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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/11/2011	.	
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The Committee on Community Affairs (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

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

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

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

(u) "Secondary metals recycler" means secondary metals recycler as defined in s. 538.18(11) ~~s. 538.18(8)~~.

Section 2. Paragraph (j) is added to subsection (1) of



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13 section 538.03, Florida Statutes, to read:

14 538.03 Definitions; applicability.—

15 (1) As used in this part, the term:

16 (j) "Appropriate law enforcement official" means the
17 sheriff of the county in which a secondhand dealer is located
18 or, in the case of a secondhand dealer located within a
19 municipality, the police chief of the municipality in which the
20 secondhand dealer is located; however, any sheriff or police
21 chief may designate as the appropriate law enforcement official
22 for the county or municipality, as applicable, any law
23 enforcement officer working within the county or municipality
24 headed by that sheriff or police chief. This paragraph does not
25 limit the power and responsibilities of the sheriff.

26 Section 3. Subsection (1) of section 538.04, Florida
27 Statutes, is amended to read:

28 538.04 Recordkeeping requirements; penalties.—

29 (1) Secondhand dealers shall complete a secondhand dealers
30 transaction form at the time of the actual transaction. A
31 secondhand dealer shall maintain a copy of a completed
32 transaction form on the registered premises for at least 1 year
33 after the date of the transaction. However, the secondhand
34 dealer shall maintain a copy of the transaction form for not
35 less than 3 years. Unless other arrangements have been agreed
36 upon by the secondhand dealer and the appropriate law
37 enforcement agency, the secondhand dealer shall, within 24 hours
38 after the acquisition of any secondhand goods, deliver to the
39 appropriate law enforcement official ~~police department of the~~
40 ~~municipality where the goods were acquired or, if the goods were~~
41 ~~acquired outside of a municipality, to the sheriff's department~~



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42 ~~of the county where the goods were acquired,~~ a record of the
43 transaction on a form approved by the Department of Law
44 Enforcement. Such record shall contain:

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

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

48 1. Brand name.

49 2. Model number.

50 3. Manufacturer's serial number.

51 4. Size.

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

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

54 7. Gemstone description, including the number of stones, if
55 applicable.

56 8. In the case of firearms, the type of action, caliber or
57 gauge, number of barrels, barrel length, and finish.

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

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

61 1. Full name, current residential address, workplace, and
62 home and work phone numbers.

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

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

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

69 Section 4. Section 538.18, Florida Statutes, is amended to
70 read:



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71 538.18 Definitions.—As used in this part, the term:
72 (1) "Appropriate law enforcement official" means the
73 sheriff of the county in which a secondary metals recycler is
74 located or, in the case of a secondary metals recycler located
75 within a municipality, the police chief of the municipality in
76 which the secondary metals recycler is located; however, any
77 sheriff or police chief may designate as the appropriate law
78 enforcement official for the county or municipality, as
79 applicable, any law enforcement officer working within the
80 county or municipality headed by that sheriff or police chief.
81 This subsection does not limit the power and responsibilities of
82 the sheriff.
83 (2 "Department" means the Department of Revenue.
84 (3)~~(1)~~ "Ferrous metals" means any metals containing
85 significant quantities of iron or steel.
86 (4)~~(2)~~ "Fixed location" means any site occupied by a
87 secondary metals recycler as owner of the site or as lessee of
88 the site under a lease or other rental agreement providing for
89 occupation of the site by the secondary metals recycler for a
90 total duration of not less than 364 days.
91 (5)~~(3)~~ "Money" means a medium of exchange authorized or
92 adopted by a domestic or foreign government as part of its
93 currency.
94 (6)~~(4)~~ "Nonferrous metals" means metals not containing
95 significant quantities of iron or steel, including, without
96 limitation, copper, brass, aluminum, bronze, lead, zinc, nickel,
97 and alloys thereof, excluding precious metals subject to
98 regulation under part I.
99 (7)~~(5)~~ "Personal identification card" means any government-



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100 issued photographic identification card.

101 ~~(8)~~~~(6)~~ "Purchase transaction" means a transaction in which
102 a secondary metals recycler gives consideration for regulated
103 metals property.

104 ~~(9)~~~~(7)~~ "Regulated metals property" means any item composed
105 primarily of any nonferrous metals. The term does, ~~but shall~~ not
106 include aluminum beverage containers, used beverage containers,
107 or similar beverage containers; however, ~~the term includes~~
108 ~~shall include~~ stainless steel beer kegs.

109 (10) "Restricted regulated metals property" means any
110 regulated metals property listed in s. 538.26(6)(b), the sale of
111 which is restricted as provided in s. 538.26(6)(a).

