

By the Committees on Community Affairs; and Commerce and Tourism; and Senators Smith, Montford, Evers, and Lynn

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1 A bill to be entitled
2 An act relating to secondhand dealers and secondary
3 metals recyclers; amending s. 538.03, F.S.; requiring
4 that a secondary metals recycler conform to the
5 requirements for a secondhand dealer; defining the
6 term "appropriate law enforcement official"; deleting
7 exemptions from regulation as a secondhand dealer
8 which relate to flea market transactions and auction
9 businesses; conforming terminology; amending s.
10 538.04, F.S., relating to recordkeeping requirements;
11 conforming terminology and clarifying provisions;
12 amending s. 538.18, F.S.; revising and providing
13 definitions; amending s. 319.30, F.S.; conforming a
14 cross-reference; amending s. 538.19, F.S.; revising
15 requirements for the types of information that
16 secondary metals recyclers must obtain and maintain
17 regarding purchase transactions, including
18 requirements for the maintenance and transmission of
19 electronic records of such transactions; revising the
20 period required for secondary metals recyclers to
21 maintain certain information regarding purchase
22 transactions involving regulated metals property;
23 limiting the liability of secondary metals recyclers
24 for the conversion of motor vehicles to scrap metal
25 under certain circumstances; amending s. 538.235,
26 F.S.; revising requirements for payments made by
27 secondary metals recyclers to sellers of regulated
28 metals property to prohibit certain cash transactions;
29 providing penalties; providing methods of payment for

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30 restricted regulated metals property; requiring that
31 purchases of certain property be made by check or by
32 electronic payment; providing procedures; amending s.
33 538.25, F.S.; requiring the Department of Revenue to
34 accept applications from a fixed business address;
35 prohibiting the department from accepting an
36 application that provides an address from a hotel or
37 motel room, a vehicle, or a post office box; amending
38 s. 538.26, F.S.; prohibiting secondary metals
39 recyclers from purchasing regulated metals property,
40 restricted regulated metals property, or ferrous
41 metals during specified times or from certain
42 locations; prohibiting the purchase of regulated metal
43 property from a seller who uses a name other than his
44 or her own name or the registered name of the
45 business, is younger than 18 years of age, or is under
46 the influence of drugs or alcohol, if such a condition
47 is visible or apparent; prohibiting the purchase of
48 specified restricted regulated metals property without
49 obtaining certain proof of the seller's ownership and
50 authorization to sell the property; providing
51 penalties; creating s. 538.28, F.S.; preempting to the
52 state the regulation of secondary metals recyclers and
53 purchase transactions involving regulated metals
54 property; exempting county and municipal ordinances
55 and regulations enacted before March 1, 2012, from
56 preemption; reenacting and amending s. 538.23(1)(a),
57 F.S., relating to violations and penalties, to
58 incorporate the amendments made by this act to ss.

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59 538.19 and 538.235, F.S., in references thereto;
60 correcting a cross-reference; amending s. 812.145,
61 F.S.; redefining the term "utility"; providing that a
62 person who assists in the taking of certain metals
63 commits a felony of the first degree; providing that a
64 person who illegally takes copper or other nonferrous
65 metals from a utility or communications services
66 provider is liable to the utility or communications
67 provider for damages equal to three times the amount
68 of any claim against the utility or communication
69 services provider resulting from the illegal taking of
70 copper or other nonferrous metals; limiting the
71 liability of a public or private owner of metal
72 property for injuries occurring during the theft or
73 attempted theft of metal property and for injuries
74 occurring as the result of the theft or attempted
75 theft; providing that no additional duty of care is
76 imposed on the owner of metal property; providing an
77 effective date.

