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

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

39

40 Be It Enacted by the Legislature of the State of Florida:

41

42 Section 1. Section 538.18, Florida Statutes, is amended to
 43 read:

44 538.18 Definitions.—As used in this part, the term:

45 (1)~~(9)~~ "Department" means the Department of Revenue.

46 (2)~~(1)~~ "Ferrous metals" means any metals containing
 47 significant quantities of iron or steel.

48 (3)~~(2)~~ "Fixed location" means any site occupied by a
 49 secondary metals recycler as owner of the site or as lessee of
 50 the site under a lease or other rental agreement providing for
 51 occupation of the site by the secondary metals recycler for a
 52 total duration of not less than 364 days.

53 (4)~~(3)~~ "Money" means a medium of exchange authorized or
 54 adopted by a domestic or foreign government as part of its
 55 currency.

56 (5)~~(4)~~ "Nonferrous metals" means metals not containing

57 | significant quantities of iron or steel, including, without
 58 | limitation, copper, brass, aluminum, bronze, lead, zinc, nickel,
 59 | and alloys thereof, excluding precious metals subject to
 60 | regulation under part I.

61 | (6)~~(5)~~ "Personal identification card" means any
 62 | government-issued photographic identification card.

63 | (7)~~(6)~~ "Purchase transaction" means a transaction in which
 64 | a secondary metals recycler gives consideration for regulated
 65 | metals property.

66 | (8)~~(7)~~ "Regulated metals property" means any item composed
 67 | primarily of any nonferrous metals. The term does,~~but shall~~ not
 68 | include aluminum beverage containers, used beverage containers,
 69 | or similar beverage containers; however,~~-~~ the term includes
 70 | ~~shall include~~ stainless steel beer kegs.

71 | (9) "Restricted regulated metals property" means any
 72 | regulated metals property listed in s. 538.26(6) (b) the sale of
 73 | which is restricted as provided in s. 538.26(6) (a).

74 | (10)~~(8)~~ "Secondary metals recycler" means any person who:

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

82 | (b) Has facilities for performing the manufacturing
 83 | process by which ferrous metals or nonferrous metals are
 84 | converted into raw material products consisting of prepared

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

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

96 Section 2. Paragraph (u) of subsection (1) of section
 97 319.30, Florida Statutes, is amended to read:

98 319.30 Definitions; dismantling, destruction, change of
 99 identity of motor vehicle or mobile home; salvage.—

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

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

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

105 538.19 Records required; limitation of liability.—

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

109 ~~If a purchase transaction involves the transfer of~~
 110 ~~regulated metals property from~~ A secondary metals recycler
 111 registered with the department that purchases a motor vehicle
 112 from a licensed salvage motor vehicle dealer as defined in s.

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113 320.27 or to another secondary metals recycler registered with
 114 the department and uses a mechanical crusher to convert the
 115 vehicle to scrap metal must obtain a signed statement from the
 116 seller stating that the seller has surrendered the vehicle's
 117 certificate of title to the Department of Highway Safety and
 118 Motor Vehicles as provided in s. 319.30 or otherwise complied
 119 with the titling requirements provided by law for conversion of
 120 the vehicle to scrap metal. A, the secondary metals recycler is
 121 not liable for the seller's failure to comply with the titling
 122 requirements provided by law for conversion of a motor vehicle
 123 to scrap metal if the secondary metals recycler obtains and
 124 maintains the seller's signed statement receiving the regulated
 125 metals property shall record the name and address of the
 126 secondary metals recycler from which it received the regulated
 127 metals property in lieu of the requirements of paragraph (2) (h).

128 Section 4. Section 538.235, Florida Statutes, is amended
 129 to read:

130 538.235 Method of payment.—

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

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

135 (b) In any amount for the purchase of restricted regulated
 136 metals property.

137 (2) Payment in excess of \$1,000 for the purchase of
 138 regulated metals property or payment in any amount for the
 139 purchase of restricted regulated metals property must shall be
 140 made by check issued and payable to the seller or by electronic

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141 payment to the seller's bank account or the bank account of the
142 seller's employer metal and payable to the seller.

143 Section 5. Subsection (5) of section 538.26, Florida
144 Statutes, is amended, and subsection (6) is added to that
145 section, to read:

146 538.26 Certain acts and practices prohibited.—It is
147 unlawful for a secondary metals recycler to do or allow any of
148 the following acts:

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

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

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

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

- 169 (b) The purchase of any of the following regulated metals
 170 property is subject to the restrictions provided in paragraph
 171 (a):
- 172 1. A manhole cover.
 - 173 2. An electric light pole or other utility structure and
 174 its fixtures, wires, and hardware that are readily identifiable
 175 as connected to the utility structure.
 - 176 3. A guard rail.
 - 177 4. A street sign, traffic sign, or traffic signal and its
 178 fixtures and hardware.
 - 179 5. Communication, transmission, distribution, and service
 180 wire from a utility, including copper or aluminum bus bars,
 181 connectors, grounding plates, or grounding wire.
 - 182 6. A funeral marker or funeral vase.
 - 183 7. A historical marker.
 - 184 8. Railroad equipment, including, but not limited to, a
 185 tie plate, signal house, control box, switch plate, E clip, or
 186 rail tie junction.
 - 187 9. Any metal item that is observably marked upon
 188 reasonable inspection with any form of the name, initials, or
 189 logo of a governmental entity, utility company, cemetery, or
 190 railroad.
 - 191 10. A copper, aluminum, or aluminum-copper condensing or
 192 evaporator coil, including its tubing or rods, from an air
 193 conditioning or heating unit, excluding coils from window air
 194 conditioning or heating units and motor vehicle air conditioning
 195 or heating units.
 - 196 11. An aluminum or stainless steel container or bottle

197 designed to hold propane for fueling forklifts.

198 12. A stainless steel beer keg.

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

201 14. Metallic wire that has been burned in whole or in part
 202 to remove insulation.

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

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

211 17. A shopping cart.

212 Section 6. Section 538.27, Florida Statutes, is created to
 213 read:

214 538.27 Secondary metals recyclers; limitation of
 215 liability; inference.-

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

220 (2) As provided in s. 812.022(7), proof that a purchase
 221 transaction for regulated metals property by a secondary metals
 222 recycler complied with this part gives rise to an inference that
 223 the secondary metals recycler did not know or have reason to

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224 believe that the property was stolen and did not have intent to
 225 commit theft or deal in stolen property.

226 Section 7. Section 538.28, Florida Statutes, is created to
 227 read:

228 538.28 Local government regulation; preemption.-

229 (1) The regulation of purchase transactions involving
 230 regulated metals property is preempted to the state. Except as
 231 provided in subsection (2), an ordinance or regulation adopted
 232 by a county or municipality relating to the purchase or sale of
 233 regulated metals property or the registration or licensure of
 234 secondary metals recyclers is void.

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

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

241 812.022 Evidence of theft or dealing in stolen property.-

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

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