

By Senator Altman

24-00651B-11

20111528

1 A bill to be entitled
2 An act relating to secondary metals recyclers;
3 amending s. 538.18, F.S.; revising and providing
4 definitions; amending s. 319.30, F.S.; conforming a
5 cross-reference; amending s. 538.19, F.S.; revising
6 the period required for secondary metals recyclers to
7 maintain certain information regarding purchase
8 transactions involving regulated metals property;
9 revising requirements for the types of information
10 that secondary metals recyclers must obtain and
11 maintain regarding purchase transactions; limiting the
12 liability of secondary metals recyclers for the
13 conversion of motor vehicles to scrap metal under
14 certain circumstances; amending s. 538.235, F.S.;
15 revising requirements for payments made by secondary
16 metals recyclers to sellers of regulated metals
17 property, to which penalties apply; providing methods
18 of payment for restricted regulated metals property;
19 requiring that purchases of certain property be made
20 by check or by electronic payment; amending s. 538.26,
21 F.S.; prohibiting secondary metals recyclers from
22 purchasing regulated metals property without
23 maintaining certain records; deleting provisions
24 prohibiting the purchase of regulated metals property
25 from certain persons or at certain locations;
26 prohibiting the purchase of specified restricted
27 regulated metals property without obtaining certain
28 proof of the seller's ownership and authorization to
29 sell the property; creating s. 538.27, F.S.; limiting

24-00651B-11

20111528

30 civil liability of secondary metals recyclers under
31 certain circumstances; establishing an inference that
32 secondary metals recyclers do not commit theft or deal
33 in stolen property under certain circumstances;
34 creating s. 538.28, F.S.; preempting to the state the
35 regulation of secondary metals recyclers and purchase
36 transactions involving regulated metals property;
37 exempting certain ordinances and regulations from
38 preemption; amending s. 812.022, F.S.; establishing an
39 inference that secondary metals recyclers do not
40 commit theft or deal in stolen property under certain
41 circumstances; providing an effective date.

42
43 Be It Enacted by the Legislature of the State of Florida:

44
45 Section 1. Section 538.18, Florida Statutes, is amended to
46 read:

47 538.18 Definitions.—As used in this part, the term:

48 (1)~~(9)~~ "Department" means the Department of Revenue.

49 (2)~~(1)~~ "Ferrous metals" means any metals containing
50 significant quantities of iron or steel.

51 (3)~~(2)~~ "Fixed location" means any site occupied by a
52 secondary metals recycler as owner of the site or as lessee of
53 the site under a lease or other rental agreement providing for
54 occupation of the site by the secondary metals recycler for a
55 total duration of not less than 364 days.

56 (4)~~(3)~~ "Money" means a medium of exchange authorized or
57 adopted by a domestic or foreign government as part of its
58 currency.

24-00651B-11

20111528

59 (5)~~(4)~~ "Nonferrous metals" means metals not containing
60 significant quantities of iron or steel, including, without
61 limitation, copper, brass, aluminum, bronze, lead, zinc, nickel,
62 and alloys thereof, excluding precious metals subject to
63 regulation under part I.

64 (6)~~(5)~~ "Personal identification card" means any government-
65 issued photographic identification card.

66 (7)~~(6)~~ "Purchase transaction" means a transaction in which
67 a secondary metals recycler gives consideration for regulated
68 metals property.

69 (8)~~(7)~~ "Regulated metals property" means any item composed
70 primarily of any nonferrous metals. The term does, but shall not
71 include aluminum beverage containers, used beverage containers,
72 or similar beverage containers; however, the term includes
73 shall include stainless steel beer kegs.

74 (9) "Restricted regulated metals property" means any
75 regulated metals property listed in s. 538.26(6)(b) the sale of
76 which is restricted as provided in s. 538.26(6)(a).