78
79 Be It Enacted by the Legislature of the State of Florida:

80
81 Section 1. Subsection (1) of section 538.03, Florida
82 Statutes, is reordered and amended, paragraphs (m) through (q)
83 of subsection (2) of that section are redesignated as paragraphs
84 (k) through (o), respectively, and present paragraphs (k), (l),
85 and (n) of that subsection are amended, to read:

86 538.03 Definitions; applicability.—

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

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88 (g)~~(a)~~ "Secondhand dealer" means any person, corporation,
89 or other business organization or entity that ~~which~~ is not a
90 secondary metals recycler subject to part II and that ~~which~~ is
91 engaged in the business of purchasing, consigning, or trading
92 secondhand goods. A secondary metals recycler may not act as a
93 secondhand dealer without also conforming to the requirements
94 for a secondhand dealer pursuant to this part.

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

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

103 (c)~~(d)~~ "Consignment shop" means a shop engaging in the
104 business of accepting for sale, on consignment, secondhand goods
105 that ~~which~~, having once been used or transferred from the
106 manufacturer to the dealer, are then received into the
107 possession of a third party.

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

110 (h)~~(f)~~ "Secondhand goods" means personal property
111 previously owned or used, which is not regulated metals property
112 regulated under part II and which is purchased, consigned, or
113 traded as used property. Such secondhand goods do not include
114 office furniture, pianos, books, clothing, organs, coins, motor
115 vehicles, costume jewelry, cardio and strength training or
116 conditioning equipment designed primarily for indoor use, and

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117 secondhand sports equipment that is not permanently labeled with
118 a serial number. For purposes of this paragraph, "secondhand
119 sports equipment" does not include golf clubs.

120 (j)~~(g)~~ "Transaction" means any purchase, consignment, or
121 trade of secondhand goods by a secondhand dealer.

122 (e)~~(h)~~ "Precious metals" means any item containing any
123 gold, silver, or platinum, or any combination thereof, excluding
124 any chemical or any automotive, photographic, electrical,
125 medical, or dental materials or electronic parts.

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

127 (b) "Appropriate law enforcement official" means the
128 sheriff of the county in which a secondhand dealer is located
129 or, if the secondhand dealer is located within a municipality,
130 both the police chief of the municipality and the sheriff;
131 however, the sheriff or police chief may designate as the
132 appropriate law enforcement official for that county or
133 municipality, as applicable, any law enforcement officer working
134 within that respective county or municipality. This paragraph
135 does not limit the authority or duties of the sheriff.

136 (2) This chapter does not apply to:

137 ~~(k) Any person purchasing, consigning, or trading~~
138 ~~secondhand goods at a flea market regardless of whether at a~~
139 ~~temporary or permanent business location at the flea market.~~

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

141 (1)~~(n)~~ A business that contracts with other persons or
142 entities to offer its secondhand goods for sale, purchase,
143 consignment, or trade via an Internet website, and that
144 maintains a shop, store, or other business premises for this
145 purpose, if all of the following apply:

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- 146 1. The secondhand goods must be available on the website
147 for viewing by the public at no charge;
- 148 2. The records of the sale, purchase, consignment, or trade
149 must be maintained for at least 2 years;
- 150 3. The records of the sale, purchase, consignment, or
151 trade, and the description of the secondhand goods as listed on
152 the website, must contain the serial number of each item, if
153 any;
- 154 4. The secondhand goods listed on the website must be
155 searchable based upon the state or zip code;
- 156 5. The business must provide the appropriate law
157 enforcement official ~~agency~~ with the name or names under which
158 it conducts business on the website;
- 159 6. The business must allow the appropriate law enforcement
160 official ~~agency~~ to inspect its business premises at any time
161 during normal business hours;
- 162 7. Any payment by the business resulting from such a sale,
163 purchase, consignment, or trade must be made to the person or
164 entity with whom the business contracted to offer the goods and
165 must be made by check or via a money services business licensed
166 under part II of chapter 560; and
- 167 8.a. At least 48 hours after the estimated time of
168 contracting to offer the secondhand goods, the business must
169 verify that any item having a serial number is not stolen
170 property by entering the serial number of the item into the
171 Department of Law Enforcement's stolen article database located
172 at the Florida Crime Information Center's public access system
173 website. The business shall record the date and time of such
174 verification on the contract covering the goods. If such

