

1 A bill to be entitled

2 An act relating to secondary metals recyclers;  
3 transferring administration of part II of chapter 538,  
4 F.S., relating to secondary metals recyclers, from the  
5 Department of Revenue to the Department of Agriculture  
6 and Consumer Services; providing for applicability  
7 with respect to pending actions, orders, and rules;  
8 amending s. 213.053, F.S.; authorizing the Department  
9 of Revenue to share certain confidential information  
10 with the Department of Agriculture and Consumer  
11 Services; amending ss. 319.30, 538.18, and 538.19,  
12 F.S.; conforming provisions to changes made by the  
13 act; amending s. 538.20, F.S.; authorizing specified  
14 persons to inspect regulated metals property and  
15 records; amending s. 538.21, F.S.; prohibiting a  
16 secondary metals recycler from disposing of certain  
17 property for a specified period; amending s. 538.23,  
18 F.S.; revising violations subject to criminal  
19 penalties; amending s. 538.25, F.S.; revising  
20 application requirements for registration as a  
21 secondary metals recycler; revising registration fees;  
22 requiring such fees to be transferred into the General  
23 Inspection Trust Fund; requiring secondary metals  
24 recyclers to maintain specified insurance coverage;  
25 requiring secondary metals recyclers to exhibit active  
26 registration certificates from the Department of

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27 Agriculture and Consumer Services before applying for  
28 or renewing a local business tax receipt; requiring  
29 secondary metals recyclers to allow department  
30 personnel to enter certain places of business for a  
31 specified purpose; revising penalties for  
32 noncompliance; requiring the department to suspend  
33 certain registrations or applications for registration  
34 under certain circumstances; amending s. 538.26, F.S.;  
35 prohibiting secondary metals recyclers from purchasing  
36 regulated metals property, restricted regulated metals  
37 property, or ferrous metals on Sundays; prohibiting  
38 the purchase of specified restricted regulated metals  
39 property without obtaining certain proof of the  
40 seller's transactions involving regulated metals  
41 property; creating s. 538.27, F.S.; providing  
42 penalties for noncompliance; creating s. 538.29, F.S.;  
43 authorizing the department to adopt rules; providing  
44 an effective date.

45  
46 Be It Enacted by the Legislature of the State of Florida:

47  
48 Section 1. (1) All powers, duties, functions, records,  
49 personnel, property, pending issues, existing contracts,  
50 administrative authority, administrative rules, and unexpended  
51 balances of appropriations, allocations, and other funds of the  
52 Department of Revenue relating to the administration of part II

53 of chapter 538, Florida Statutes, are transferred by a type two  
54 transfer, pursuant to s. 20.06(2), Florida Statutes, to the  
55 Department of Agriculture and Consumer Services.

56 (2) This section does not affect the validity of any  
57 judicial or administrative action pending as of 11:59 p.m. on  
58 the day before the effective date of this act to which the  
59 Department of Revenue is at that time a party, and the  
60 Department of Agriculture and Consumer Services shall be  
61 substituted as a party in interest in any such action.

62 (3) All lawful orders issued by the Department of Revenue  
63 relating to the administration of part II of chapter 538,  
64 Florida Statutes, issued before the effective date of this act  
65 shall remain in effect and be enforceable after the effective  
66 date of this section unless thereafter modified in accordance  
67 with law.

68 (4) The rules of the Department of Revenue relating to the  
69 administration of part II of chapter 538, Florida Statutes, that  
70 were in effect at 11:59 p.m. on the day before the effective  
71 date of this act shall remain in effect and be enforceable after  
72 the effective date of this section unless thereafter modified in  
73 accordance with law.

74 Section 2. Paragraph (cc) is added to subsection (8) of  
75 section 213.053, Florida Statutes, and subsection (11) of that  
76 section is amended, to read:

77 213.053 Confidentiality and information sharing.—

78 (8) Notwithstanding any other provision of this section,

79 | the department may provide:

80 |       (cc) Information relative to chapter 212 and part II of  
 81 | chapter 538 to the Department of Agriculture and Consumer  
 82 | Services in the conduct of its official duties.

