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LEGISLATIVE ACTION

Senate . House

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Floor: 1/AD/2R .

03/09/2012 04:31 PM .

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Senator Smith moved the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (1) of section 538.03, Florida
Statutes, is reordered and amended, paragraphs (m) through (q)
of subsection (2) of that section are redesignated as paragraphs
(l) through (p), respectively, and present paragraphs (k), (l),
and (n) of that subsection are amended, to read:

538.03 Definitions; applicability.—

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

(g)~~(a)~~ "Secondhand dealer" means any person, corporation,
or other business organization or entity which is not a



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14 secondary metals recycler subject to part II and which is
15 engaged in the business of purchasing, consigning, or trading
16 secondhand goods.

17 (f)~~(b)~~ "Precious metals dealer" means a secondhand dealer
18 who normally or regularly engages in the business of buying used
19 precious metals for resale. The term does not include those
20 persons involved in the bulk sale of precious metals from one
21 secondhand or precious metals dealer to another.

22 (i)~~(e)~~ "Secondhand store" means the place or premises at
23 which a secondhand dealer is registered to conduct business as a
24 secondhand dealer or conducts business.

25 (c)~~(d)~~ "Consignment shop" means a shop engaging in the
26 business of accepting for sale, on consignment, secondhand goods
27 which, having once been used or transferred from the
28 manufacturer to the dealer, are then received into the
29 possession of a third party.

30 (a)~~(e)~~ "Acquire" means to obtain by purchase, consignment,
31 or trade.

32 (h)~~(f)~~ "Secondhand goods" means personal property
33 previously owned or used, which is not regulated metals property
34 regulated under part II and which is purchased, consigned, or
35 traded as used property. Such secondhand goods do not include
36 office furniture, pianos, books, clothing, organs, coins, motor
37 vehicles, costume jewelry, cardio and strength training or
38 conditioning equipment designed primarily for indoor use, and
39 secondhand sports equipment that is not permanently labeled with
40 a serial number. For purposes of this paragraph, "secondhand
41 sports equipment" does not include golf clubs.

42 (j)~~(g)~~ "Transaction" means any purchase, consignment, or



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43 trade of secondhand goods by a secondhand dealer.

44 (e) ~~(h)~~ "Precious metals" means any item containing any
45 gold, silver, or platinum, or any combination thereof, excluding
46 any chemical or any automotive, photographic, electrical,
47 medical, or dental materials or electronic parts.

48 (d) ~~(i)~~ "Department" means the Department of Revenue.

49 (b) "Appropriate law enforcement official" means the
50 sheriff of the county in which a secondhand dealer is located
51 or, if the secondhand dealer is located within a municipality,
52 both the police chief of the municipality and the sheriff;
53 however, the sheriff or police chief may designate as the
54 appropriate law enforcement official for that county or
55 municipality, as applicable, any law enforcement officer working
56 within that respective county or municipality. This paragraph
57 does not limit the authority or duties of the sheriff.

58 (2) This chapter does not apply to:

59 (k) Any auction business as defined in s. 468.382 operating
60 as an auction business in the buying and selling of estates,
61 business inventory, surplus merchandise, or business
62 liquidations. Any person purchasing, consigning, or trading
63 secondhand goods at a flea market regardless of whether at a
64 temporary or permanent business location at the flea market.

65 ~~(l) Any auction business as defined in s. 468.382(1).~~

66 (m) ~~(n)~~ A business that contracts with other persons or
67 entities to offer its secondhand goods for sale, purchase,
68 consignment, or trade via an Internet website, and that
69 maintains a shop, store, or other business premises for this
70 purpose, if all of the following apply:

71 1. The secondhand goods must be available on the website



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72 for viewing by the public at no charge;

73 2. The records of the sale, purchase, consignment, or trade
74 must be maintained for at least 2 years;

75 3. The records of the sale, purchase, consignment, or
76 trade, and the description of the secondhand goods as listed on
77 the website, must contain the serial number of each item, if
78 any;

79 4. The secondhand goods listed on the website must be
80 searchable based upon the state or zip code;

81 5. The business must provide the appropriate law
82 enforcement official ~~agency~~ with the name or names under which
83 it conducts business on the website;

84 6. The business must allow the appropriate law enforcement
85 official ~~agency~~ to inspect its business premises at any time
86 during normal business hours;

87 7. Any payment by the business resulting from such a sale,
88 purchase, consignment, or trade must be made to the person or
89 entity with whom the business contracted to offer the goods and
90 must be made by check or via a money services business licensed
91 under part II of chapter 560; and