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175 verification reveals that an item is stolen property, the
176 business shall immediately remove the item from any website on
177 which it is being offered and notify the appropriate law
178 enforcement official ~~agency~~; or

179 b. The business must provide the appropriate law
180 enforcement official ~~agency~~ with an electronic copy of the name,
181 address, phone number, driver ~~driver's~~ license number, and
182 issuing state of the person with whom the business contracted to
183 offer the goods, as well as an accurate description of the
184 goods, including make, model, serial number, and any other
185 unique identifying marks, numbers, names, or letters that may be
186 on an item, in a format agreed upon by the business and the
187 appropriate law enforcement official ~~agency~~. This information
188 must be provided to the appropriate law enforcement official
189 ~~agency~~ within 24 hours after entering into the contract unless
190 other arrangements are made between the business and the law
191 enforcement official ~~agency~~.

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

194 538.04 Recordkeeping requirements; penalties.—

195 (1) A secondhand dealer ~~dealers~~ shall complete a secondhand
196 dealers transaction form at the time of the actual transaction.
197 A secondhand dealer shall maintain a copy of a completed
198 transaction form on the registered premises for at least 1 year
199 after the date of the transaction. However, the secondhand
200 dealer shall maintain a copy of the transaction form for not
201 less than 3 years. Unless other arrangements are ~~have been~~
202 agreed upon by the secondhand dealer and the appropriate law
203 enforcement official ~~agency~~, the secondhand dealer shall, within

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204 24 hours after acquiring ~~the acquisition of~~ any secondhand
205 goods, deliver to such official ~~the police department of the~~
206 ~~municipality where the goods were acquired or, if the goods were~~
207 ~~acquired outside of a municipality, to the sheriff's department~~
208 ~~of the county where the goods were acquired,~~ a record of the
209 transaction on a form approved by the Department of Law
210 Enforcement. Such record shall contain:

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

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

214 1. Brand name.

215 2. Model number.

216 3. Manufacturer's serial number.

217 4. Size.

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

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

220 7. Gemstone description, including the number of stones, if
221 applicable.

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

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

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

227 1. Full name, current residential address, workplace, and
228 home and work phone numbers.

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

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

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

235 (6) If the appropriate law enforcement official ~~agency~~
236 supplies a secondhand dealer with appropriate software and the
237 secondhand dealer has computer capability, the secondhand dealer
238 must ~~transactions shall be~~ electronically transmit ~~secondhand~~
239 dealer transactions required by this section to such official
240 ~~transferred~~. If a secondhand dealer does not have computer
241 capability, the appropriate law enforcement official ~~agency~~ may
242 provide the secondhand dealer with a computer and all equipment
243 necessary to ~~equipment for the purpose of~~ electronically
244 transmit ~~transferring~~ secondhand dealer transactions. The
245 appropriate law enforcement official ~~agency~~ shall retain
246 ownership of the computer, unless otherwise agreed upon, and~~,~~
247 the secondhand dealer shall maintain the computer in good
248 working order, except for ordinary wear and ~~tear~~ ~~excepted~~. A ~~If~~
249 ~~the~~ secondhand dealer who transmits ~~transfers~~ secondhand dealer
250 transactions electronically, ~~the secondhand dealer~~ is not
251 required to also deliver ~~to the appropriate law enforcement~~
252 ~~agency~~ the original or paper copies of the secondhand
253 transaction forms to the appropriate law enforcement official.
254 However, such official may, for purposes ~~the purpose~~ of a
255 criminal investigation, ~~the appropriate law enforcement agency~~
256 ~~may request that~~ the secondhand dealer to deliver the ~~produce an~~
257 original ~~of a~~ transaction form that was ~~has been~~ electronically
258 transmitted ~~transferred~~. The secondhand dealer shall deliver the
259 ~~this~~ form to the appropriate law enforcement official ~~agency~~
260 within 24 hours after receipt of the request.

