

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 885 Transactions by Secondhand Dealers and Secondary Metals Recyclers

SPONSOR(S): Business & Consumer Affairs Subcommittee; Ford; Metz and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/CS/SB 540

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee	10 Y, 0 N, As CS	Livingston	Creamer
2) Judiciary Committee	18 Y, 0 N	Smith	Havlicak
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Part I of chapter 538, F.S., addresses the regulation of secondhand dealers. Part II of chapter 538, F.S., relates to the regulation of secondary metals recyclers that involve the purchase and sale of regulated metals property. "Secondhand dealer" is any entity which is not a secondary metals recycler subject to part II and which is engaged in the business of purchasing, consigning, or trading secondhand goods. "Secondary metals recycler" generally means any person who is engaged in the business of obtaining ferrous or nonferrous metals or converting metals into raw material products, or who has facilities for such activities.

The bill addresses various provisions relating to Part I and Part II of ch. 538, F.S., to:

- Define the terms "appropriate law enforcement official" and "personal identification card" and require that secondary metals recyclers maintain and daily transmit an electronic record of the previous day's purchase transactions to the appropriate law enforcement official;
- Revise the timeframe that secondary metals recyclers are required to maintain purchase transaction records;
- Create the definition of "restricted regulated metals property;"
- Limit the liability of secondary metals recyclers for the conversion of motor vehicles to scrap metal, as well as, in premise liability cases;
- Modify the acceptable forms of payment and outlines time restrictions relating to purchase transactions of regulated metals property;
- Expand the application of penalties for violations to persons who assist with the taking of copper and other nonferrous metals;
- Provide that the regulation of regulated metals property is preempted to the state except with respect to ordinances enacted prior to March 1, 2012, and allows local requirements to be amended to meet or exceed state requirements;
- Provide for liability in an amount equal to three times the actual damages sustained by a utility or communications services provider caused by theft of property; and
- Provide that an owner of metal property is not liable to a person who is injured during theft or attempted theft of metal from their property and provides an owner of metals recycler is not liable for injuries caused by a dangerous condition created as a result of the theft or attempted theft of the owner's property if the owner did not know of the dangerous condition.

The bill is not anticipated to have a significant fiscal impact on state or local governments (see fiscal section).

The bill has an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation:

Chapter 538, F.S., Part I addresses the regulation of secondhand dealers, and Part II addresses the regulation of secondary metals recyclers that involve the purchase and sale of regulated metals property. "Secondhand dealer" is defined as any entity which is not a secondary metals recycler subject to Part II and which is engaged in the business of purchasing, consigning, or trading secondhand goods.¹ "Secondary metals recycler" generally means any person who is engaged in the business of obtaining ferrous or nonferrous metals, or converting metals into raw material products, or has facilities for converting metals into raw material products.²

Current law requires a secondhand dealer or secondary metals recycler to register with the Department of Revenue prior to engaging in business,³ provides record keeping requirements for transactions,⁴ requires seller information to be obtained,⁵ imposes penalties for providing false verification of ownership or false or altered identification,⁶ and specifies payment guidelines.⁷

As required by s. 538.04, F.S., *secondhand dealers* (with exceptions) must provide a record of transactions within 24 hours of the acquisition of secondhand goods. Currently, there is no requirement for *secondary metals recyclers* to similarly report under s. 538.18, F.S. Secondary metals recyclers are only required to maintain records of all purchase transactions for a specified period of time.

There is currently a provision under s. 538.04, F.S., related to secondhand dealers, allowing for the transfer of transaction records from secondhand dealers to the appropriate law enforcement official via electronic transmission. Since there is currently no requirement within s. 538.18, F.S., related to secondary metals recyclers providing records within a specified timeframe, there is also no reference to the electronic transmission of transaction records.

Effect of the Bill:

The bill defines "appropriate law enforcement official" as:

- The sheriff of the county where the secondhand dealer is located; or
- If the secondhand dealer is located in a municipality, the sheriff or police chief; or
- Any law enforcement officer working within the respective county or municipality who is designated by the sheriff or police chief of that county or municipality as an appropriate law enforcement official.⁸

The bill narrows the definition of "personal identification card" by specifying that a personal identification card is "a valid Florida driver license, a Florida identification card issued by the Department of Highway Safety and Motor Vehicles, an equivalent form of identification issued by another state, a passport, or an employment authorization issued by the United States Bureau of Citizenship and Immigration Services that contains an individual's photograph and current address."

¹ Section 538.03(1)(a), F.S.

² Section 538.18(8), F.S.

³ Sections 538.09 and 538.25, F.S.

⁴ Sections 538.04 and 538.19, F.S.

