

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 Commerce and Tourism Committee

BILL: CS/SB 1528

INTRODUCER: Commerce and Tourism Committee and Senator Altman

SUBJECT: Secondary metals recyclers

DATE: March 29, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McCarthy	Cooper	CM	Fav/CS
2.	_____	_____	CA	_____
3.	_____	_____	CJ	_____
4.	_____	_____	BC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes
- B. AMENDMENTS..... Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

This CS (the bill) creates a new category of “regulated metals property” – “restricted regulated metals property” – and imposes restrictions on the purchase of such property. Generally, “restricted regulated metals property” includes metals used by a utility defined 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.”

“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.

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.

This bill limits the liability for those recyclers who comply with the act. It also creates an inference regarding the recycler’s knowledge and intent with respect to theft and dealing in stolen property for those recyclers who comply with this law for conversion of a motor vehicle to scrap metal.

Finally, this bill 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.

This bill substantially amends the following sections of the Florida Statutes: s. 319 F.S., s.538, F.S., and s.812.022 F.S., and creates s.538.27 F.S., s.538.28 F.S.

II. Present Situation:

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

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.

¹ Section 538.25(1), F.S.

² Section 538.18(8), F.S.

³ Section 538.18(7), F.S.

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.
- 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 in lieu of the requirements listed above.⁵

Additionally a secondary metals recycler may not enter into any cash transaction in excess of \$1,000 in payment for the purchase of regulated metals property. Payment in excess of \$1,000

⁴ Section 538.19(2), F.S.

⁵ Section 538.19(5), F.S.

for the purchase of regulated metals property must be made by check issued to the seller of the metal and payable to the seller.⁶

A law enforcement officer may issue a hold notice to a secondary metals recycler if he believes the metals involved have been stolen.⁷ The hold notice is for 15 days unless extended an additional 45 days by the law enforcement officer.

Currently ch. 538 F.S., contains a provision for a petition for return of stolen regulated metals property that states once a timely, proper petition is filed with the court the secondary metals recycler will hold and not process the regulated metals property at issue until the court determines the respective interests of the parties.

In addition to the civil petition for return remedy, the state may file a motion as part of a pending criminal case related to the 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.

There is no provision within this section creating an inference that the secondary metals recycler is not liable for any civil claim of replevin or damages resulting from a purchase transaction of regulated materials that complies with ch. 538, F.S.

Currently there is no pre-emption language in the statute regarding secondary metals recyclers except s. 538.20(4), F.S. relating to a secondary metals recycler holding such metals pursuant to this statute. After a preliminary review it would appear several local communities do regulate secondary metals recyclers.

III. Effect of Proposed Changes:

Section 1 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., (see Section 5 of the bill), 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;

⁶ Section 538.235, F.S.

⁷ Section 538.21(1), F.S.

- 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.

This section also creates a definition for “utility,” a source of some of these materials. Utility is defined 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.”

Section 2 amends s. 319.30, F.S., to correct a cross-reference necessitated by changes proposed in section 1.

Section 3 amends s. 538.19, F.S., to clarify a recycler’s liability for purchases of motor vehicles from a licensed salvage motor vehicle dealer. Specifically, if the recycler uses a mechanical crusher to convert the vehicle to scrap and has obtained and maintains proof, a signed statement from the seller that he has complied with the titling laws, the recycler is not liable for the seller’s failure to comply with the titling law for conversion of a motor vehicle to scrap.

In addition, it reduces the time that recyclers must maintain purchase transaction records from 5 years to 2 years.

Section 4 amends s. 538.235, F.S., to restrict recyclers from paying cash for restricted regulated metals, as defined in section 5 of this bill. Furthermore, it restricts the 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, unless such purchases are by check issued and payable to the seller or by electronic payment to the seller’s bank account or the bank account of the seller’s employer.

Section 5 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 6 creates s. 538.27, F.S., to limit the liability for those recyclers who comply with the requirements for the purchase of regulated metals property as specified by this act.

It also creates 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 if he complied with this section of the law.

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.

Section 8 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 gives rise to 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 9 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 also reduces the time period for which recyclers must maintain records, thereby reducing associated costs.

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 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.