261 (7) If the original transaction form is lost or destroyed

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262 by the appropriate law enforcement official ~~agency~~, a copy may
263 be used by the secondhand dealer as evidence in court. When an
264 electronic image of a customer's identification is accepted for
265 a transaction, the secondhand dealer must maintain the
266 electronic image in order to meet the recordkeeping requirements
267 applicable to the original transaction form. If a criminal
268 investigation occurs, the secondhand dealer shall, upon request,
269 provide a clear and legible copy of the image to the appropriate
270 law enforcement official ~~agency~~.

271 Section 3. Section 538.18, Florida Statutes, is reordered
272 and amended to read:

273 538.18 Definitions.—As used in this part, the term:

274 (1) "Appropriate law enforcement official" means the
275 sheriff of the county in which a secondary metals recycler is
276 located or, if the secondary metals recycler is located within a
277 municipality, the police chief of the municipality in which the
278 secondary metals recycler is located; however, the sheriff or
279 police chief may designate as the appropriate law enforcement
280 official for the county or municipality, as applicable, any law
281 enforcement officer working within that respective county or
282 municipality. This subsection does not limit the authority or
283 duties of the sheriff.

284 (3) ~~(1)~~ "Ferrous metals" means any metals containing
285 significant quantities of iron or steel.

286 (4) ~~(2)~~ "Fixed location" means any site occupied by a
287 secondary metals recycler as owner of the site or as lessee of
288 the site under a lease or other rental agreement providing for
289 occupation of the site by the secondary metals recycler for a
290 total duration of not less than 364 days.

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291 (5)~~(3)~~ "Money" means a medium of exchange authorized or
292 adopted by a domestic or foreign government as part of its
293 currency.

294 (6)~~(4)~~ "Nonferrous metals" means metals not containing
295 significant quantities of iron or steel, including, without
296 limitation, copper, brass, aluminum, bronze, lead, zinc, nickel,
297 and alloys thereof, excluding precious metals subject to
298 regulation under part I.

299 (7)~~(5)~~ "Personal identification card" means a valid Florida
300 driver license, a Florida identification card issued by the
301 Department of Highway Safety and Motor Vehicles, an equivalent
302 form of identification issued by another state, a passport, or
303 an employment authorization issued by the United States Bureau
304 of Citizenship and Immigration Services that contains an
305 individual's photograph and current address ~~any government-~~
306 ~~issued photographic identification card.~~

307 (8)~~(6)~~ "Purchase transaction" means a transaction in which
308 a secondary metals recycler gives consideration for regulated
309 metals property.

310 (9)~~(7)~~ "Regulated metals property" means any item composed
311 primarily of any nonferrous metals. The term does, ~~but shall~~ not
312 include aluminum beverage containers, used beverage containers,
313 or similar beverage containers; however, ~~the term~~ includes
314 ~~shall include~~ stainless steel beer kegs and items made of
315 ferrous metal obtained from any restricted regulated metals
316 property.

317 (11)~~(8)~~ "Secondary metals recycler" means any person who:
318 (a) Is engaged, from a fixed location or otherwise, in the
319 business of purchase transactions, gathering or obtaining

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320 ferrous or nonferrous metals that have served their original
321 economic purpose, ~~or is in the business of~~ performing the
322 manufacturing process by which ferrous metals or nonferrous
323 metals are converted into raw material products consisting of
324 prepared grades and having an existing or potential economic
325 value; or

326 (b) Has facilities for performing the manufacturing process
327 by which ferrous metals or nonferrous metals are converted into
328 raw material products consisting of prepared grades and having
329 an existing or potential economic value, other than by the
330 exclusive use of hand tools, by methods including, without
331 limitation, processing, sorting, cutting, classifying, cleaning,
332 baling, wrapping, shredding, shearing, or changing the physical
333 form or chemical content thereof.

334

335 A secondary metals recycler may not act as a secondhand dealer
336 without also conforming to the requirements of a secondhand
337 dealer pursuant to this part.

338 (2)(9) "Department" means the Department of Revenue.

339 (10) "Restricted regulated metals property" means any
340 regulated metals property listed in s. 538.26(5)(b) the sale of
341 which is restricted as provided in s. 538.26(5)(a).

