

By the Committees on Community Affairs; and Commerce and Tourism; and Senator Altman

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1 A bill to be entitled
2 An act relating to secondary metals recyclers;
3 amending s. 319.30, F.S.; conforming a cross-
4 reference; amending s. 538.03, F.S.; defining the term
5 "appropriate law enforcement official"; amending s.
6 538.04, F.S.; clarifying a provision requiring that a
7 secondhand dealer deliver a transaction form to the
8 appropriate law enforcement official; amending s.
9 538.18, F.S.; revising and providing definitions;
10 amending s. 538.19, F.S.; requiring that a secondary
11 metals recycler complete a transaction form and
12 transmit it to the appropriate law enforcement
13 official within 24 hours after the acquisition of
14 regulated metals; authorizing such recyclers to use an
15 electronic database and transmit transaction forms
16 electronically under certain circumstances;
17 authorizing appropriate law enforcement officials to
18 provide software and computer equipment to recyclers;
19 requiring that a recycler produce an original form in
20 certain situations; revising the period required for
21 secondary metals recyclers to maintain certain
22 information regarding purchase transactions involving
23 regulated metals property; revising requirements for
24 the types of information that secondary metals
25 recyclers must obtain and maintain regarding purchase
26 transactions; limiting the liability of secondary
27 metals recyclers for the conversion of motor vehicles
28 to scrap metal under certain circumstances; amending
29 s. 538.235, F.S.; revising requirements for payments

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30 made by secondary metals recyclers to sellers of
31 regulated metals property, to which penalties apply;
32 providing methods of payment for restricted regulated
33 metals property; requiring that purchases of certain
34 property be made by check or by electronic payment;
35 amending s. 538.26, F.S.; prohibiting secondary metals
36 recyclers from purchasing regulated metals property
37 without maintaining certain records; deleting
38 provisions prohibiting the purchase of regulated
39 metals property from certain persons or at certain
40 locations; prohibiting the purchase of specified
41 restricted regulated metals property without obtaining
42 certain proof of the seller's ownership or
43 authorization to sell the property; creating s.
44 538.27, F.S.; establishing an inference that secondary
45 metals recyclers do not commit theft or deal in stolen
46 property under certain circumstances; creating s.
47 538.28, F.S.; preempting to the state the regulation
48 of secondary metals recyclers and purchase
49 transactions involving regulated metals property;
50 exempting certain ordinances and regulations from
51 preemption; amending s. 812.022, F.S.; establishing an
52 inference that secondary metals recyclers do not
53 commit theft or deal in stolen property under certain
54 circumstances; providing an effective date.

55
56 Be It Enacted by the Legislature of the State of Florida:

57
58 Section 1. Paragraph (u) of subsection (1) of section

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59 319.30, Florida Statutes, is amended to read:

60 319.30 Definitions; dismantling, destruction, change of
61 identity of motor vehicle or mobile home; salvage.—

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

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

65 Section 2. Paragraph (j) is added to subsection (1) of
66 section 538.03, Florida Statutes, to read:

67 538.03 Definitions; applicability.—

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

69 (j) "Appropriate law enforcement official" means the
70 sheriff of the county in which a secondhand dealer is located
71 or, in the case of a secondhand dealer located within a
72 municipality, the police chief of the municipality in which the
73 secondhand dealer is located; however, any sheriff or police
74 chief may designate as the appropriate law enforcement official
75 for the county or municipality, as applicable, any law
76 enforcement officer working within the county or municipality
77 headed by that sheriff or police chief. This paragraph does not
78 limit the power and responsibilities of the sheriff.

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

81 538.04 Recordkeeping requirements; penalties.—

82 (1) Secondhand dealers shall complete a secondhand dealers
83 transaction form at the time of the actual transaction. A
84 secondhand dealer shall maintain a copy of a completed
85 transaction form on the registered premises for at least 1 year
86 after the date of the transaction. However, the secondhand
87 dealer shall maintain a copy of the transaction form for not

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88 less than 3 years. Unless other arrangements have been agreed
89 upon by the secondhand dealer and the appropriate law
90 enforcement agency, the secondhand dealer shall, within 24 hours
91 after the acquisition of any secondhand goods, deliver to the
92 appropriate law enforcement official ~~police department of the~~
93 ~~municipality where the goods were acquired or, if the goods were~~
94 ~~acquired outside of a municipality, to the sheriff's department~~
95 ~~of the county where the goods were acquired,~~ a record of the
96 transaction on a form approved by the Department of Law
97 Enforcement. Such record shall contain:

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

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

101 1. Brand name.

