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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/29/2011	.	
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The Committee on Commerce and Tourism (Flores) 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 and, 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 and, 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)~~(9)~~ "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 (12) "Utility" means a person, firm, corporation,



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129 association, or political subdivision, whether private,
130 municipal, county, or cooperative, which is engaged in the sale,
131 generation, provision, or delivery of gas, electricity, heat,
132 water, oil, sewer service, or telephone, telegraph, radio,
133 communications, or telecommunications service.

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

136 538.19 Records required; limitation of liability.-

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

185 (3) Any secondary metals recycler may, with the approval of
186 the appropriate law enforcement official, use that maintains an



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

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



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

222 (5)-(4) A secondary metals recycler shall maintain or cause
223 to be maintained the information required by this section for
224 not less than 2 5 years from the date of the purchase
225 transaction.

226 (6)-(5) If a purchase transaction involves the transfer of
227 regulated metals property from A secondary metals recycler
228 registered with the department who purchases a motor vehicle
229 from a licensed salvage motor vehicle dealer as defined in s.
230 320.27 or from ~~to~~ another secondary metals recycler registered
231 with the department and who uses a mechanical crusher to convert
232 the vehicle to scrap metal must obtain a signed statement from
233 the seller stating that the seller has surrendered the vehicle's
234 certificate of title to the Department of Highway Safety and
235 Motor Vehicles as provided in s. 319.30 or has otherwise
236 complied with the titling requirements provided by law for
237 conversion of the vehicle to scrap metal. A, the secondary
238 metals recycler is not liable for the seller's failure to comply
239 with the titling requirements provided by law for conversion of
240 a motor vehicle to scrap metal if the secondary metals recycler
241 obtains and maintains the seller's signed statement receiving
242 the regulated metals property shall record the name and address
243 of the secondary metals recycler from which it received the
244 regulated metals property in lieu of the requirements of



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245 ~~paragraph (2)(h).~~

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

248 538.235 Method of payment.—

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

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

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

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

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

264 538.26 Certain acts and practices prohibited.—It is
265 unlawful for a secondary metals recycler to do or allow any of
266 the following acts:

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



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274 ~~purchased with money and sold for the purpose of making payments~~
275 ~~or transfers to others.~~

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

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

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

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

290 1. A manhole cover.

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

294 3. A guard rail.

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

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

300 6. A funeral marker or funeral vase.

301 7. A historical marker.

302 8. Railroad equipment, including, but not limited to, a tie



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303 plate, signal house, control box, switch plate, E clip, or rail
304 tie junction.

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

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

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

315 12. A stainless steel beer keg.

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

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

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

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

328 17. A shopping cart.

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

331 538.27 Secondary metals recyclers; limitation of liability;



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332 inference.-

333 (1) A secondary metals recycler is not liable for any civil
334 claim of replevin or damages resulting from a purchase
335 transaction of regulated metals property which complies with
336 this chapter.

337 (2) As provided in s. 812.022(7), proof that a purchase
338 transaction for regulated metals property by a secondary metals
339 recycler complied with this part gives rise to an inference that
340 the secondary metals recycler did not know or have reason to
341 believe that the property was stolen and that the recycler did
342 not have intent to commit theft or deal in stolen property.

343 Section 9. Section 538.28, Florida Statutes, is created to
344 read:

345 538.28 Local government regulation; preemption.-

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

352 (2) This part does not preempt an ordinance or regulation
353 originally enacted by a county or municipality before March 1,
354 2011, or any subsequent amendment to such ordinance or
355 regulation.

356 Section 10. Paragraph (b) of subsection (2) of section
357 539.001, Florida Statutes, is amended to read:

358 539.001 The Florida Pawnbroking Act.-

359 (2) DEFINITIONS.-As used in this section, the term:

360 (b) "Appropriate law enforcement official" means the



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361 sheriff of the county in which a pawnshop is located and ~~or~~, in
362 the case of a pawnshop located within a municipality, the police
363 chief of the municipality in which the pawnshop is located;
364 however, any sheriff or police chief may designate as the
365 appropriate law enforcement official for the county or
366 municipality, as applicable, any law enforcement officer working
367 within the county or municipality headed by that sheriff or
368 police chief. ~~Nothing in~~ This subsection does not limit ~~limits~~
369 the power and responsibilities of the sheriff.

370 Section 11. Subsection (7) is added to section 812.022,
371 Florida Statutes, to read:

372 812.022 Evidence of theft or dealing in stolen property.-

373 (7) Proof that a purchase transaction for regulated metals
374 property by a secondary metals recycler complied with part II of
375 chapter 538 gives rise to an inference that the secondary metals
376 recycler did not know or have reason to believe that the
377 property was stolen and that the recycler did not have intent to
378 commit theft or deal in stolen property.

379 Section 12. This act shall take effect July 1, 2011.

380
381 ===== T I T L E A M E N D M E N T =====

382 And the title is amended as follows:

383 Delete everything before the enacting clause
384 and insert:

385 A bill to be entitled
386 An act relating to secondary metals recyclers;
387 amending s. 319.30, F.S.; conforming a cross-
388 reference; amending s. 538.03, F.S.; defining the term
389 "appropriate law enforcement official"; amending s.



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390 538.04, F.S.; clarifying a provision requiring that a
391 secondhand dealer deliver a transaction form to the
392 appropriate law enforcement official; amending s.
393 538.18, F.S.; revising and providing definitions;
394 amending s. 538.19, F.S.; requiring that a secondary
395 metals recycler complete a transaction form and
396 transmit it to the appropriate law enforcement
397 official within 24 hours after the acquisition of
398 regulated metals; authorizing such recyclers to use an
399 electronic database and transmit transaction forms
400 electronically under certain circumstances;
401 authorizing appropriate law enforcement officials to
402 provide software and computer equipment to recyclers;
403 requiring that a recycler produce an original form in
404 certain situations; revising the period required for
405 secondary metals recyclers to maintain certain
406 information regarding purchase transactions involving
407 regulated metals property; revising requirements for
408 the types of information that secondary metals
409 recyclers must obtain and maintain regarding purchase
410 transactions; limiting the liability of secondary
411 metals recyclers for the conversion of motor vehicles
412 to scrap metal under certain circumstances; amending
413 s. 538.235, F.S.; revising requirements for payments
414 made by secondary metals recyclers to sellers of
415 regulated metals property, to which penalties apply;
416 providing methods of payment for restricted regulated
417 metals property; requiring that purchases of certain
418 property be made by check or by electronic payment;



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419 amending s. 538.26, F.S.; prohibiting secondary metals
420 recyclers from purchasing regulated metals property
421 without maintaining certain records; deleting
422 provisions prohibiting the purchase of regulated
423 metals property from certain persons or at certain
424 locations; prohibiting the purchase of specified
425 restricted regulated metals property without obtaining
426 certain proof of the seller's ownership or
427 authorization to sell the property; creating s.
428 538.27, F.S.; limiting civil liability of secondary
429 metals recyclers under certain circumstances;
430 establishing an inference that secondary metals
431 recyclers do not commit theft or deal in stolen
432 property under certain circumstances; creating s.
433 538.28, F.S.; preempting to the state the regulation
434 of secondary metals recyclers and purchase
435 transactions involving regulated metals property;
436 exempting certain ordinances and regulations from
437 preemption; amending s. 539.001, F.S.; clarifying a
438 definition for purposes of the Florida Pawnbroking
439 Act; amending s. 812.022, F.S.; establishing an
440 inference that secondary metals recyclers do not
441 commit theft or deal in stolen property under certain
442 circumstances; providing an effective date.