

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 Community Affairs Committee

BILL: CS/CS/SB 1528

INTRODUCER: Community Affairs Committee, Commerce and Tourism Committee and Senator Altman

SUBJECT: Secondary Metals Recyclers

DATE: April 11, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McCarthy	Cooper	CM	Fav/CS
2.	Wolfgang	Yeatman	CA	Fav/CS
3.			CJ	
4.			BC	
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 or bill) creates a new category of “regulated metals property” – “restricted regulated metals property” – and imposes restrictions on the purchase of such property. “Restricted regulated metals property” includes: manhole covers; electric light poles; guard rails; traffic signs; utility communication wire; funeral and historical markers; railroad equipment; metal marked by a governmental entity, utility company, cemetery or railroad; condensing or evaporator coils from air conditioning equipment; propane tanks; beer kegs; catalytic converters; metallic wire from which the insulation has been removed; certain brass or bronze fixtures; and shopping carts. The CS defines appropriate law enforcement official.

Recyclers may only purchase such property after obtaining “reasonable proof” that the seller owns the property or is authorized to sell the property on behalf of the owner. In addition, recyclers may not provide cash for purchases of restricted regulated metals property.

The bill deletes an exemption in current law allowing the secondary metals recyclers to not keep certain identifying information. The bill adds new language stating that if a secondary metals recycler purchases a vehicle to convert it into scrap metal then it may rely on a written statement

from another secondary metals recycler or a salvage motor vehicle dealer that the vehicle's title was surrendered to the Department of Highway Safety and Motor Vehicles.

The bill provides inferences against civil and criminal liability for stolen goods for secondary metals recyclers complying with statutorily required procedures.

By deleting a current authorization, the bill would prohibit regulated metals from being purchased from a nonfixed location. The bill also preempts the regulation of regulated metals property or the registration or licensure of secondary metals recyclers to the state, except for such local ordinances existing before March 1, 2011.

The CS reduces the amount of time that a secondary metals recycler must keep records. It also specifies how long secondary metals recyclers have to submit records and requires them to submit them electronically when possible.

This bill substantially amends the following sections of the Florida Statutes: 319.30, 538.03, 538.04, 538.18, 538.19, 538.235, 538.26, and 812.022.

This bill creates sections 538.27 and 538.28 of the Florida Statutes.

II. Present Situation:

Secondary Metals Recyclers

Requirements

Currently no person may engage in business as a secondary metals recycler at any location without registering with the department of revenue.¹ A secondary metals recycler means any person who:

- Is engaged, from a fixed location or otherwise, in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or
- Has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, other than by the exclusive use of hand tools, by methods including, without limitation, processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content thereof.²

“Regulated metals property” means any item composed primarily of any nonferrous metals, but may not include aluminum beverage containers, used beverage containers, or similar beverage containers. The term shall include stainless steel beer kegs.³

¹ Section 538.25(1), F.S.

² Section 538.18(8), F.S.

³ Section 538.18(7), F.S.

Secondary metals recyclers must maintain legible records of all purchase transactions to which the secondary metals recycler is a party. The secondary metals recycler must maintain the records of the purchase transactions for 5 years.

The following information must be maintained on a form approved by the Department of Law Enforcement for each purchase transaction:

- The name and address of the secondary metals recycler.
- The name, initials, or other identification of the individual entering the information on the ticket.
- The date and time of the transaction.
- The weight, quantity, or volume, and a description of the type of regulated metals property purchased in a purchase transaction.
- The amount of consideration given in a purchase transaction for the regulated metals property.
- A signed statement from the person delivering the regulated metals property stating that she or he is the rightful owner of, or is entitled to sell, the regulated metals property being sold. If the purchase involves a stainless steel beer keg, the seller must provide written documentation from the manufacturer that the seller is the owner of the stainless steel beer keg or is an employee or agent of the manufacturer.
- The distinctive number from the personal identification card of the person delivering the regulated metals property to the secondary metals recycler.
- 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.
 - Vehicle description to include the make, model, and tag number of the vehicle and trailer of the person selling the regulated metals property.
 - Any other information required by the form approved by the Department of Law Enforcement.
- A photograph, videotape, or digital image of the regulated metals being sold.
- A photograph, videotape, or similar likeness of the person receiving consideration in which such person's facial features are clearly visible.⁴

If a purchase transaction involves the transfer of regulated metals property from a secondary metals recycler registered with the department to another secondary metals recycler registered with the department, the secondary metals recycler receiving the regulated metals property must record the name and address of the secondary metals recycler from which it received the regulated metals property rather than the information regarding the identity of the original seller.⁵

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.;

⁴ Section 538.19(2), F.S.