92 8.a. At least 48 hours after the estimated time of
93 contracting to offer the secondhand goods, the business must
94 verify that any item having a serial number is not stolen
95 property by entering the serial number of the item into the
96 Department of Law Enforcement's stolen article database located
97 at the Florida Crime Information Center's public access system
98 website. The business shall record the date and time of such
99 verification on the contract covering the goods. If such
100 verification reveals that an item is stolen property, the



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101 business shall immediately remove the item from any website on
102 which it is being offered and notify the appropriate law
103 enforcement official ~~agency~~; or

104 b. The business must provide the appropriate law
105 enforcement official ~~agency~~ with an electronic copy of the name,
106 address, phone number, driver ~~driver's~~ license number, and
107 issuing state of the person with whom the business contracted to
108 offer the goods, as well as an accurate description of the
109 goods, including make, model, serial number, and any other
110 unique identifying marks, numbers, names, or letters that may be
111 on an item, in a format agreed upon by the business and the
112 appropriate law enforcement official ~~agency~~. This information
113 must be provided to the appropriate law enforcement official
114 ~~agency~~ within 24 hours after entering into the contract unless
115 other arrangements are made between the business and the law
116 enforcement official ~~agency~~.

117 Section 2. Subsections (1), (6), and (7) of section 538.04,
118 Florida Statutes, are amended to read:

119 538.04 Recordkeeping requirements; penalties.—

120 (1) A secondhand dealer ~~dealers~~ shall complete a secondhand
121 dealers transaction form at the time of the actual transaction.
122 A secondhand dealer shall maintain a copy of a completed
123 transaction form on the registered premises for at least 1 year
124 after the date of the transaction. However, the secondhand
125 dealer shall maintain a copy of the transaction form for not
126 less than 3 years. Unless other arrangements are ~~have been~~
127 agreed upon by the secondhand dealer and the appropriate law
128 enforcement official ~~agency~~, the secondhand dealer shall, within
129 24 hours after acquiring ~~the acquisition of~~ any secondhand



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130 goods, deliver to such official ~~the police department of the~~
131 ~~municipality where the goods were acquired or, if the goods were~~
132 ~~acquired outside of a municipality, to the sheriff's department~~
133 ~~of the county where the goods were acquired,~~ a record of the
134 transaction on a form approved by the Department of Law
135 Enforcement. Such record shall contain:

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

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

139 1. Brand name.

140 2. Model number.

141 3. Manufacturer's serial number.

142 4. Size.

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

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

145 7. Gemstone description, including the number of stones, if
146 applicable.

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

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

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

152 1. Full name, current residential address, workplace, and
153 home and work phone numbers.

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

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

158 (d) Any other information required by the form approved by



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159 the Department of Law Enforcement.

160 (6) If the appropriate law enforcement official agency
161 supplies a secondhand dealer with appropriate software and the
162 secondhand dealer has computer capability, the secondhand dealer
163 must ~~transactions shall be~~ electronically transmit secondhand
164 dealer transactions required by this section to such official
165 ~~transferred~~. If a secondhand dealer does not have computer
166 capability, the appropriate law enforcement official agency may
167 provide the secondhand dealer with a computer and all equipment
168 necessary to ~~equipment for the purpose of~~ electronically
169 transmit ~~transferring~~ secondhand dealer transactions. The
170 appropriate law enforcement official agency shall retain
171 ownership of the computer, unless otherwise agreed upon, and
172 the secondhand dealer shall maintain the computer in good
173 working order, except for ordinary wear and ~~tear excepted~~. A If
174 ~~the~~ secondhand dealer who transmits ~~transfers~~ secondhand dealer
175 transactions electronically, ~~the secondhand dealer~~ is not
176 required to also deliver ~~to the appropriate law enforcement~~
177 ~~agency~~ the original or paper copies of the secondhand
178 transaction forms to the appropriate law enforcement official.
179 However, such official may, for purposes ~~the purpose~~ of a
180 criminal investigation, ~~the appropriate law enforcement agency~~
181 ~~may~~ request ~~that~~ the secondhand dealer to deliver the ~~produce an~~
182 original ~~of a~~ transaction form that was ~~has been~~ electronically
183 transmitted ~~transferred~~. The secondhand dealer shall deliver the
184 ~~this~~ form to the appropriate law enforcement official agency
185 within 24 hours after receipt of the request.