83 |  
 84 | Disclosure of information under this subsection shall be  
 85 | pursuant to a written agreement between the executive director  
 86 | and the agency. Such agencies, governmental or nongovernmental,  
 87 | shall be bound by the same requirements of confidentiality as  
 88 | the Department of Revenue. Breach of confidentiality is a  
 89 | misdemeanor of the first degree, punishable as provided by s.  
 90 | 775.082 or s. 775.083.

91 |       (11) Notwithstanding any other provision of this section,  
 92 | with respect to a request for verification of a certificate of  
 93 | registration issued pursuant to s. 212.18 to a specified dealer  
 94 | or taxpayer or with respect to a request by a law enforcement  
 95 | officer for verification of a certificate of registration issued  
 96 | pursuant to s. 538.09 to a specified secondhand dealer ~~or~~  
 97 | ~~pursuant to s. 538.25 to a specified secondary metals recycler,~~  
 98 | the department may disclose whether the specified person holds a  
 99 | valid certificate, or whether a specified certificate number is  
 100 | valid, or whether a specified certificate number has been  
 101 | canceled or is inactive or invalid, and the name of the holder  
 102 | of the certificate. This subsection shall not be construed to  
 103 | create a duty to request verification of any certificate of  
 104 | registration.

105 Section 3. Paragraph (b) of subsection (1) of section  
 106 319.30, Florida Statutes, is amended to read:

107 319.30 Definitions; dismantling, destruction, change of  
 108 identity of motor vehicle or mobile home; salvage.—

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

110 (b) "Certificate of registration number" means the  
 111 certificate of registration number issued by the Department of  
 112 Agriculture and Consumer Services Revenue of the State of  
 113 Florida pursuant to s. 538.25.

114 Section 4. Subsection (2) of section 538.18, Florida  
 115 Statutes, is amended to read:

116 538.18 Definitions.—As used in this part, the term:

117 (2) "Department" means the Department of Agriculture and  
 118 Consumer Services Revenue.

119 Section 5. Subsections (1), (2), and (3) of section  
 120 538.19, Florida Statutes, are amended to read:

121 538.19 Records required; limitation of liability.—

122 (1) A secondary metals recycler shall maintain a legible  
 123 paper record of all purchase transactions to which such  
 124 secondary metals recycler is a party. A secondary metals  
 125 recycler shall also maintain a legible electronic record, in the  
 126 English language, of all such purchase transactions. The  
 127 appropriate law enforcement official may provide data  
 128 specifications regarding the electronic record format, but such  
 129 format must be approved by the department ~~of Law Enforcement~~. An  
 130 electronic record of a purchase transaction shall be

131 electronically transmitted to the appropriate law enforcement  
132 official no later than 10 a.m. of the business day following the  
133 date of the purchase transaction. The record transmitted to the  
134 appropriate law enforcement official must not contain the price  
135 paid for the items. A secondary metals recycler who transmits  
136 such records electronically is not required to also deliver the  
137 original or paper copies of the transaction forms to the  
138 appropriate law enforcement official. However, such official  
139 may, for purposes of a criminal investigation, request the  
140 secondary metals recycler to make available the original  
141 transaction form that was electronically transmitted. This  
142 original transaction form must include the price paid for the  
143 items. The secondary metals recycler shall make the form  
144 available to the appropriate law enforcement official within 24  
145 hours after receipt of the request.

146 (2) The following information must be maintained on the  
147 form approved by the department ~~of Law Enforcement~~ for each  
148 purchase transaction:

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

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

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

153 (d) The weight, quantity, or volume, and a description of  
154 the type of regulated metals property purchased in a purchase  
155 transaction.

156 (e) The amount of consideration given in a purchase

157 transaction for the regulated metals property.

158 (f) A signed statement from the person delivering the  
159 regulated metals property stating that she or he is the rightful  
160 owner of, or is entitled to sell, the regulated metals property  
161 being sold. If the purchase involves a stainless steel beer keg,  
162 the seller must provide written documentation from the  
163 manufacturer that the seller is the owner of the stainless steel  
164 beer keg or is an employee or agent of the manufacturer.