112 ~~(11)~~~~(8)~~ "Secondary metals recycler" means any person who:

113 (a) Is engaged, from a fixed location ~~or otherwise~~, in the
114 business of gathering or obtaining ferrous or nonferrous metals
115 that have served their original economic purpose or is in the
116 business of performing the manufacturing process by which
117 ferrous metals or nonferrous metals are converted into raw
118 material products consisting of prepared grades and having an
119 existing or potential economic value; or

120 (b) Has facilities for performing the manufacturing process
121 by which ferrous metals or nonferrous metals are converted into
122 raw material products consisting of prepared grades and having
123 an existing or potential economic value, other than by the
124 exclusive use of hand tools, by methods including, without
125 limitation, processing, sorting, cutting, classifying, cleaning,
126 baling, wrapping, shredding, shearing, or changing the physical
127 form or chemical content thereof.

128 ~~(9) "Department" means the Department of Revenue.~~



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129 (12) "Utility" means a person, firm, corporation,
130 association, or political subdivision, whether private,
131 municipal, county, or cooperative, which is engaged in the sale,
132 generation, provision, or delivery of gas, electricity, heat,
133 water, oil, sewer service, or telephone, telegraph, radio,
134 communications, or telecommunications service.

135 Section 5. Section 538.19, Florida Statutes, is amended to
136 read:

137 538.19 Records required; limitation of liability.—

138 (1) A secondary metals recycler shall complete a
139 transaction form at the time of the actual transaction. Unless
140 other arrangements have been agreed upon, the secondary metals
141 recycler shall, within 24 hours after acquiring the regulated
142 metals, deliver to the appropriate law enforcement official a
143 record of the transaction on a form approved by the Department
144 of Law Enforcement. The recycler shall also maintain a legible
145 record of all purchase transactions to which ~~the such~~ secondary
146 metals recycler is a party.

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

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

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

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

154 (d) The weight, quantity, or volume, and a description of
155 the type of regulated metals property purchased in a purchase
156 transaction.

157 (e) The amount of consideration given in a purchase



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158 transaction for the regulated metals property.

159 (f) A signed statement from the person delivering the
160 regulated metals property stating that she or he is the rightful
161 owner of, or is entitled to sell, the regulated metals property
162 being sold. If the purchase involves a stainless steel beer keg,
163 the seller must provide written documentation from the
164 manufacturer that the seller is the owner of the stainless steel
165 beer keg or is an employee or agent of the manufacturer.

166 (g) The distinctive number from the personal identification
167 card of the person delivering the regulated metals property to
168 the secondary metals recycler.

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

171 1. Full name, current residential address, workplace, and
172 home and work phone numbers.

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

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

176 4. Vehicle description to include the make, model, and tag
177 number of the vehicle and trailer of the person selling the
178 regulated metals property.

179 5. Any other information required by the form approved by
180 the Department of Law Enforcement.

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

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

186 (3) Any secondary metals recycler may, with the approval of



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187 the appropriate law enforcement official, use that maintains an
188 electronic database containing the information required in
189 subsection (2) paragraph (2)(h), along with an oath of ownership
190 with a signature of the seller of the secondary metals being
191 purchased by the secondary metals recycler and a right
192 thumbprint that has no smudges and smears on the oath of
193 ownership for each purchase transaction, shall be exempt from
194 the records requirement of paragraph (2)(h). A secondary metals
195 recycler complies with the requirements of this section if it
196 maintains an electronic database containing the information
197 required by subsection (2) paragraph (2)(h) as long as the
198 electronic information required by subsection (2) paragraph
199 (2)(h), along with an electronic oath of ownership with an
200 electronic signature of the seller of the secondary metals being
201 purchased by the secondary metals recyclers and an electronic
202 image of the seller's right thumbprint that has no smudges and
203 smears, can be downloaded onto a paper form in the image of the
204 form approved by the Department of Law Enforcement as provided
205 in subsection (2).

206 (4) If an appropriate law enforcement official supplies the
207 software and the secondary metals recycler has the computer
208 ability, the recycler shall electronically transmit regulated
209 metals transaction records required by this section. If a
210 recycler does not have such ability, the appropriate law
211 enforcement official may provide the recycler with a computer
212 and necessary equipment to electronically transmit such records.
213 The appropriate law enforcement official shall retain ownership
214 of the computer, unless otherwise agreed upon, and the recycler
215 shall maintain the computer in good working order, ordinary wear



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216 and tear excepted. A recycler who transmits such records
217 electronically is not required to also provide the original or
218 paper copies of the forms to the appropriate law enforcement
219 official. However, such official may, for purposes of a criminal
220 investigation, require the recycler to provide the original of a
221 transaction form that has been electronically transferred within
222 24 hours after receipt of the request.