186 (7) If the original transaction form is lost or destroyed
187 by the appropriate law enforcement official agency, a copy may



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188 be used by the secondhand dealer as evidence in court. When an
189 electronic image of a customer's identification is accepted for
190 a transaction, the secondhand dealer must maintain the
191 electronic image in order to meet the recordkeeping requirements
192 applicable to the original transaction form. If a criminal
193 investigation occurs, the secondhand dealer shall, upon request,
194 provide a clear and legible copy of the image to the appropriate
195 law enforcement official agency.

196 Section 3. Section 538.18, Florida Statutes, is reordered
197 and amended to read:

198 538.18 Definitions.—As used in this part, the term:

199 (3)~~(1)~~ "Ferrous metals" means any metals containing
200 significant quantities of iron or steel.

201 (4)~~(2)~~ "Fixed location" means any site occupied by a
202 secondary metals recycler as owner of the site or as lessee of
203 the site under a lease or other rental agreement providing for
204 occupation of the site by the secondary metals recycler for a
205 total duration of not less than 364 days.

206 (5)~~(3)~~ "Money" means a medium of exchange authorized or
207 adopted by a domestic or foreign government as part of its
208 currency.

209 (6)~~(4)~~ "Nonferrous metals" means metals not containing
210 significant quantities of iron or steel, including, without
211 limitation, copper, brass, aluminum, bronze, lead, zinc, nickel,
212 and alloys thereof, excluding precious metals subject to
213 regulation under part I.

214 (7)~~(5)~~ "Personal identification card" means a valid Florida
215 driver license, a Florida identification card issued by the
216 Department of Highway Safety and Motor Vehicles, an equivalent



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217 form of identification issued by another state, a passport, or
218 an employment authorization issued by the United States Bureau
219 of Citizenship and Immigration Services that contains an
220 individual's photograph and current address ~~any government-~~
221 ~~issued photographic identification card.~~

222 (8)~~(6)~~ "Purchase transaction" means a transaction in which
223 a secondary metals recycler gives consideration for regulated
224 metals property.

225 (9)~~(7)~~ "Regulated metals property" means any item composed
226 primarily of any nonferrous metals, but shall not include
227 aluminum beverage containers, used beverage containers, or
228 similar beverage containers. The term shall include stainless
229 steel beer kegs.

230 (10)~~(8)~~ "Secondary metals recycler" means any person who:

231 (a) Is engaged, from a fixed location or otherwise, in the
232 business of gathering or obtaining ferrous or nonferrous metals
233 that have served their original economic purpose or is in the
234 business of performing the manufacturing process by which
235 ferrous metals or nonferrous metals are converted into raw
236 material products consisting of prepared grades and having an
237 existing or potential economic value; or

238 (b) Has facilities for performing the manufacturing process
239 by which ferrous metals or nonferrous metals are converted into
240 raw material products consisting of prepared grades and having
241 an existing or potential economic value, other than by the
242 exclusive use of hand tools, by methods including, without
243 limitation, processing, sorting, cutting, classifying, cleaning,
244 baling, wrapping, shredding, shearing, or changing the physical
245 form or chemical content thereof.



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246 (2) ~~(9)~~ "Department" means the Department of Revenue.

247 (1) "Appropriate law enforcement official" means the
248 sheriff of the county in which a secondary metals recycler is
249 located or, if the secondary metals recycler is located within a
250 municipality, the police chief of the municipality in which the
251 secondary metals recycler is located; however, the sheriff or
252 police chief may designate as the appropriate law enforcement
253 official for the county or municipality, as applicable, any law
254 enforcement officer working within that respective county or
255 municipality. This subsection does not limit the authority or
256 duties of the sheriff.

257 (11) "Utility" means a public utility or electric utility
258 as defined in s. 366.02 or a person, firm, corporation,
259 association, or political subdivision, whether private,
260 municipal, county, or cooperative, that is engaged in the sale,
261 generation, provision, or delivery of gas, electricity, heat,
262 water, oil, sewer service, or telephone, telegraph, radio,
263 telecommunications, or communications service.

264 Section 4. Paragraph (u) of subsection (1) of section
265 319.30, Florida Statutes, is amended to read:

266 319.30 Definitions; dismantling, destruction, change of
267 identity of motor vehicle or mobile home; salvage.—

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

269 (u) "Secondary metals recycler" means secondary metals
270 recycler as defined in s. 538.18 ~~538.18(8)~~.