102 2. Model number.

103 3. Manufacturer's serial number.

104 4. Size.

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

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

107 7. Gemstone description, including the number of stones, if
108 applicable.

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

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

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

114 1. Full name, current residential address, workplace, and
115 home and work phone numbers.

116 2. Height, weight, date of birth, race, gender, hair color,

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117 eye color, and any other identifying marks.

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

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

122 Section 4. Section 538.18, Florida Statutes, is amended to
123 read:

124 538.18 Definitions.—As used in this part, the term:

125 (1) "Appropriate law enforcement official" means the
126 sheriff of the county in which a secondary metals recycler is
127 located or, in the case of a secondary metals recycler located
128 within a municipality, the police chief of the municipality in
129 which the secondary metals recycler is located; however, any
130 sheriff or police chief may designate as the appropriate law
131 enforcement official for the county or municipality, as
132 applicable, any law enforcement officer working within the
133 county or municipality headed by that sheriff or police chief.
134 This subsection does not limit the power and responsibilities of
135 the sheriff.

136 (2) "Department" means the Department of Revenue.

137 (3)~~(1)~~ "Ferrous metals" means any metals containing
138 significant quantities of iron or steel.

139 (4)~~(2)~~ "Fixed location" means any site occupied by a
140 secondary metals recycler as owner of the site or as lessee of
141 the site under a lease or other rental agreement providing for
142 occupation of the site by the secondary metals recycler for a
143 total duration of not less than 364 days.

144 (5)~~(3)~~ "Money" means a medium of exchange authorized or
145 adopted by a domestic or foreign government as part of its

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146 currency.

147 (6)~~(4)~~ "Nonferrous metals" means metals not containing
148 significant quantities of iron or steel, including, without
149 limitation, copper, brass, aluminum, bronze, lead, zinc, nickel,
150 and alloys thereof, excluding precious metals subject to
151 regulation under part I.

152 (7)~~(5)~~ "Personal identification card" means any government-
153 issued photographic identification card.

154 (8)~~(6)~~ "Purchase transaction" means a transaction in which
155 a secondary metals recycler gives consideration for regulated
156 metals property.

157 (9)~~(7)~~ "Regulated metals property" means any item composed
158 primarily of any nonferrous metals. The term does, but shall not
159 include aluminum beverage containers, used beverage containers,
160 or similar beverage containers; however, - the term includes
161 ~~shall include~~ stainless steel beer kegs.

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

165 (11)~~(8)~~ "Secondary metals recycler" means any person who:

166 (a) Is engaged, from a fixed location ~~or otherwise~~, in the
167 business of gathering or obtaining ferrous or nonferrous metals
168 that have served their original economic purpose or is in the
169 business of performing the manufacturing process by which
170 ferrous metals or nonferrous metals are converted into raw
171 material products consisting of prepared grades and having an
172 existing or potential economic value; or

173 (b) Has facilities for performing the manufacturing process
174 by which ferrous metals or nonferrous metals are converted into

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175 raw material products consisting of prepared grades and having
176 an existing or potential economic value, other than by the
177 exclusive use of hand tools, by methods including, without
178 limitation, processing, sorting, cutting, classifying, cleaning,
179 baling, wrapping, shredding, shearing, or changing the physical
180 form or chemical content thereof.

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

182 (12) "Utility" means a person, firm, corporation,
183 association, or political subdivision, whether private,
184 municipal, county, or cooperative, which is engaged in the sale,
185 generation, provision, or delivery of gas, electricity, heat,
186 water, oil, sewer service, or telephone, telegraph, radio,
187 communications, or telecommunications service.

188 Section 5. Section 538.19, Florida Statutes, is amended to
189 read:

190 538.19 Records required; limitation of liability.-

191 (1) A secondary metals recycler shall complete a
192 transaction form at the time of the actual transaction. Unless
193 other arrangements have been agreed upon, the secondary metals
194 recycler shall, within 24 hours after acquiring the regulated
195 metals, deliver to the appropriate law enforcement official a
196 record of the transaction on a form approved by the Department
197 of Law Enforcement. The recycler shall also maintain a legible
198 record of all purchase transactions to which ~~the such~~ secondary
199 metals recycler is a party.

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

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

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

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

207 (d) The weight, quantity, or volume, and a description of
208 the type of regulated metals property purchased in a purchase
209 transaction.