⁵ *Id.*

⁶ Section 538.04(1)(d)4, F.S.

⁷ Section 538.235, F.S.

⁸ The bill specifies that the paragraph does not limit the authority or duties of the sheriff.

The bill defines “restricted regulated metals property” as materials listed in s. 538.26(5)(b), F.S., which sets forth a list of items that are classified as “restricted regulated metals property,” including manhole covers, street signs, copper coils, stainless steel beer kegs, among others.⁹

The bill amends s. 538.03, F.S., to remove transactions conducted at flea markets and licensed auction events from the exemption under this chapter. Any person purchasing, consigning, or trading secondhand goods at a flea market or at an auction business must now comply with the requirements found in this chapter.

The bill amends s. 538.19, F.S., to require that secondary metals recyclers maintain both a paper and electronic record of purchase transactions. The format for the electronic record must be approved by the Florida Department of Law Enforcement.

The bill specifies that records for purchase transactions be electronically transmitted to the appropriate law enforcement official no later than 10 a.m. of the business day following the date of the purchase transaction. The bill allows a person to submit an electronic file to law enforcement and not have to deliver hard copy documents unless there is an ongoing criminal investigation. When an investigation is conducted, the bill requires the secondary metals recycler to submit the manuscript documents within 24 hours from the request. The bill reduces the time period that a secondary metals recycler is required to maintain information concerning purchase transactions from 5 years to 3 years.

The bill provides guidelines relating to transactions involving the conversion of motor vehicle salvage to scrap metal. A secondary metals recycler must obtain and maintain a signed statement from the seller stating that the seller has surrendered the vehicle’s certificate of title to the Department of Highway Safety and Motor Vehicles or has otherwise complied with the titling requirements provided by law. The bill specifies that a secondary metals recycler is not liable for a seller’s failure to comply with the titling requirements.

The bill amends s. 538.235, F.S., to require a secondary metals recycler to make payment to the seller or the seller’s employer within 3 days following a purchase transaction. The bill prohibits payment to be made to a post office box address.¹⁰

The bill prohibits cash transactions for the purchase of “restricted regulated metals property.” The bill specifies that the acceptable forms of payment are:

- A check issued and payable to the seller; or
- By electronic payment to the seller’s bank account or to the bank account of the seller’s employer.

The bill amends s. 538.25, F.S., to specify that the Department of Revenue shall only accept a secondary metals recycler’s registration applications from a fixed business address.

The bill amends s. 538.26, F.S., to prohibit the sale of regulated metals property on weekdays before 7 a.m. or after 6 p.m., on Saturdays before 7 a.m. or after 3 p.m., or on Sundays. The bill also prohibits a secondary metals recycler from purchasing regulated metals property from minors or someone visibly or apparently under the influence of drugs or alcohol.

The bill specifies the items that are “restricted regulated metals property,” and, therefore, are subject to ownership verification requirements. The bill prohibits a secondary metals recycler from purchasing any “restricted regulated metals property” unless the seller is the owner. If the seller is the owner of the property, reasonable proof of ownership requires presenting a secondary metals recycler with a receipt or bill of sale showing that the seller is the owner. The bill requires that when the seller is an employee, agent, or contractor of the property’s owner who is authorized to sell the property, proof includes a

⁹ Section 538.26(5)(b), F.S.

¹⁰ The bill provides that certain parties may provide a check at the time of the purchase transaction, rather than mailing the check as required in paragraph (a).

signed letter on the owner's letterhead, dated no later than 90 days before the sale, authorizing the seller to sell the property.

The bill creates s. 538.28, F.S., to provide that the regulation of purchase transactions involving "regulated metals property" is preempted to the state with the exception of those ordinances enacted prior to March 1, 2012. The bill allows a local ordinance or other regulation to be amended to meet or exceed the requirements of state law.

The bill amends s. 812.145, F.S., by expanding the definition of utility in subsection (1) to mean "a public utility or electric utility as defined in s. 366.02, or a person, firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, which is engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, or telephone, telegraph, radio, or telecommunications service."

A person who knowingly and intentionally "assists with the taking of copper or other nonferrous metals from a utility or communications service provider," which results in damage to its facilities, commits a violation of subsection (2), which is a first degree felony.¹¹

In addition, the newly created subsection (3) provides that a person who is found in a civil action to have illegally taken copper or other nonferrous metals from a utility or communications services provider based upon a conviction for a violation of subsection (2), is liable to the utility or communications services provider for damages in an amount equal to three times the actual damages sustained by the utility or communications services provider due to any personal injury, wrongful death, or property damage caused by the illegal taking of the nonferrous metals, or an amount equal to three times any claim made against the utility or communications services provider for any personal injury, wrongful death, or property damage caused by the malfunction of the facilities of the utility or communications services provider resulting from the violation, whichever is greater.