271 Section 5. Section 538.19, Florida Statutes, is amended to
272 read:

273 538.19 Records required; limitation of liability.—

274 (1) A secondary metals recycler shall maintain a legible



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275 paper record of all purchase transactions to which such
276 secondary metals recycler is a party. A secondary metals
277 recycler shall also maintain a legible electronic record, in the
278 English language, of all such purchase transactions. The
279 appropriate law enforcement official may provide data
280 specifications regarding the electronic record format, but such
281 format must be approved by the Department of Law Enforcement. An
282 electronic record of a purchase transaction shall be
283 electronically transmitted to the appropriate law enforcement
284 official no later than 10 a.m. of the business day following the
285 date of the purchase transaction. The record transmitted to the
286 appropriate law enforcement official must not contain the price
287 paid for the items. A secondary metals recycler who transmits
288 such records electronically is not required to also deliver the
289 original or paper copies of the transaction forms to the
290 appropriate law enforcement official. However, such official
291 may, for purposes of a criminal investigation, request the
292 secondary metals recycler to make available the original
293 transaction form that was electronically transmitted. This
294 original transaction form must include the price paid for the
295 items. The secondary metals recycler shall make the form
296 available to the appropriate law enforcement official within 24
297 hours after receipt of the request.

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

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

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



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- 304 (c) The date and time of the transaction.
- 305 (d) The weight, quantity, or volume, and a description of
306 the type of regulated metals property purchased in a purchase
307 transaction.
- 308 (e) The amount of consideration given in a purchase
309 transaction for the regulated metals property.
- 310 (f) A signed statement from the person delivering the
311 regulated metals property stating that she or he is the rightful
312 owner of, or is entitled to sell, the regulated metals property
313 being sold. If the purchase involves a stainless steel beer keg,
314 the seller must provide written documentation from the
315 manufacturer that the seller is the owner of the stainless steel
316 beer keg or is an employee or agent of the manufacturer.
- 317 (g) The distinctive number from the personal identification
318 card of the person delivering the regulated metals property to
319 the secondary metals recycler.
- 320 (h) A description of the person from whom the regulated
321 metals property was ~~goods were~~ acquired, including:
- 322 1. Full name, current residential address, workplace, and
323 home and work phone numbers.
 - 324 2. Height, weight, date of birth, race, gender, hair color,
325 eye color, and any other identifying marks.
 - 326 3. The right thumbprint, free of smudges and smears.
 - 327 4. Vehicle description to include the make, model, and tag
328 number of the vehicle and trailer of the person selling the
329 regulated metals property.
 - 330 5. Any other information required by the form approved by
331 the Department of Law Enforcement.
- 332 (i) A photograph, videotape, or digital image of the



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333 regulated metals being sold.

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

337 ~~(3) Any secondary metals recycler that maintains an~~
338 ~~electronic database containing the information required in~~
339 ~~paragraph (2) (h), along with an oath of ownership with a~~
340 ~~signature of the seller of the secondary metals being purchased~~
341 ~~by the secondary metals recycler and a right thumbprint that has~~
342 ~~no smudges and smears on the oath of ownership for each purchase~~
343 ~~transaction, shall be exempt from the records requirement of~~
344 ~~paragraph (2) (h).~~ A secondary metals recycler complies with the
345 requirements of this section if it maintains an electronic
346 database containing the information required by subsection (2)
347 ~~paragraph (2) (h)~~ as long as the electronic information required
348 by subsection (2) ~~paragraph (2) (h)~~, along with an electronic
349 oath of ownership with an electronic signature of the seller of
350 the secondary metals being purchased by the secondary metals
351 recyclers and an electronic image of the seller's right
352 thumbprint that has no smudges and smears, can be downloaded
353 onto a paper form in the image of the form approved by the
354 Department of Law Enforcement as provided in subsection (2).

355 (4) A secondary metals recycler shall maintain or cause to
356 be maintained the information required by this section for not
357 less than 3 ~~5~~ years from the date of the purchase transaction.

358 (5) ~~If a purchase transaction involves the transfer of~~
359 ~~regulated metals property from~~ A secondary metals recycler
360 registered with the department that purchases a motor vehicle
361 from a licensed salvage motor vehicle dealer as defined in s.