223 (5)-(4) A secondary metals recycler shall maintain or cause
224 to be maintained the information required by this section for
225 not less than 2 5 years from the date of the purchase
226 transaction.

227 (6)-(5) If a purchase transaction involves the transfer of
228 regulated metals property from A secondary metals recycler
229 registered with the department who purchases a motor vehicle
230 from a licensed salvage motor vehicle dealer as defined in s.
231 320.27 or from ~~to~~ another secondary metals recycler registered
232 with the department and who uses a mechanical crusher to convert
233 the vehicle to scrap metal must obtain a signed statement from
234 the seller stating that the seller has surrendered the vehicle's
235 certificate of title to the Department of Highway Safety and
236 Motor Vehicles as provided in s. 319.30 or has otherwise
237 complied with the titling requirements provided by law for
238 conversion of the vehicle to scrap metal. A, the secondary
239 metals recycler is not liable for the seller's failure to comply
240 with the titling requirements provided by law for conversion of
241 a motor vehicle to scrap metal if the secondary metals recycler
242 obtains and maintains the seller's signed statement receiving
243 the regulated metals property shall record the name and address
244 of the secondary metals recycler from which it received the



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245 ~~regulated metals property in lieu of the requirements of~~
246 ~~paragraph (2) (h).~~

247 Section 6. Section 538.235, Florida Statutes, is amended to
248 read:

249 538.235 Method of payment.—

250 (1) A secondary metals recycler may ~~shall~~ not enter into
251 any cash transaction:

252 (a) In excess of \$1,000 in payment for the purchase of
253 regulated metals property; or

254 (b) In any amount for the purchase of restricted regulated
255 metals property.

256 (2) Payment in excess of \$1,000 for the purchase of
257 regulated metals property or payment in any amount for the
258 purchase of restricted regulated metals property must ~~shall~~ be
259 made by check issued and payable to the seller or by electronic
260 payment to the seller's bank account or the bank account of the
261 seller's employer ~~metal and payable to the seller.~~

262 Section 7. Subsection (5) of section 538.26, Florida
263 Statutes, is amended, and subsection (6) is added to that
264 section, to read:

265 538.26 Certain acts and practices prohibited.—It is
266 unlawful for a secondary metals recycler to do or allow any of
267 the following acts:

268 (5) Purchase regulated metals property ~~in return for money~~
269 ~~from a trailer, a vehicle, or any location other than a fixed~~
270 ~~location or from any person who is required to prove ownership~~
271 under s. 538.19 pursuant to subsection (4). ~~However, regulated~~
272 ~~metals may be purchased from a nonfixed location, or from such~~
273 ~~person, with any negotiable or nonnegotiable instrument,~~



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274 ~~including a check or draft or any other type of instrument~~
275 ~~purchased with money and sold for the purpose of making payments~~
276 ~~or transfers to others.~~

277 (6) (a) Purchase any restricted regulated metals property
278 listed in paragraph (b) unless the secondary metals recycler
279 obtains reasonable proof that the seller:

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

282 2. Is an employee, agent, or contractor of the property's
283 owner and is authorized to sell the property on behalf of the
284 owner. Reasonable proof of authorization to sell the property
285 includes, but is not limited to, a signed letter on the owner's
286 letterhead, dated no later than 90 days before the sale,
287 authorizing the seller to sell the property.

288 (b) The purchase of any of the following regulated metals
289 property is subject to the restrictions provided in paragraph
290 (a):

291 1. A manhole cover.

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

295 3. A guard rail.

296 4. A street sign, traffic sign, or traffic signal and its
297 fixtures and hardware.

298 5. Communication, transmission, distribution, and service
299 wire from a utility, including copper or aluminum bus bars,
300 connectors, grounding plates, or grounding wire.

301 6. A funeral marker or funeral vase.

302 7. A historical marker.



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303 8. Railroad equipment, including, but not limited to, a tie
304 plate, signal house, control box, switch plate, E clip, or rail
305 tie junction.

306 9. A metal item that is observably marked, upon reasonable
307 inspection, with any form of the name, initials, or logo of a
308 governmental entity, utility company, cemetery, or railroad.

309 10. A copper, aluminum, or aluminum-copper condensing or
310 evaporator coil, including its tubing or rods, from an air-
311 conditioning or heating unit, excluding coils from window air-
312 conditioning or heating units and motor vehicle air-conditioning
313 or heating units.

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

316 12. A stainless steel beer keg.

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

319 14. Metallic wire that has been burned in whole or in part
320 to remove insulation.