342 (12) "Utility" means a public utility or electric utility
343 as defined in s. 366.02 or a person, firm, cooperative,
344 association, or political subdivision, whether private,
345 municipal, county, or cooperative, which is engaged in the sale,
346 generation, provision, or delivery of heat, water, oil, sewer
347 service, or telephone, telegraph, radio, telecommunications, or
348 communications service.

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349 Section 4. Paragraph (u) of subsection (1) of section
350 319.30, Florida Statutes, is amended to read:

351 319.30 Definitions; dismantling, destruction, change of
352 identity of motor vehicle or mobile home; salvage.—

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

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

356 Section 5. Section 538.19, Florida Statutes, is amended to
357 read:

358 538.19 Records required; limitation of liability.—

359 (1) A secondary metals recycler shall maintain a legible
360 paper record of all purchase transactions to which such
361 secondary metals recycler is a party. A secondary metals
362 recycler shall also maintain a legible electronic record, in the
363 English language, of all such purchase transactions. The
364 appropriate law enforcement official may provide data
365 specifications regarding the electronic record format, but such
366 format must be approved by the Department of Law Enforcement. An
367 electronic record of a purchase transaction shall be
368 electronically transmitted to the appropriate law enforcement
369 official no later than 10 a.m. of the business day following the
370 date of the purchase transaction. A secondary metals recycler
371 who transmits such records electronically is not required to
372 also deliver the original or paper copies of the transaction
373 forms to the appropriate law enforcement official. However, such
374 official may, for purposes of a criminal investigation, request
375 the secondary metals recycler to deliver the original
376 transaction form that was electronically transmitted. The
377 secondary metals recycler shall make available the form to the

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378 appropriate law enforcement official within 24 hours after
379 receipt of the request.

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

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

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

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

387 (d) The weight, quantity, or volume, and a description of
388 the type of regulated metals property purchased in a purchase
389 transaction.

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

392 (f) A signed statement from the person delivering the
393 regulated metals property stating that she or he is the rightful
394 owner of, or is entitled to sell, the regulated metals property
395 being sold. If the purchase involves a stainless steel beer keg,
396 the seller must provide written documentation from the
397 manufacturer that the seller is the owner of the stainless steel
398 beer keg or is an employee or agent of the manufacturer.

399 (g) The distinctive number from the personal identification
400 card of the person delivering the regulated metals property to
401 the secondary metals recycler.

402 (h) A description of the person from whom the regulated
403 metals property was ~~goods were~~ acquired, including:

404 1. Full name, current residential address, workplace, and
405 home and work phone numbers.

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

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407 eye color, and any other identifying marks.

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

409 4. Vehicle description to include the make, model, and tag
410 number of the vehicle and trailer of the person selling the
411 regulated metals property.

412 5. Any other information required by the form approved by
413 the Department of Law Enforcement.

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

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

419 ~~(3) Any secondary metals recycler that maintains an~~
420 ~~electronic database containing the information required in~~
421 ~~paragraph (2) (h), along with an oath of ownership with a~~
422 ~~signature of the seller of the secondary metals being purchased~~
423 ~~by the secondary metals recycler and a right thumbprint that has~~
424 ~~no smudges and smears on the oath of ownership for each purchase~~
425 ~~transaction, shall be exempt from the records requirement of~~
426 ~~paragraph (2) (h).~~ A secondary metals recycler complies with the
427 requirements of this section if it maintains an electronic
428 database containing the information required by subsection (2)
429 ~~paragraph (2) (h)~~ as long as the electronic information required
430 by subsection (2) paragraph (2) (h), along with an electronic
431 oath of ownership with an electronic signature of the seller of
432 the secondary metals being purchased by the secondary metals
433 recyclers and an electronic image of the seller's right
434 thumbprint that has no smudges and smears, can be downloaded
435 onto a paper form in the image of the form approved by the

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436 Department of Law Enforcement as provided in subsection (2).