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362 320.27 or to another secondary metals recycler registered with
363 the department and uses a mechanical crusher to convert the
364 vehicle to scrap metal must obtain a signed statement from the
365 seller stating that the seller has surrendered the vehicle's
366 certificate of title to the Department of Highway Safety and
367 Motor Vehicles as provided in s. 319.30 or otherwise complied
368 with the titling requirements provided by law for conversion of
369 the vehicle to scrap metal. A, the secondary metals recycler is
370 not liable for the seller's failure to comply with the titling
371 requirements provided by law for conversion of a motor vehicle
372 to scrap metal if the secondary metals recycler obtains and
373 maintains the seller's signed statement receiving the regulated
374 metals property shall record the name and address of the
375 secondary metals recycler from which it received the regulated
376 metals property in lieu of the requirements of paragraph (2) (h).

377 Section 6. Section 538.235, Florida Statutes, is amended to
378 read:

379 538.235 Method of payment.—

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

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

384 (b) In any amount for the purchase of restricted regulated
385 metals property.

386 (2) Payment in excess of \$1,000 for the purchase of
387 regulated metals property shall be made by check issued to the
388 seller of the metal and payable to the seller.

389 (3) Payment for the purchase of restricted regulated metals
390 property shall be made by check issued to the seller of the



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391 metal and payable to the seller or by electronic payment to the
392 seller's bank account or the seller's employer's bank account.

393 (a) Each check shall be mailed by the secondary metals
394 recycler directly to the street address of the seller that is on
395 file with the secondary metals recycler unless otherwise
396 provided in this part. A check may not be mailed to a post
397 office box. Electronic payments shall be transmitted to an
398 account for which the seller is listed as an account holder or
399 an employee or agent of the seller.

400 (b) Each check or electronic payment shall be mailed or
401 transmitted by the secondary metals recycler to the seller
402 within 3 days after the purchase transaction unless otherwise
403 provided in this section.

404 (c) The secondary metals recycler may provide a check at
405 the time of the purchase transaction, rather than mailing the
406 check as required in paragraph (a), if the seller is:

407 1. An organization, corporation, or association registered
408 with the state as a charitable, philanthropic, religious,
409 fraternal, civic, patriotic, social, or school-sponsored
410 organization or association, or any nonprofit corporation or
411 association;

412 2. A law enforcement officer acting in an official
413 capacity;

414 3. A trustee in bankruptcy, executor, administrator, or
415 receiver who has presented proof of such status to the secondary
416 metals recycler;

417 4. A public official acting under judicial process or
418 authority who has presented proof of such status to the
419 secondary metals recycler;



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420 5. A sheriff acting under the authority of a court's writ
421 of execution, or by virtue of any process issued by a court, if
422 proof thereof has been presented to the secondary metals
423 recycler; or

424 6. A manufacturing, industrial, or other commercial vendor
425 that generates regulated materials in the ordinary course of
426 business.

427 Section 7. Subsection (1) of section 538.25, Florida
428 Statutes, is amended to read:

429 538.25 Registration.—

430 (1) A ~~No~~ person may not ~~shall~~ engage in business as a
431 secondary metals recycler at any location without registering
432 with the department. The department shall accept applications
433 only from a fixed business address. The department may not
434 accept an application that provides an address of a hotel room
435 or motel room, a vehicle, or a post office box.

436 (a) A fee equal to the federal and state costs for
437 processing required fingerprints must be submitted to the
438 department with each application for registration. One
439 application is required for each secondary metals recycler. If a
440 secondary metals recycler is the owner of more than one
441 secondary metals recycling location, the application must list
442 each location, and the department shall issue a duplicate
443 registration for each location. For purposes of subsections (3),
444 (4), and (5), these duplicate registrations shall be deemed
445 individual registrations. A secondary metals recycler shall pay
446 a fee of \$6 per location at the time of registration and an
447 annual renewal fee of \$6 per location on October 1 of each year.
448 All fees collected, less costs of administration, shall be



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449 transferred into the Operating Trust Fund.

450 (b) The department shall forward the full set of
451 fingerprints to the Department of Law Enforcement for state and
452 federal processing, provided the federal service is available,
453 to be processed for any criminal justice information as defined
454 in s. 943.045. The cost of processing such fingerprints shall be
455 payable to the Department of Law Enforcement by the department.
456 The department may issue a temporary registration to each
457 location pending completion of the background check by state and
458 federal law enforcement agencies, but shall revoke such
459 temporary registration if the completed background check reveals
460 a prohibited criminal background. The Department of Law
461 Enforcement shall report its findings to the Department of
462 Revenue within 30 days after the date fingerprint cards are
463 submitted for criminal justice information.

464 (c) An applicant for a secondary metals recycler
465 registration must be a natural person who has reached the age of
466 18 years or a corporation organized or qualified to do business
467 in the state.