⁵ Section 538.19(5), F.S.

- 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.⁶

Criminal Penalties

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

- Violates inspection requirements;⁷
- Violates their requirement to hold metals if notified by law enforcement;⁸
- Engages in a pattern of failing to keep records;⁹
- 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;¹⁰ or
- Enters into cash transactions in excess of \$1,000 for the purchase of regulated metals property.¹¹

It is a felony for a secondary metals recycler to fail to register under s. 538.25, F.S., and the Department of Revenue (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.¹²

Stolen Metals

Generally, the remedies for theft are damages for the value of the item, damages for the loss of use of the item due to damage and/or the time it was unlawfully taken, or return of the item (replevin). “Any person who purchases personal property of another from one other than the owner or someone authorized to sell it is liable for conversion of property in a suit by the true owner, regardless of whether the purchaser was honestly mistaken or acted innocently, in good faith, and without knowledge of the seller's lack of right to make the sale.”¹³ Chapter 812, F.S.,

⁶ Section 538.26, F.S.

⁷ Section 538.20, F.S.

⁸ Section 538.21, F.S.

⁹ Section 538.19, F.S.

¹⁰ Section 538.26(4), F.S.

¹¹ Section 538.235, F.S.

¹² Section 120.69, F.S.

¹³ 12 Fla. Jur 2d Conversion and Replevin § 28.

provides both criminal and civil sanctions for theft, dealing in stolen property,¹⁴ and other crimes. Remedies include divestiture of stolen property. Additionally, ss. 538.24 and 538.32, F.S., provide for an action for replevin by a party claiming ownership of any allegedly stolen regulated metals property in the possession of a secondary metals recycler if the recycler has contested the identification or ownership of such property. The criminal court has jurisdiction to determine ownership, to order return or other disposition of the property, and to order any appropriate restitution to any person. The order must be entered upon hearing after proper notice has been given to the secondhand dealer, the victim, and the defendant in the criminal case.

A law enforcement officer may issue a hold notice to a secondary metals recycler if he believes the metals involved have been stolen.¹⁵ The hold notice is for 15 days unless extended an additional 45 days by the law enforcement officer.

III. Effect of Proposed Changes:

Section 1 amends s. 319.30, F.S., to correct a cross-reference.

Section 2 amends s. 538.03, F.S., to define “appropriate law enforcement official” to mean the sheriff of the county in which a secondhand dealer is located *or*, in the case of a secondhand dealer located within a municipality, the police chief of the municipality in which the secondhand dealer is located; however, any sheriff or police chief may designate as the appropriate law enforcement official for the county or municipality, as applicable, any law enforcement officer working within the county or municipality headed by that sheriff or police chief.

Section 3 amends s. 538.04, F.S., to replace the reference to police officer or sheriff with “appropriate law enforcement official.”

Section 4 amends s. 538.18, F.S., to create a new category of “regulated metals property” – “restricted regulated metals property.” The term is defined by reference to proposed s. 538.26(6)(b), F.S., and includes:

- manhole covers;
- electric light poles;
- guard rails;
- traffic signs;
- utility communication wire;
- funeral and historical markers;
- railroad equipment;
- metal marked by a governmental entity,
- utility company,
- cemetery or railroad;
- condensing or evaporator coils from air conditioning equipment;
- propane tanks;

¹⁴ “Any person who traffics in, or endeavors to traffic in, property that he or she knows or should know was stolen shall be guilty of a felony of the second degree....” Section 812.019, F.S.