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

440 (5) ~~If a purchase transaction involves the transfer of~~
441 ~~regulated metals property from~~ A secondary metals recycler
442 registered with the department who purchases a motor vehicle
443 from a licensed salvage motor vehicle dealer as defined in s.
444 320.27 or to ~~to~~ another secondary metals recycler registered with
445 the department and uses a mechanical crusher to convert the
446 vehicle to scrap metal must obtain a signed statement from the
447 seller stating that the seller has surrendered the vehicle's
448 certificate of title to the Department of Highway Safety and
449 Motor Vehicles as provided in s. 319.30 or has otherwise
450 complied with the titling requirements provided by law for
451 conversion of the vehicle to scrap metal. A, the secondary
452 metals recycler is not liable for the seller's failure to comply
453 with the titling requirements provided by law for conversion of
454 a motor vehicle to scrap metal if the secondary metals recycler
455 obtains and maintains the seller's signed statement receiving
456 ~~the regulated metals property shall record the name and address~~
457 ~~of the secondary metals recycler from which it received the~~
458 ~~regulated metals property in lieu of the requirements of~~
459 ~~paragraph (2)(h).~~

460 Section 6. Section 538.235, Florida Statutes, is amended to
461 read:

462 538.235 Method of payment.—

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

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

467 (b) In any amount for the purchase of restricted regulated
468 metals property.

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

472 (3) Payment for the purchase of restricted regulated metals
473 property shall be made by check issued to the seller of the
474 metal and payable to the seller or by electronic payment to the
475 seller's bank account or the seller's employer's bank account.

476 (a) Each check shall be mailed by the secondary metals
477 recycler directly to the street address of the seller which is
478 on file with the secondary metals recycler, unless otherwise
479 provided in this part. A check may not be mailed to a post
480 office box. Electronic payments shall be transmitted to an
481 account for which the seller is listed as an account holder or
482 an employee or agent of the seller.

483 (b) Each check or electronic payment shall be mailed or
484 transmitted by the secondary metals recycler to the seller
485 within 3 days after the purchase transaction, unless otherwise
486 provided in this section.

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

490 1. An organization, corporation, or association registered
491 with the state as a charitable, philanthropic, religious,
492 fraternal, civic, patriotic, social, or school-sponsored
493 organization or association, or is a nonprofit corporation or

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494 association;

495 2. A law enforcement officer acting in an official
496 capacity;

497 3. A trustee in bankruptcy or an executor, administrator,
498 or receiver who has presented proof of such status to the
499 secondary metals recycler;

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

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

507 6. A manufacturing, industrial, or other commercial vendor
508 that generates regulated materials in the ordinary course of
509 business.

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

512 538.25 Registration.—

513 (1) A ~~Ne~~ person may not shall engage in business as a
514 secondary metals recycler at any location without registering
515 with the department. The department shall accept applications
516 only from a fixed business address. The department may not
517 accept an application that provides an address of a hotel or
518 motel room, a vehicle, or a post office box.

519 (a) A fee equal to the federal and state costs for
520 processing required fingerprints must be submitted to the
521 department with each application for registration. One
522 application is required for each secondary metals recycler. If a

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523 secondary metals recycler is the owner of more than one
524 secondary metals recycling location, the application must list
525 each location, and the department shall issue a duplicate
526 registration for each location. For purposes of subsections (3),
527 (4), and (5), these duplicate registrations shall be deemed
528 individual registrations. A secondary metals recycler shall pay
529 a fee of \$6 per location at the time of registration and an
530 annual renewal fee of \$6 per location on October 1 of each year.
531 All fees collected, less costs of administration, shall be
532 transferred into the Operating Trust Fund.

533 (b) The department shall forward the full set of
534 fingerprints to the Department of Law Enforcement for state and
535 federal processing, provided the federal service is available,
536 to be processed for any criminal justice information as defined
537 in s. 943.045. The cost of processing such fingerprints shall be
538 payable to the Department of Law Enforcement by the department.
539 The department may issue a temporary registration to each
540 location pending completion of the background check by state and
541 federal law enforcement agencies, but shall revoke such
542 temporary registration if the completed background check reveals
543 a prohibited criminal background. The Department of Law
544 Enforcement shall report its findings to the Department of
545 Revenue within 30 days after the date fingerprint cards are
546 submitted for criminal justice information.

