporation’s registered agent for service of process in the state and a certified copy of a statement from the Secretary of State that the corporation is duly organized in the state.

As part of registering a business, the business applicant must submit a complete set of fingerprints to DOR and DOR must forward the fingerprints to the Florida Department of Law Enforcement (FDLE) for state and federal processing. In addition, the applicant must submit a recent full-face photographic identification card of himself or herself. A dealer is responsible for the cost of fingerprinting and must pay a \$6 fee to register each business location and must pay an annual registration renewal fee of \$6 per location.

The secondhand dealer’s registration must be conspicuously displayed at her or his registered locations.

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<sup>1</sup> Section 538.03(1)(f), F.S.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

*Recordkeeping*

Secondhand dealers are responsible for maintaining a record of all sale transactions and for each sale there must be a completed transaction form. A copy of a completed transaction form must be maintained for at least 3 years. Additionally, secondhand dealers must provide local law enforcement with a record of each transaction within 24 hours of the transaction and on a form approved by FDLE. The form may be submitted by electronic transmission if the secondhand dealer is capable of doing so and if the law enforcement agency permits. The form must contain:<sup>4</sup>

- The time, date, and place of the transaction.
- A complete and accurate description of the goods acquired, including:
  - Brand name;
  - Model number;
  - Manufacturer's serial number;
  - Size;
  - Color, as apparent to the untrained eye;
  - Precious metal type, weight, and content if known; and
  - Gemstone description, including the number of stones, if applicable.
- In the case of firearms, the type of action, caliber or gauge, number of barrels, barrel length, and finish.
- Any other unique identifying marks, numbers, or letters of the goods.
- A description of the person from whom the goods were acquired, including:
  - Full name, current residential address, workplace, and home and work phone numbers;
  - Height, weight, date of birth, race, gender, hair color, eye color, and any other identifying marks;
  - The right thumbprint, free of smudges and smears, of the person from whom the goods were acquired; and
  - Any other information required by the form approved by FDLE.

The secondhand dealer must take additional security measures and must verify a customer's identification by reviewing a government-issued photographic identification card, such as a driver's license or military identification card, and must report information from the identification card to local law enforcement on the aforementioned form.

Any law enforcement having jurisdiction over the secondhand dealer may inspect the secondhand dealer's premises, including records and inventory kept on the premises, during regular business hours.

*Prohibited Acts*

It is unlawful for a secondhand dealer or employee to do, or allow, any of the following acts:

- Knowingly make a transaction with a person who is visibly under the influence of drugs or alcohol, a person under the age of 18 years, or a person using a name other than her or his own name or the registered name of her or his business.

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<sup>4</sup> See s. 538.04(1), F.S.

- Have a secondhand store open or engage in or conduct business as a secondhand dealer between the hours of 10 p.m. and 8 a.m. or conduct any transaction at a drive-through window or similar device.
- Fail to pay any sales tax owed to the Department of Revenue or fail to have a sales tax registration number.

A seller must sign a statement verifying that he or she is the rightful owner of the goods or is entitled to sell, consign, or trade the goods, and if that person knowingly gives false verification of ownership or gives a false or altered identification, and receives money from a secondhand dealer for the goods, that person may be subject to criminal penalties. Specifically, if the seller is paid less than \$300, a felony of the third degree is committed; if the seller is paid \$300 or more, a felony of the second degree is committed.

#### *Holding Periods*

Secondhand dealers must hold goods for at least 15 days after a transaction without altering, encumbering, or using those goods; except the original seller of the goods may purchase the goods back before that time. However, a law enforcement officer having probable cause that the goods are stolen may place a 90-day written hold order on the goods. The hold may be extended beyond 90 days by a court finding probable cause that the property is stolen and may require the goods to be held as long as is necessary for the purposes of trial or to safeguard such property. The dealer assumes all responsibility, civil or criminal, relative to the property or evidence in question, including responsibility for the actions of any employee with respect thereto.

#### *Penalties*

Any person who knowingly violates any provision in ch. 538, F.S., commits a misdemeanor of the first degree and may be fined up to \$10,000. If a lawful owner recovers stolen property from a secondhand dealer, and the person who sold or pledged the stolen property to the secondhand dealer is convicted for a violation under ch. 538, F.S., for theft, or for dealing in stolen property, the court must order the defendant to make restitution to the secondhand dealer or the lawful owner, as applicable.