468 1. If the applicant is a natural person, the registration
469 must include a complete set of her or his fingerprints,
470 certified by an authorized law enforcement officer, and a recent
471 fullface photographic identification card of herself or himself.

472 2. If the applicant is a partnership, all the partners must
473 make application for registration.

474 3. If the applicant is a corporation, the registration must
475 include the name and address of such corporation's registered
476 agent for service of process in the state and a certified copy
477 of statement from the Secretary of State that the corporation is



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478 duly organized in the state or, if the corporation is organized
479 in a state other than Florida, a certified copy of the statement
480 that the corporation is duly qualified to do business in this
481 state.

482 Section 8. Section 538.26, Florida Statutes, is amended to
483 read:

484 538.26 Certain acts and practices prohibited.—It is
485 unlawful for a secondary metals recycler to do or allow any of
486 the following acts:

487 (1) Purchase regulated metals property, restricted
488 regulated metals property, or ferrous metals before 7 a.m. or
489 after 7 p.m. between the hours of 9 p.m. and 6 a.m.

490 ~~(2) Fail to pay any sales tax owed to the department or~~
491 ~~fail to have a sales tax registration number.~~

492 ~~(3) Purchase regulated metals property at a location other~~
493 ~~than the place of business set forth on the registration.~~

494 (2)(4) Purchase regulated metals property, restricted
495 regulated metals property, or ferrous metals from any seller who
496 presents such property for sale at the registered location of
497 the secondary metals recycler when such property was not
498 transported in a motor vehicle.

499 (3)(5) Purchase regulated metals property, restricted
500 regulated metals property, or ferrous metals ~~in return for money~~
501 ~~from a trailer, a vehicle, or any location other than a fixed~~
502 ~~location or from any person who is required to prove ownership~~
503 ~~pursuant to subsection (4). However, regulated metals may be~~
504 ~~purchased from a nonfixed location, or from such person, with~~
505 ~~any negotiable or nonnegotiable instrument, including a check or~~
506 ~~draft or any other type of instrument purchased with money and~~



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507 ~~sold for the purpose of making payments or transfers to others.~~

508 (4) Purchase regulated metals property from a seller who:

509 (a) Uses a name other than his or her own name or the

510 registered name of the seller's business;

511 (b) Is younger than 18 years of age; or

512 (c) Is visibly or apparently under the influence of drugs
513 or alcohol.

514 (5) (a) Purchase any restricted regulated metals property
515 listed in paragraph (b) unless the secondary metals recycler
516 obtains reasonable proof that the seller:

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

519 2. Is an employee, agent, or contractor of the property's
520 owner who is authorized to sell the property on behalf of the
521 owner. Reasonable proof of authorization to sell the property
522 includes, but is not limited to, a signed letter on the owner's
523 letterhead, dated no later than 90 days before the sale,
524 authorizing the seller to sell the property.

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

527 (a):

528 1. A manhole cover.

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

532 3. A guard rail.

533 4. A street sign, traffic sign, or traffic signal and its
534 fixtures and hardware.

535 5. Communication, transmission, distribution, and service



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- 536 wire from a utility, including copper or aluminum bus bars,
537 connectors, grounding plates, or grounding wire.
- 538 6. A funeral marker or funeral vase.
- 539 7. A historical marker.
- 540 8. Railroad equipment, including, but not limited to, a tie
541 plate, signal house, control box, switch plate, E clip, or rail
542 tie junction.
- 543 9. Any metal item that is observably marked upon reasonable
544 inspection with any form of the name, initials, or logo of a
545 governmental entity, utility company, cemetery, or railroad.
- 546 10. A copper, aluminum, or aluminum-copper condensing or
547 evaporator coil, including its tubing or rods, from an air-
548 conditioning or heating unit, excluding coils from window air-
549 conditioning or heating units and motor vehicle air-conditioning
550 or heating units.
- 551 11. An aluminum or stainless steel container or bottle
552 designed to hold propane for fueling forklifts.
- 553 12. A stainless steel beer keg.
- 554 13. A catalytic converter or any nonferrous part of a
555 catalytic converter unless purchased as part of a motor vehicle.
- 556 14. Metallic wire that has been burned in whole or in part
557 to remove insulation.
- 558 15. A brass or bronze commercial valve or fitting, referred
559 to as a "fire department connection and control valve" or an
560 "FDC valve," that is commonly used on structures for access to
561 water for the purpose of extinguishing fires.
- 562 16. A brass or bronze commercial potable water backflow
563 preventer valve that is commonly used to prevent backflow of
564 potable water from commercial structures into municipal domestic