547 (c) An applicant for a secondary metals recycler
548 registration must be a natural person who has reached the age of
549 18 years or a corporation organized or qualified to do business
550 in the state.

551 1. If the applicant is a natural person, the registration

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552 must include a complete set of her or his fingerprints,
553 certified by an authorized law enforcement officer, and a recent
554 fullface photographic identification card of herself or himself.

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

557 3. If the applicant is a corporation, the registration must
558 include the name and address of such corporation's registered
559 agent for service of process in the state and a certified copy
560 of statement from the Secretary of State that the corporation is
561 duly organized in the state or, if the corporation is organized
562 in a state other than Florida, a certified copy of the statement
563 that the corporation is duly qualified to do business in this
564 state.

565 Section 8. Section 538.26, Florida Statutes, is amended to
566 read:

567 538.26 Certain acts and practices prohibited.—It is
568 unlawful for a secondary metals recycler to do or allow any of
569 the following acts:

570 (1) Purchase regulated metals property, restricted
571 regulated metals property, or ferrous metals on weekdays before
572 7 a.m. or after 6 p.m., on Saturdays before 7 a.m. or after 1
573 p.m., or on Sundays. ~~between the hours of 9 p.m. and 6 a.m.~~

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

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

578 (2)(4) Purchase regulated metals property, restricted
579 regulated metals property, or ferrous metals from any seller who
580 presents such property for sale at the registered location of

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581 the secondary metals recycler when such property was not
582 transported in a motor vehicle.

583 ~~(3)-(5) Purchase regulated metals property, restricted~~
584 ~~regulated metals property, or ferrous metals in return for money~~
585 ~~from a trailer, a vehicle, or any location other than a fixed~~
586 ~~location or from any person who is required to prove ownership~~
587 ~~pursuant to subsection (4). However, regulated metals may be~~
588 ~~purchased from a nonfixed location, or from such person, with~~
589 ~~any negotiable or nonnegotiable instrument, including a check or~~
590 ~~draft or any other type of instrument purchased with money and~~
591 ~~sold for the purpose of making payments or transfers to others.~~

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

593 (a) Uses a name other than his or her own name or the
594 registered name of the seller's business;

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

596 (c) Is under the influence of drugs or alcohol, if such
597 condition is visible or apparent.

598 (5) (a) Purchase any restricted regulated metals property
599 listed in paragraph (b), unless the secondary metals recycler
600 obtains reasonable proof that the seller:

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

603 2. Is an employee, agent, or contractor of the property's
604 owner who is authorized to sell the property on behalf of the
605 owner. Reasonable proof of authorization to sell the property
606 includes, but is not limited to, a signed letter on the owner's
607 letterhead, dated no later than 90 days before the sale,
608 authorizing the seller to sell the property.

609 (b) The purchase of any of the following regulated metals

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610 property is subject to the restrictions provided in paragraph

611 (a):

612 1. A manhole cover.

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

616 3. A guard rail.

617 4. A street sign, traffic sign, or traffic signal and its
618 fixtures and hardware.

619 5. Communication, transmission, distribution, and service
620 wire from a utility, including copper or aluminum bus bars,
621 connectors, grounding plates, or grounding wire.

622 6. A funeral marker or funeral vase.

623 7. A historical marker.

624 8. Railroad equipment, including, but not limited to, a tie
625 plate, signal house, control box, switch plate, E clip, or rail
626 tie junction.

627 9. Any metal item that is observably marked upon reasonable
628 inspection with any form of the name, initials, or logo of a
629 governmental entity, utility company, cemetery, or railroad.

630 10. A copper, aluminum, or aluminum-copper condensing or
631 evaporator coil, including its tubing or rods, from an air-
632 conditioning or heating unit, excluding coils from window air-
633 conditioning or heating units and motor vehicle air-conditioning
634 or heating units.