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

212 (f) A signed statement from the person delivering the
213 regulated metals property stating that she or he is the rightful
214 owner of, or is entitled to sell, the regulated metals property
215 being sold. If the purchase involves a stainless steel beer keg,
216 the seller must provide written documentation from the
217 manufacturer that the seller is the owner of the stainless steel
218 beer keg or is an employee or agent of the manufacturer.

219 (g) The distinctive number from the personal identification
220 card of the person delivering the regulated metals property to
221 the secondary metals recycler.

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

224 1. Full name, current residential address, workplace, and
225 home and work phone numbers.

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

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

229 4. Vehicle description to include the make, model, and tag
230 number of the vehicle and trailer of the person selling the
231 regulated metals property.

232 5. Any other information required by the form approved by

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233 the Department of Law Enforcement.

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

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

239 (3) Any secondary metals recycler may, with the approval of
240 the appropriate law enforcement official, use ~~that maintains~~ an
241 electronic database containing the information required in
242 subsection (2) ~~paragraph (2) (h), along with an oath of ownership~~
243 with a signature of the seller of the secondary metals being
244 purchased by the secondary metals recycler and a right
245 thumbprint that has no smudges and smears on the oath of
246 ownership for each purchase transaction, shall be exempt from
247 the records requirement of paragraph (2) (h). A secondary metals
248 recycler complies with the requirements of this section if it
249 maintains an electronic database containing the information
250 required by subsection (2) ~~paragraph (2) (h)~~ as long as the
251 electronic information required by subsection (2) ~~paragraph~~
252 (2) (h), along with an electronic oath of ownership with an
253 electronic signature of the seller of the secondary metals being
254 purchased by the secondary metals recyclers and an electronic
255 image of the seller's right thumbprint that has no smudges and
256 smears, can be downloaded onto a paper form in the image of the
257 form approved by the Department of Law Enforcement as provided
258 in subsection (2).

259 (4) If an appropriate law enforcement official supplies the
260 software and the secondary metals recycler has the computer
261 ability, the recycler shall electronically transmit regulated

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262 metals transaction records required by this section. If a
263 recycler does not have such ability, the appropriate law
264 enforcement official may provide the recycler with a computer
265 and necessary equipment to electronically transmit such records.
266 The appropriate law enforcement official shall retain ownership
267 of the computer, unless otherwise agreed upon, and the recycler
268 shall maintain the computer in good working order, ordinary wear
269 and tear excepted. A recycler who transmits such records
270 electronically is not required to also provide the original or
271 paper copies of the forms to the appropriate law enforcement
272 official. However, such official may, for purposes of a criminal
273 investigation, require the recycler to provide the original of a
274 transaction form that has been electronically transferred within
275 24 hours after receipt of the request.

276 (5) ~~(4)~~ A secondary metals recycler shall maintain or cause
277 to be maintained the information required by this section for
278 not less than 2 ~~5~~ years from the date of the purchase
279 transaction.

280 (6) ~~(5)~~ ~~If a purchase transaction involves the transfer of~~
281 ~~regulated metals property from~~ A secondary metals recycler
282 registered with the department who purchases a motor vehicle
283 from a licensed salvage motor vehicle dealer as defined in s.
284 320.27 or from ~~to~~ another secondary metals recycler registered
285 with the department and who uses a mechanical crusher to convert
286 the vehicle to scrap metal must obtain a signed statement from
287 the seller stating that the seller has surrendered the vehicle's
288 certificate of title to the Department of Highway Safety and
289 Motor Vehicles as provided in s. 319.30 or has otherwise
290 complied with the titling requirements provided by law for

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291 conversion of the vehicle to scrap metal. A, the secondary
292 metals recycler is not liable for the seller's failure to comply
293 with the titling requirements provided by law for conversion of
294 a motor vehicle to scrap metal if the secondary metals recycler
295 obtains and maintains the seller's signed statement receiving
296 the regulated metals property shall record the name and address
297 of the secondary metals recycler from which it received the
298 regulated metals property in lieu of the requirements of
299 paragraph (2) (h).

300 Section 6. Section 538.235, Florida Statutes, is amended to
301 read:

302 538.235 Method of payment.—

303 (1) A secondary metals recycler may shall not enter into
304 any cash transaction:

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

307 (b) In any amount for the purchase of restricted regulated
308 metals property.

309 (2) Payment in excess of \$1,000 for the purchase of
310 regulated metals property or payment in any amount for the
311 purchase of restricted regulated metals property must shall be
312 made by check issued and payable to the seller or by electronic
313 payment to the seller's bank account or the bank account of the
314 seller's employer metal and payable to the seller.