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565 water service systems.
566 17. A shopping cart.
567 18. A brass water meter.
568 19. A storm grate.
569 20. A brass sprinkler head used in commercial agriculture.
570 Section 9. Section 538.28, Florida Statutes, is created to
571 read:
572 538.28 Local government regulation.—
573 (1) The regulation of purchase transactions involving
574 regulated metals property is preempted to the state. Except as
575 provided in subsection (2), an ordinance or regulation adopted
576 by a county or municipality relating to the purchase or sale of
577 regulated metals property or the registration or licensure of
578 secondary metals recyclers is void.
579 (2) This part does not preempt an ordinance or regulation
580 originally enacted by a county or municipality before March 1,
581 2012. Such ordinance or regulation may subsequently be amended
582 to incorporate any provision of this part.
583 (3) This section does not apply to a county as defined in
584 s. 125.011(1) until July 1, 2013.
585 Section 10. Subsection (1) of section 538.23, Florida
586 Statutes, is amended to read:
587 538.23 Violations and penalties.—
588 (1) (a) Except as provided in paragraph (b), a secondary
589 metals recycler who knowingly and intentionally:
590 1. Violates s. 538.20 or s. 538.21;
591 2. Engages in a pattern of failing to keep records required
592 by s. 538.19;
593 3. Violates s. 538.26(4); or



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594 4. Violates s. 538.235,

595
596 commits a felony of the third ~~misdemeanor of the first~~
597 degree, punishable as provided in s. 775.082, s. 775.083, or s.
598 775.084.

599 (b) A secondary metals recycler who commits a third or
600 subsequent violation of paragraph (a) commits a felony of the
601 second ~~third~~ degree, punishable as provided in s. 775.082, s.
602 775.083, or s. 775.084.

603 Section 11. Section 812.145, Florida Statutes, is amended
604 to read:

605 812.145 Theft of copper or other nonferrous metals.—

606 (1) As used in this section, the term ~~terms~~:

607 (a) "Communications services" means the transmission,
608 conveyance, or routing of voice, data, audio, video, or any
609 other information or signals, including cable services, to a
610 point, or between or among points, by or through any electronic,
611 radio, satellite, cable, optical, microwave, or other medium or
612 method now in existence or hereafter devised, regardless of the
613 protocol used for such transmission or conveyance. The term
614 includes such transmission, conveyance, or routing in which
615 computer processing applications are used to act on the form,
616 code, or protocol of the content for purposes of transmission,
617 conveyance, or routing without regard to whether such service is
618 referred to as voice-over-Internet-protocol services or is
619 classified by the Federal Communications Commission as enhanced
620 or value-added.

621 (b) "Communications services provider" includes any person,
622 firm, corporation, or political subdivision, whether private,



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623 municipal, county, or cooperative, which is engaged in the sale,
624 generation, provision, or delivery of communications services.

625 (c) "Copper or other nonferrous metals" means metals not
626 containing significant quantities of iron or steel, including,
627 without limitation, copper, copper alloy, copper utility or
628 communications service wire, brass, aluminum, bronze, lead,
629 zinc, nickel, and alloys thereof.

630 (d) "Electrical substation" means a facility that takes
631 electricity from the transmission grid and converts it to a
632 lower voltage so it can be distributed to customers in the local
633 area on the local distribution grid through one or more
634 distribution lines less than 69 kilovolts in size.

635 (e)-~~d~~ "Utility" means a public utility or electric utility
636 as defined in s. 366.02, or a person, firm, corporation,
637 association, or political subdivision, whether private,
638 municipal, county, or cooperative, which is engaged in the sale,
639 generation, provision, or delivery of gas, electricity, heat,
640 water, oil, sewer service, or telephone, telegraph, radio,
641 telecommunications, or communications service. The term includes
642 any person, firm, corporation, association, or political
643 subdivision, whether private, municipal, county, or cooperative,
644 which is engaged in the sale, generation, provision, or delivery
645 of gas or electricity services.

646 (f)-~~e~~ "Utility service" means electricity for light, heat,
647 or power and natural or manufactured gas for light, heat, or
648 power, including the transportation, delivery, transmission, and
649 distribution of electricity or natural or manufactured gas.

650 (2) A person who knowingly and intentionally takes copper
651 or other nonferrous metals from a utility or communications



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652 services provider, thereby causing damage to the facilities of a
653 utility or communications services provider, interrupting or
654 interfering with utility service or communications services, or
655 interfering with the ability of a utility or communications
656 services provider to provide service, commits a felony of the
657 first degree, punishable as provided in s. 775.082, s. 775.083,
658 or s. 775.084.