321 15. A brass or bronze commercial valve or fitting, referred
322 to as a "fire department connection and control valve" or an
323 "FDC valve," which is commonly used on structures for access to
324 water for the purpose of extinguishing fires.

325 16. A brass or bronze commercial potable water backflow
326 preventer valve that is commonly used to prevent backflow of
327 potable water from commercial structures into municipal domestic
328 water service systems.

329 17. A shopping cart.

330 Section 8. Section 538.27, Florida Statutes, is created to
331 read:



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332 538.27 Secondary metals recyclers; limitation of liability;
333 inference.—As provided in s. 812.022(7), proof that a purchase
334 transaction for regulated metals property by a secondary metals
335 recycler complied with this part gives rise to an inference that
336 the secondary metals recycler did not know or have reason to
337 believe that the property was stolen and that the recycler did
338 not have intent to commit theft or deal in stolen property.

339 Section 9. Section 538.28, Florida Statutes, is created to
340 read:

341 538.28 Local government regulation; preemption.—

342 (1) The regulation of purchase transactions involving
343 regulated metals property is preempted to the state. Except as
344 provided in subsection (2), an ordinance or regulation adopted
345 by a county or municipality relating to the purchase or sale of
346 regulated metals property or the registration or licensure of
347 secondary metals recyclers is void.

348 (2) This part does not preempt an ordinance or regulation
349 originally enacted by a county or municipality before March 1,
350 2011, or any subsequent amendment to such ordinance or
351 regulation.

352 Section 10. Subsection (7) is added to section 812.022,
353 Florida Statutes, to read:

354 812.022 Evidence of theft or dealing in stolen property.—

355 (7) Proof that a purchase transaction for regulated metals
356 property by a secondary metals recycler complied with part II of
357 chapter 538 gives rise to an inference that the secondary metals
358 recycler did not know or have reason to believe that the
359 property was stolen and that the recycler did not have intent to
360 commit theft or deal in stolen property.



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361 Section 11. This act shall take effect July 1, 2011.

362

363 ===== T I T L E A M E N D M E N T =====

364 And the title is amended as follows:

365 Delete everything before the enacting clause
366 and insert:

367 A bill to be entitled
368 An act relating to secondary metals recyclers;
369 amending s. 319.30, F.S.; conforming a cross-
370 reference; amending s. 538.03, F.S.; defining the term
371 "appropriate law enforcement official"; amending s.
372 538.04, F.S.; clarifying a provision requiring that a
373 secondhand dealer deliver a transaction form to the
374 appropriate law enforcement official; amending s.
375 538.18, F.S.; revising and providing definitions;
376 amending s. 538.19, F.S.; requiring that a secondary
377 metals recycler complete a transaction form and
378 transmit it to the appropriate law enforcement
379 official within 24 hours after the acquisition of
380 regulated metals; authorizing such recyclers to use an
381 electronic database and transmit transaction forms
382 electronically under certain circumstances;
383 authorizing appropriate law enforcement officials to
384 provide software and computer equipment to recyclers;
385 requiring that a recycler produce an original form in
386 certain situations; revising the period required for
387 secondary metals recyclers to maintain certain
388 information regarding purchase transactions involving
389 regulated metals property; revising requirements for



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390 the types of information that secondary metals
391 recyclers must obtain and maintain regarding purchase
392 transactions; limiting the liability of secondary
393 metals recyclers for the conversion of motor vehicles
394 to scrap metal under certain circumstances; amending
395 s. 538.235, F.S.; revising requirements for payments
396 made by secondary metals recyclers to sellers of
397 regulated metals property, to which penalties apply;
398 providing methods of payment for restricted regulated
399 metals property; requiring that purchases of certain
400 property be made by check or by electronic payment;
401 amending s. 538.26, F.S.; prohibiting secondary metals
402 recyclers from purchasing regulated metals property
403 without maintaining certain records; deleting
404 provisions prohibiting the purchase of regulated
405 metals property from certain persons or at certain
406 locations; prohibiting the purchase of specified
407 restricted regulated metals property without obtaining
408 certain proof of the seller's ownership or
409 authorization to sell the property; creating s.
410 538.27, F.S.; establishing an inference that secondary
411 metals recyclers do not commit theft or deal in stolen
412 property under certain circumstances; creating s.
413 538.28, F.S.; preempting to the state the regulation
414 of secondary metals recyclers and purchase
415 transactions involving regulated metals property;
416 exempting certain ordinances and regulations from
417 preemption; amending s. 812.022, F.S.; establishing an
418 inference that secondary metals recyclers do not



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commit theft or deal in stolen property under certain
circumstances; providing an effective date.