77 (10)~~(8)~~ "Secondary metals recycler" means any person who:

78 (a) Is engaged, from a fixed location ~~or otherwise~~, in the
79 business of gathering or obtaining ferrous or nonferrous metals
80 that have served their original economic purpose or is in the
81 business of performing the manufacturing process by which
82 ferrous metals or nonferrous metals are converted into raw
83 material products consisting of prepared grades and having an
84 existing or potential economic value; or

85 (b) Has facilities for performing the manufacturing process
86 by which ferrous metals or nonferrous metals are converted into
87 raw material products consisting of prepared grades and having

24-00651B-11

20111528

88 an existing or potential economic value, other than by the
 89 exclusive use of hand tools, by methods including, without
 90 limitation, processing, sorting, cutting, classifying, cleaning,
 91 baling, wrapping, shredding, shearing, or changing the physical
 92 form or chemical content thereof.

93 (11) "Utility" means a person, firm, corporation,
 94 association, or political subdivision, whether private,
 95 municipal, county, or cooperative, that is engaged in the sale,
 96 generation, provision, or delivery of gas, electricity, heat,
 97 water, oil, sewer service, or telephone, telegraph, radio, or
 98 telecommunications service.

99 Section 2. Paragraph (u) of subsection (1) of section
 100 319.30, Florida Statutes, is amended to read:

101 319.30 Definitions; dismantling, destruction, change of
 102 identity of motor vehicle or mobile home; salvage.-

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

104 (u) "Secondary metals recycler" means secondary metals
 105 recycler as defined in s. 538.18 (10) ~~(8)~~.

106 Section 3. Subsections (4) and (5) of section 538.19,
 107 Florida Statutes, are amended to read:

108 538.19 Records required; limitation of liability.-

109 (4) A secondary metals recycler shall maintain or cause to
 110 be maintained the information required by this section for not
 111 less than 2 ~~5~~ years from the date of the purchase transaction.

112 ~~(5) If a purchase transaction involves the transfer of~~
 113 ~~regulated metals property from~~ A secondary metals recycler
 114 registered with the department that purchases a motor vehicle
 115 from a licensed salvage motor vehicle dealer as defined in s.
 116 320.27 or to another secondary metals recycler registered with

24-00651B-11

20111528

117 the department and uses a mechanical crusher to convert the
 118 vehicle to scrap metal must obtain a signed statement from the
 119 seller stating that the seller has surrendered the vehicle's
 120 certificate of title to the Department of Highway Safety and
 121 Motor Vehicles as provided in s. 319.30 or otherwise complied
 122 with the titling requirements provided by law for conversion of
 123 the vehicle to scrap metal. A, the secondary metals recycler is
 124 not liable for the seller's failure to comply with the titling
 125 requirements provided by law for conversion of a motor vehicle
 126 to scrap metal if the secondary metals recycler obtains and
 127 maintains the seller's signed statement ~~receiving the regulated~~
 128 ~~metals property shall record the name and address of the~~
 129 ~~secondary metals recycler from which it received the regulated~~
 130 ~~metals property in lieu of the requirements of paragraph (2) (h).~~

131 Section 4. Section 538.235, Florida Statutes, is amended to
 132 read:

133 538.235 Method of payment.—

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

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

138 (b) In any amount for the purchase of restricted regulated
 139 metals property.

140 (2) Payment in excess of \$1,000 for the purchase of
 141 regulated metals property or payment in any amount for the
 142 purchase of restricted regulated metals property must ~~shall~~ be
 143 made by check issued and payable to the seller or by electronic
 144 payment to the seller's bank account or the bank account of the
 145 seller's employer ~~metal and payable to the seller.~~

24-00651B-11

20111528

146 Section 5. Subsection (5) of section 538.26, Florida
147 Statutes, is amended, and subsection (6) is added to that
148 section, to read:

149 538.26 Certain acts and practices prohibited.—It is
150 unlawful for a secondary metals recycler to do or allow any of
151 the following acts:

152 (5) Purchase regulated metals property ~~in return for money~~
153 from a trailer, a vehicle, or any location other than a fixed
154 location or from any person who is required to prove ownership
155 under s. 538.19 pursuant to subsection (4). ~~However, regulated~~
156 ~~metals may be purchased from a nonfixed location, or from such~~
157 ~~person, with any negotiable or nonnegotiable instrument,~~
158 ~~including a check or draft or any other type of instrument~~
159 ~~purchased with money and sold for the purpose of making payments~~
160 ~~or transfers to others.~~

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

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

166 2. Is an employee, agent, or contractor of the property's
167 owner who is authorized to sell the property on behalf of the
168 owner. Reasonable proof of authorization to sell the property
169 includes, but is not limited to, a signed letter on the owner's
170 letterhead, dated no later than 90 days before the sale,
171 authorizing the seller to sell the property.