659 (3) A person who is found in a civil action to have
660 illegally taken copper or other nonferrous metals from a utility
661 or communications services provider based on a conviction for a
662 violation of subsection (2) is liable to the utility or
663 communications services provider for damages in an amount equal
664 to three times the actual damages sustained by the utility or
665 communications services provider due to any personal injury,
666 wrongful death, or property damage caused by the illegal taking
667 of the nonferrous metals or an amount equal to three times any
668 claim made against the utility or communications services
669 provider for any personal injury, wrongful death, or property
670 damage caused by the malfunction of the facilities of the
671 utility or communications services provider resulting from the
672 violation of subsection (2), whichever is greater.

673 (4) A person who knowingly and intentionally removes copper
674 or other nonferrous metals from an electrical substation without
675 authorization of the utility commits a felony of the first
676 degree, punishable as provided in s. 775.082, s. 775.083, or s.
677 775.084.

678 Section 12. (1) A public or private owner of metal property
679 is not civilly liable to a person who is injured during the
680 theft or attempted theft of metal property.



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681 (2) A public or private owner of metal property is not
682 civilly liable to a person for injuries caused by a dangerous
683 condition created as a result of the theft or attempted theft of
684 the owner's metal property when the owner did not know, and
685 could not have reasonably known, of the dangerous condition.

686 (3) This section does not create or impose a duty of care
687 upon an owner of metal property which would not otherwise exist
688 under common law.

689 Section 13. This act shall take effect July 1, 2012.

690
691

692 ===== T I T L E A M E N D M E N T =====

693 And the title is amended as follows:

694 Delete everything before the enacting clause
695 and insert:

696 A bill to be entitled
697 An act relating to transactions by secondhand dealers
698 and secondary metals recyclers; amending s. 538.03,
699 F.S.; reordering paragraphs and defining the term
700 "appropriate law enforcement official"; deleting
701 exemptions from regulation as a secondhand dealer
702 which relate to flea market transactions and auction
703 businesses; conforming terminology; amending s.
704 538.04, F.S., relating to recordkeeping requirements;
705 conforming terminology and clarifying provisions;
706 amending s. 538.18, F.S.; revising, reordering, and
707 providing definitions; amending s. 319.30, F.S.;
708 conforming a cross-reference; amending s. 538.19,
709 F.S.; revising requirements for the types of



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710 information that secondary metals recyclers must
711 obtain and maintain regarding purchase transactions,
712 including requirements for the maintenance and
713 transmission of electronic records of such
714 transactions; revising the period required for
715 secondary metals recyclers to maintain certain
716 information regarding purchase transactions involving
717 regulated metals property; limiting the liability of
718 secondary metals recyclers for the conversion of motor
719 vehicles to scrap metal under certain circumstances;
720 amending s. 538.235, F.S.; revising requirements for
721 payments made by secondary metals recyclers to sellers
722 of regulated metals property, to prohibit certain cash
723 transactions; providing penalties; providing methods
724 of payment for restricted regulated metals property;
725 requiring that purchases of certain property be made
726 by check or by electronic payment; providing
727 procedures; amending s. 538.25, F.S.; requiring an
728 application for registration as a secondary metals
729 recycler to contain the address of a fixed business
730 location; amending s. 538.26, F.S.; prohibiting
731 secondary metals recyclers from purchasing regulated
732 metals property, restricted regulated metals property,
733 or ferrous metals during specified times, from certain
734 locations, or from certain sellers; prohibiting the
735 purchase of specified restricted regulated metals
736 property without obtaining certain proof of the
737 seller's ownership and authorization to sell the
738 property; providing penalties; creating s. 538.28,



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739 F.S.; preempting to the state the regulation of
740 secondary metals recyclers and purchase transactions
741 involving regulated metals property; providing
742 exceptions; providing for applicability; amending s.
743 538.23, F.S.; increasing the criminal penalties for
744 specified violations relating to secondary metals
745 recycling; providing increased criminal penalties for
746 third and subsequent criminal violations; amending s.
747 812.145, F.S., relating to theft of copper or other
748 nonferrous metals from a utility or communications
749 services provider; revising and providing definitions;
750 providing civil liability and penalties; prohibiting
751 removing copper or other nonferrous metals from an
752 electrical substation site without authorization of
753 the utility; providing criminal penalties; providing
754 an effective date.
755