The bill also creates an undesignated section of law that provides that an owner of metal property is not liable to a person who is injured during theft or attempted theft of metal from their property and provides an owner of metals recycler is not liable for injuries caused by a dangerous condition created as a result of the theft or attempted theft of the owner's property if the owner did not know, or have reason to know, of the dangerous condition.

B. SECTION DIRECTORY:

Section 1 amends s. 538.03, F.S., to require any person purchasing, consigning, or trading secondhand goods at a flea market or at an auction business to conform to the requirements found in chapter 538, F.S.

Section 2 amends s. 538.04, F.S., relating to recordkeeping requirements to make conforming changes.

Section 3 amends s. 538.18, F.S., to define the terms "appropriate law enforcement official," "personal identification card," "restricted regulated metals property," and "utility."

Section 4 amends s. 319.30, F.S., to correct a cross-reference to the definition of secondary metals recycler.

Section 5 amends s. 538.19, F.S., to require that secondary metals recyclers maintain both a paper and electronic record of purchase transactions and establishes guidelines.

Section 6 amends s. 538.235, F.S., to revise requirements for payments made by secondary metals recyclers to sellers of regulated metals property to prohibit certain cash transactions and provide methods of payment for restricted regulated metals property.

¹¹ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

Section 7 amends s. 538.25, F.S., to specify that the Department of Revenue shall only accept a secondary metals recycler's registration applications from a fixed address.

Section 8 amends s. 538.26, F.S., to prohibit secondary metals recyclers from purchasing regulated metals property, restricted regulated metals property, or ferrous metals during specified times or from certain locations and prohibit the purchase of specified restricted regulated metals property without obtaining proof of the seller's ownership and authorization to sell the property.

Section 9 creates s. 538.28, F.S., to provide that the regulation of purchase transactions involving "regulated metals property" is preempted to the state with the exception of those ordinances enacted prior to March 1, 2012, and allows local requirements to be amended to be more restrictive than state requirements.

Section 10 amends s. 538.23, F.S., to correct a cross-reference.

Section 11 amends s. 812.145, F.S., to expand the definition of "utility" as it relates to the theft of copper and other nonferrous materials and provides that a person who steals copper or other nonferrous materials from a utility or communications services provider is liable for damages equal to three times actual damages or claims sustained by the utility or communications services provider resulting from the theft of property.

Section 12 creates an undesignated section of law and provides that property owners are not liable for injuries resulting from a theft of metal from their property.

Section 13 provides for an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Any impact on state government revenues is not anticipated to be significant.

2. Expenditures:

See fiscal comments section below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Any impact on local government revenues is not anticipated to be significant.

2. Expenditures:

See fiscal comments below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires that an electronic record of the previous day's purchase transactions made by a secondary metals recycler be submitted to the appropriate law enforcement official. Private businesses may incur additional costs related to the reporting requirements required under the bill.

D. FISCAL COMMENTS:

The bill requires law enforcement officials to implement statutory provisions related to secondhand dealers for persons purchasing, consigning, or trading secondhand goods at a flea market or at an auction business. It could be anticipated that agencies enforcing these provisions may incur additional costs.

The bill requires that an electronic record of the previous day's purchase transactions made by a secondary metals recycler be submitted to the appropriate law enforcement official. As a result, law enforcement agencies may be required to devote financial resources and staff to comply with the additional record-keeping requirements.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that the counties or municipalities have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 31, 2012, the Business & Consumer Affairs Subcommittee adopted a strike-all amendment and an amendment to the strike-all amendment and passed the bill as a CS. The CS differs from the original bill as follows:

- Specifies that the Department of Revenue shall only accept secondary metals recyclers registration applications from a fixed address;
- Prohibits a secondary metals recycler from purchasing regulated metals from a seller: not using his or her real name, a person younger than 18, or someone under the influence of drugs or alcohol;
- Expands the definition of "utility" as it relates to the theft of copper and other nonferrous materials;
- provides that a person who steals copper or other nonferrous materials from a utility or communications services provider is liable for damages equal to three times actual damages or claims sustained by or made against the utility or communications services provider;
- Specifies that the civil treble damages provision applies to a person who has been convicted for illegally taking or assisting in taking copper or other nonferrous metals from a utility or communications services provider;

- Creates an undesignated section of law and provides that an owner of metal property is not liable to a person who is injured during theft or attempted theft of metal from their property and provides a secondary metals recycler is not liable for injuries caused by a dangerous condition created as a result of the theft or attempted theft of the owner's property if the owner did not know, or have reason to know, of the dangerous condition.

This analysis reflects the changes made by the CS.