¹⁵ Section 538.21(1), F.S.

- beer kegs;
- catalytic converters;
- metallic wire from which the insulation has been removed;
- certain brass or bronze fixtures; and
- shopping carts.

The bill defines “utility” as a person, firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, that is engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, or telephone, telegraph, radio, communications, or telecommunications service.

The bill revises the definition of “secondary metals recycler” to make it consistent with other provisions of the bill that would prohibit secondary metals recyclers from engaging in business in a mobile location.

Section 5 amends s. 538.19, F.S., to specify that a secondary metals recycler shall complete a transaction form at the time of actual transaction and submit the form to the appropriate law enforcement officer within 24 hours (unless other arrangements have been agreed upon).

The secondary metals recycler shall submit their records electronically if law enforcement provides the software and secondary metals recycler has the ability. The law enforcement official may lend the secondary metals recycler a computer to transmit these records. In a criminal investigation the recycler may be required to provide the original transaction form.

The CS reduces the time that recyclers must maintain purchase transaction records from 5 years to 2 years.

The CS deletes the provision in current law that, in the transfer of regulated metals property between secondary metals recyclers, the secondary metals recycler receiving the regulated metals property need only record the name and address of the secondary metals recycler from which it received the regulated metals rather than the information regarding the identity of the original seller. The bill replaces this subsection with language that allows a secondary metals recycler purchasing a vehicle for scrap metal to rely on written statement from another secondary metals recycler or a salvage motor vehicle dealer that sold the vehicle stating that the vehicle’s title was surrendered to the Department of Highway Safety and Motor Vehicles.

Section 6 amends s. 538.235, F.S., to restrict recyclers from paying cash for restricted regulated metals. Payment in excess of \$1,000 for the purchase of regulated metals property or payment in any amount for the purchase of restricted regulated metals property may only be made by:

- check issued and payable to the seller, or
- electronic payment to the seller’s bank account or the bank account of the seller’s employer.

Section 7 amends s. 538.26(5), F.S., to specify that regulated metal property may only be purchased from a fixed location. Current law allows purchases of such property from a non-fixed location if paid by check or other type of instrument.

In addition, this section creates subsection (6) to prohibit recyclers from purchasing restricted regulated metals property, unless the recycler obtains “reasonable proof” that the seller owns the property or is authorized to sell the property on behalf of the owner. This section also lists all those items to be considered restricted regulated metals as referenced in section 1.

Section 8 creates s. 538.27, F.S., to provide that compliance with the law gives rise to an inference that the secondary metals recycler did not know or have reason to believe that the property was stolen and did not have intent to commit theft or deal in stolen property.

Section 9 creates s. 538.28, F.S., to preempt the regulation of regulated metals property or the registration or licensure of secondary metals recyclers to the state, except for such local ordinances existing before March 1, 2011.

Section 10 creates subsection (7) of s. 812.022, F.S., to expand what constitutes evidence of theft as it relates to purchase transactions of regulated metals property. Specifically, any secondary metals recycler who has complied with part II of ch. 538, F.S., dealing with secondary metals recyclers, shall be protected by an inference that the recycler did not know or have reason to believe that the property was stolen and did not have intent to commit theft or deal in stolen property.

Section 11 provides an effective date of July 1, 2011.

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:

The bill imposes new restrictions on the purchase of regulated metals property. The bill will put persons/entities that currently operate out of a nonfixed location out of business. For example, a business that purchases secondary metals from the seller at the seller’s location and sells the metals to another entity may no longer do so under this bill.

C. **Government Sector Impact:**

Section 7 creates s. 538.28, F.S., to preempt the regulation of regulated metals property or the registration or licensure of secondary metals recyclers to the state, except for such local ordinances existing before March 1, 2011.

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 Committee on April 11, 2011:

- Removes the limitation of liability for replevin or damages.
- Adds the definition of appropriate law enforcement official.
- Adds provisions related to electronic submission of records.

CS by Commerce and Tourism Committee on March 29, 2011:

The CS expands the definition of “Utility,” as proposed in the bill, to include “communications.”

B. **Amendments:**

None.