315 Section 7. Subsection (5) of section 538.26, Florida
316 Statutes, is amended, and subsection (6) is added to that
317 section, to read:

318 538.26 Certain acts and practices prohibited.—It is
319 unlawful for a secondary metals recycler to do or allow any of

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320 the following acts:

321 (5) Purchase regulated metals property ~~in return for money~~
322 from a trailer, a vehicle, or any location other than a fixed
323 location or from any person who is required to prove ownership
324 under s. 538.19 pursuant to subsection (4). ~~However, regulated~~
325 ~~metals may be purchased from a nonfixed location, or from such~~
326 ~~person, with any negotiable or nonnegotiable instrument,~~
327 ~~including a check or draft or any other type of instrument~~
328 ~~purchased with money and sold for the purpose of making payments~~
329 ~~or transfers to others.~~

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

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

335 2. Is an employee, agent, or contractor of the property's
336 owner and is authorized to sell the property on behalf of the
337 owner. Reasonable proof of authorization to sell the property
338 includes, but is not limited to, a signed letter on the owner's
339 letterhead, dated no later than 90 days before the sale,
340 authorizing the seller to sell the property.

341 (b) The purchase of any of the following regulated metals
342 property is subject to the restrictions provided in paragraph
343 (a):

344 1. A manhole cover.

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

348 3. A guard rail.

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- 349 4. A street sign, traffic sign, or traffic signal and its
350 fixtures and hardware.
- 351 5. Communication, transmission, distribution, and service
352 wire from a utility, including copper or aluminum bus bars,
353 connectors, grounding plates, or grounding wire.
- 354 6. A funeral marker or funeral vase.
- 355 7. A historical marker.
- 356 8. Railroad equipment, including, but not limited to, a tie
357 plate, signal house, control box, switch plate, E clip, or rail
358 tie junction.
- 359 9. A metal item that is observably marked, upon reasonable
360 inspection, with any form of the name, initials, or logo of a
361 governmental entity, utility company, cemetery, or railroad.
- 362 10. A copper, aluminum, or aluminum-copper condensing or
363 evaporator coil, including its tubing or rods, from an air-
364 conditioning or heating unit, excluding coils from window air-
365 conditioning or heating units and motor vehicle air-conditioning
366 or heating units.
- 367 11. An aluminum or stainless steel container or bottle
368 designed to hold propane for fueling forklifts.
- 369 12. A stainless steel beer keg.
- 370 13. A catalytic converter or any nonferrous part of a
371 catalytic converter unless purchased as part of a motor vehicle.
- 372 14. Metallic wire that has been burned in whole or in part
373 to remove insulation.
- 374 15. A brass or bronze commercial valve or fitting, referred
375 to as a "fire department connection and control valve" or an
376 "FDC valve," which is commonly used on structures for access to
377 water for the purpose of extinguishing fires.

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378 16. A brass or bronze commercial potable water backflow
379 preventer valve that is commonly used to prevent backflow of
380 potable water from commercial structures into municipal domestic
381 water service systems.

382 17. A shopping cart.

383 Section 8. Section 538.27, Florida Statutes, is created to
384 read:

385 538.27 Secondary metals recyclers; limitation of liability;
386 inference.—As provided in s. 812.022(7), proof that a purchase
387 transaction for regulated metals property by a secondary metals
388 recycler complied with this part gives rise to an inference that
389 the secondary metals recycler did not know or have reason to
390 believe that the property was stolen and that the recycler did
391 not have intent to commit theft or deal in stolen property.

392 Section 9. Section 538.28, Florida Statutes, is created to
393 read:

394 538.28 Local government regulation; preemption.—

395 (1) The regulation of purchase transactions involving
396 regulated metals property is preempted to the state. Except as
397 provided in subsection (2), an ordinance or regulation adopted
398 by a county or municipality relating to the purchase or sale of
399 regulated metals property or the registration or licensure of
400 secondary metals recyclers is void.

401 (2) This part does not preempt an ordinance or regulation
402 originally enacted by a county or municipality before March 1,
403 2011, or any subsequent amendment to such ordinance or
404 regulation.

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

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407 812.022 Evidence of theft or dealing in stolen property.—

408 (7) Proof that a purchase transaction for regulated metals
409 property by a secondary metals recycler complied with part II of
410 chapter 538 gives rise to an inference that the secondary metals
411 recycler did not know or have reason to believe that the
412 property was stolen and that the recycler did not have intent to
413 commit theft or deal in stolen property.

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