172 (b) The purchase of any of the following regulated metals
173 property is subject to the restrictions provided in paragraph

174 (a):

24-00651B-11

20111528

- 175 1. A manhole cover.
- 176 2. An electric light pole or other utility structure and
177 its fixtures, wires, and hardware that are readily identifiable
178 as connected to the utility structure.
- 179 3. A guard rail.
- 180 4. A street sign, traffic sign, or traffic signal and its
181 fixtures and hardware.
- 182 5. Communication, transmission, distribution, and service
183 wire from a utility, including copper or aluminum bus bars,
184 connectors, grounding plates, or grounding wire.
- 185 6. A funeral marker or funeral vase.
- 186 7. A historical marker.
- 187 8. Railroad equipment, including, but not limited to, a tie
188 plate, signal house, control box, switch plate, E clip, or rail
189 tie junction.
- 190 9. Any metal item that is observably marked upon reasonable
191 inspection with any form of the name, initials, or logo of a
192 governmental entity, utility company, cemetery, or railroad.
- 193 10. A copper, aluminum, or aluminum-copper condensing or
194 evaporator coil, including its tubing or rods, from an air
195 conditioning or heating unit, excluding coils from window air
196 conditioning or heating units and motor vehicle air conditioning
197 or heating units.
- 198 11. An aluminum or stainless steel container or bottle
199 designed to hold propane for fueling forklifts.
- 200 12. A stainless steel beer keg.
- 201 13. A catalytic converter or any nonferrous part of a
202 catalytic converter unless purchased as part of a motor vehicle.
- 203 14. Metallic wire that has been burned in whole or in part

24-00651B-11

20111528

204 to remove insulation.

205 15. A brass or bronze commercial valve or fitting, referred
206 to as a "fire department connection and control valve" or an
207 "FDC valve," that is commonly used on structures for access to
208 water for the purpose of extinguishing fires.

209 16. A brass or bronze commercial potable water backflow
210 preventer valve that is commonly used to prevent backflow of
211 potable water from commercial structures into municipal domestic
212 water service systems.

213 17. A shopping cart.

214 Section 6. Section 538.27, Florida Statutes, is created to
215 read:

216 538.27 Secondary metals recyclers; limitation of liability;
217 inference.—

218 (1) A secondary metals recycler is not liable for any civil
219 claim of replevin or damages resulting from a purchase
220 transaction of regulated metals property that complies with this
221 chapter.

222 (2) As provided in s. 812.022(7), proof that a purchase
223 transaction for regulated metals property by a secondary metals
224 recycler complied with this part gives rise to an inference that
225 the secondary metals recycler did not know or have reason to
226 believe that the property was stolen and did not have intent to
227 commit theft or deal in stolen property.

228 Section 7. Section 538.28, Florida Statutes, is created to
229 read:

230 538.28 Local government regulation; preemption.—

231 (1) The regulation of purchase transactions involving
232 regulated metals property is preempted to the state. Except as

24-00651B-11

20111528

233 provided in subsection (2), an ordinance or regulation adopted
234 by a county or municipality relating to the purchase or sale of
235 regulated metals property or the registration or licensure of
236 secondary metals recyclers is void.

237 (2) This part does not preempt an ordinance or regulation
238 originally enacted by a county or municipality before March 1,
239 2011, or any subsequent amendment to such ordinance or
240 regulation.

241 Section 8. Subsection (7) is added to section 812.022,
242 Florida Statutes, to read:

243 812.022 Evidence of theft or dealing in stolen property.—

244 (7) Proof that a purchase transaction for regulated metals
245 property by a secondary metals recycler complied with part II of
246 chapter 538 gives rise to an inference that the secondary metals
247 recycler did not know or have reason to believe that the
248 property was stolen and did not have intent to commit theft or
249 deal in stolen property.

250 Section 9. This act shall take effect July 1, 2011.