635 11. An aluminum or stainless steel container or bottle
636 designed to hold propane for fueling forklifts.

637 12. A stainless steel beer keg.

638 13. A catalytic converter or any nonferrous part of a

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639 catalytic converter unless purchased as part of a motor vehicle.

640 14. Metallic wire that has been burned in whole or in part
641 to remove insulation.

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

646 16. A brass or bronze commercial potable water backflow
647 preventer valve that is commonly used to prevent backflow of
648 potable water from commercial structures into municipal domestic
649 water service systems.

650 17. A shopping cart.

651 18. A brass water meter.

652 19. A storm grate.

653 20. A brass sprinkler head used in commercial agriculture.

654 Section 9. Section 538.28, Florida Statutes, is created to
655 read:

656 538.28 Local government regulation; preemption.-

657 (1) The regulation of purchase transactions involving
658 regulated metals property is preempted to the state. Except as
659 provided in subsection (2), an ordinance or regulation adopted
660 by a county or municipality relating to the purchase or sale of
661 regulated metals property or the registration or licensure of
662 secondary metals recyclers is void.

663 (2) This part does not preempt an ordinance or regulation
664 originally enacted by a county or municipality before March 1,
665 2012. Such an ordinance or regulation may subsequently be
666 amended to meet or exceed the requirements of this part.

667 Section 10. For the purpose of incorporating the amendments

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668 made by this act to sections 538.19 and 538.235, Florida
669 Statutes, in references thereto, paragraph (a) of subsection (1)
670 of section 538.23, Florida Statutes, is reenacted and amended to
671 read:

672 538.23 Violations and penalties.—

673 (1) (a) Except as provided in paragraph (b), a secondary
674 metals recycler who knowingly and intentionally:

675 1. Violates s. 538.20 or s. 538.21;

676 2. Engages in a pattern of failing to keep records required
677 by s. 538.19;

678 3. Violates s. 538.26(2) ~~538.26(4)~~; or

679 4. Violates s. 538.235,

680

681 commits a misdemeanor of the first degree, punishable as
682 provided in s. 775.082.

683 Section 11. Paragraph (d) of subsection (1) and subsection
684 (2) of section 812.145, Florida Statutes, are amended, and
685 subsection (3) is added to that section, to read:

686 812.145 Theft of copper or other nonferrous metals.—

687 (1) As used in this section, the terms:

688 (d) "Utility" means a public utility or electric utility as
689 defined in s. 366.02, or a ~~includes any~~ person, firm,
690 cooperative, corporation, association, or political subdivision,
691 whether private, municipal, county, or cooperative, which is
692 engaged in the sale, generation, provision, or delivery of heat,
693 water, oil, sewer service, telephone or telegraph service,
694 radio, telecommunications, communications, gas, or electricity
695 services.

696 (2) A person who knowingly and intentionally takes or

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697 assists with the taking of copper or other nonferrous metals
698 from a utility or communications services provider, thereby
699 causing damage to the facilities of a utility or communications
700 services provider, interrupting or interfering with utility
701 service or communications services, or interfering with the
702 ability of a utility or communications services provider to
703 provide service, commits a felony of the first degree,
704 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

705 (3) A person who is found in a civil action to have
706 illegally taken copper or other nonferrous metals from a utility
707 or communications services provider in violation of subsection
708 (2) is liable to the utility or communications services provider
709 for damages in an amount equal to three times the actual damages
710 sustained by the utility or communications services provider due
711 to any personal injury, wrongful death, or property damage
712 caused by the illegal taking of the nonferrous metals or an
713 amount equal to three times any claim made against the utility
714 or communications services provider for any personal injury,
715 wrongful death, or property damage caused by the malfunction of
716 the facilities of the utility or communications services
717 provider resulting from the violation of subsection (2),
718 whichever is greater.

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

722 (2) A public or private owner of metal property is not
723 civilly liable to a person for injuries caused by a dangerous
724 condition created as a result of the theft or attempted theft of
725 the owner's metal property when the owner did not know, and

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726 could not have reasonably known, of the dangerous condition.

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

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