DOR may impose a civil fine of up to \$10,000 for violating any of the registration requirements under s. 538.09, F.S., and if the fine is not paid within 60 days, DOR may bring a civil action to recover the fine. Additionally, DOR may deny any registration, and registration of a business may be revoked, restricted, or suspended by DOR if it determines that the applicant or registrant:

- Has violated any provision of this chapter or any rule or order made pursuant to this chapter;
- Has made a material false statement in the application for registration;
- Has been guilty of a fraudulent act in connection with any purchase or sale or has been or is engaged in or is about to engage in any practice, purchase, or sale which is fraudulent or in violation of the law;
- Has made a misrepresentation or false statement to, or concealed any essential or material fact from, any person in making any purchase or sale;
- Is making purchases or sales through any business associate not registered in compliance with the provisions of this chapter;

- Has, within the preceding 10-year period for new registrants who apply for registration on or after October 1, 2006, been convicted of, or has entered a plea of guilty or nolo contendere to, or had adjudication withheld for, a crime against the laws of this state or any other state or of the federal government which relates to registration as a secondhand dealer or which involves theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, any felony drug offense, any retail or farm theft, or any fraudulent dealing;
- Has had a final judgment entered against her or him in a civil action upon grounds of fraud, embezzlement, misrepresentation, or deceit; or
- Has failed to pay any sales tax owed to the DOR.

### ***Secondary Metals Recyclers/Holding Periods***

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, or send those metals to a refinery, to make new products.

### ***Registration***

Secondary metals recyclers are currently regulated under ch. 538, part II, F.S., and must be registered with DOR. An applicant for a secondary metals recycler registration must be a natural person, who is at least 18 years of age, or a corporation organized or qualified to do business in the state.<sup>5</sup> The applicant must submit a complete set of fingerprints to DOR and DOR must forward the fingerprints to FDLE for state and federal processing. In addition, the applicant must submit a recent full-face photographic identification card of himself or herself. A recycler is responsible for the cost of fingerprinting and must pay a \$6 fee to register each business location and must pay an annual registration renewal fee of \$6 per location.

The secondhand dealer's registration must be conspicuously displayed at her or his registered locations.

### ***Recordkeeping***

A secondary metals recycler must maintain a legible record of all purchase transactions to which such secondary metals recycler is a party.<sup>6</sup> Section 538.19, F.S., provides a list of the information that 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.<sup>7</sup>

### ***Holding Period***

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 identified in the notice for 15 days after receipt of the notice. The officer may extend the hold notice for 45 additional days.

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<sup>5</sup> Section 538.25, F.S.

<sup>6</sup> Section 538.19, F.S.

<sup>7</sup> Section 538.19, F.S.

*Prohibited Acts*

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.<sup>8</sup>

*Criminal Penalties*

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

- Violates inspection requirements;<sup>9</sup>
- Violates their requirement to hold metals if notified by law enforcement;<sup>10</sup>
- Engages in a pattern of failing to keep records;<sup>11</sup>
- 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;<sup>12</sup> or
- Enters into cash transactions in excess of \$1,000 for the purchase of regulated metals property.<sup>13</sup>

It is a felony for a secondary metals recycler to fail to register under s. 538.25, F.S., and DOR 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.<sup>14</sup>

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<sup>8</sup> Section 538.26, F.S.

<sup>9</sup> Section 538.20, F.S.

<sup>10</sup> Section 538.21, F.S.

<sup>11</sup> Section 538.19, F.S.

<sup>12</sup> Section 538.26(4), F.S.

<sup>13</sup> Section 538.235, F.S.

<sup>14</sup> Section 120.69, F.S.

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.

#### *Recent Legislation*

In 2008, the Legislature passed CS/CS/SB 556 increasing the regulation of secondary metals recyclers by:<sup>15</sup>

- 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 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.
- Requiring payments for all transactions in excess of \$1,000 be made by check.

### **III. Effect of Proposed Changes:**

**Section 1** excludes “cardio or strength training or conditioning equipment designed primarily for indoor use” from the definition of secondhand goods in s. 538.03(1)(f), F.S. Excluding this type of exercise equipment from this definition exempts those individuals selling this type of exercise equipment from the requirements and penalties provided for in part I, ch. 538, F.S.

**Section 2** preempts local government regulations enacted after December 31, 2008, that require specific holding periods for metals purchased by secondary metals recyclers.

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

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

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<sup>15</sup> See s. 3, ch. 208-69, L.O.F.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Secondhand dealers that exclusively deal in cardio and strength training or conditioning equipment designed primarily for indoor use will be exempt from the requirements of part I, ch. 538, F.S., meaning they will save costs associated with registering with DOR.

Preemption of local regulation would prevent secondary metals recyclers from having to hold regulated metals for a longer period than dictated by state law. Otherwise, for longer holding periods, recyclers may incur costs associated with storing the metals and may incur losses associated with holding on to, and not being able to sell, a commodity which has fluctuating values.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

CS/CS/SB 2700 also deals with second hand dealers and secondary metals recyclers and includes this bill's amendment of s. 538.03(1)(f), F.S., that excludes "cardio and strength-training or conditioning equipment designed primarily for indoor use" from the definition of secondhand goods.

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 Criminal Justice on April 21, 2009:**

- Changes the effective date from July 1, 2009 to October 1, 2009.

**CS by Commerce on April 6, 2009:**

- Clarifies the type of exercise equipment being excluded from the definition of "secondhand goods," thereby narrowing the exemption from regulation under part I of ch. 538, for exercise equipment.



- Prevents municipal and county ordinances enacted before December 31, 2008, which concern hold notices for secondary metals recyclers, from being preempted.

**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.