165 (g) The distinctive number from the personal  
166 identification card of the person delivering the regulated  
167 metals property to the secondary metals recycler.

168 (h) A description of the person from whom the regulated  
169 metals property was acquired, including:

170 1. Full name, current residential address, workplace, and  
171 home and work phone numbers.

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

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

175 4. Vehicle description to include the make, model, and tag  
176 number of the vehicle and trailer of the person selling the  
177 regulated metals property.

178 5. Any other information required by the form approved by  
179 the department of ~~Law Enforcement~~.

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

182 (j) A photograph, videotape, or similar likeness of the

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183 person receiving consideration in which such person's facial  
184 features are clearly visible.

185 (3) A secondary metals recycler complies with the  
186 requirements of this section if it maintains an electronic  
187 database containing the information required by subsection (2)  
188 as long as the electronic information required by subsection  
189 (2), along with an electronic oath of ownership with an  
190 electronic signature of the seller of the secondary metals being  
191 purchased by the secondary metals recyclers and an electronic  
192 image of the seller's right thumbprint that has no smudges and  
193 smears, can be downloaded onto a paper form in the image of the  
194 form approved by the department ~~of Law Enforcement~~ as provided  
195 in subsection (2).

196 Section 6. Section 538.20, Florida Statutes, is amended to  
197 read:

198 538.20 Inspection of regulated metals property and  
199 records.—During the usual and customary business hours of a  
200 secondary metals recycler, a law enforcement officer or employee  
201 of the department who is a nonsworn trained regulatory  
202 investigator shall, after properly identifying herself or  
203 himself as such ~~a law enforcement officer~~, have the right to  
204 inspect:

205 (1) Any and all purchased regulated metals property in the  
206 possession of the secondary metals recycler, ~~and~~

207 (2) Any and all records required to be maintained under s.  
208 538.19.



209 Section 7. Subsection (3) of section 538.21, Florida  
 210 Statutes, is amended to read:

211 538.21 Hold notice.—

212 (3) A secondary metals recycler may not dispose of any  
 213 property identified by a hold notice or extended hold notice  
 214 until the applicable hold period expires. At the expiration of  
 215 the hold period or, if extended in accordance with this section,  
 216 at the expiration of the extended hold period, the hold is  
 217 automatically released and the secondary metals recycler may  
 218 dispose of the regulated metals property unless other  
 219 disposition has been ordered by a court of competent  
 220 jurisdiction.

221 Section 8. Paragraph (a) of subsection (1) and subsection  
 222 (3) of section 538.23, Florida Statutes, are amended to read:

223 538.23 Violations and penalties.—

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

- 226 1. Violates s. 538.20, ~~or~~ s. 538.21, or s. 538.26;
- 227 2. Engages in a pattern of failing to keep records  
 228 required by s. 538.19;
- 229 3. Violates s. 538.26(2); or
- 230 4. Violates s. 538.235,

231  
 232 commits a felony of the third degree, punishable as provided in  
 233 s. 775.082, s. 775.083, or s. 775.084.

234 (3) Any person who knowingly provides false information,

235 gives false verification of ownership, ~~or who~~ gives a false or  
236 altered identification and who receives money or other  
237 consideration from a secondary metals recycler in return for  
238 regulated metals property commits:

239 (a) A felony of the third degree, punishable as provided  
240 in s. 775.082, s. 775.083, or s. 775.084, if the value of the  
241 money or other consideration received is less than \$300.

242 (b) A felony of the second degree, punishable as provided  
243 in s. 775.082, s. 775.083, or s. 775.084, if the value of the  
244 money or other consideration received is \$300 or more or if the  
245 money or other consideration received is for restricted  
246 regulated metals.

247 Section 9. Subsections (1), (3), (4), and (6) of section  
248 538.25, Florida Statutes, are amended to read:

249 538.25 Registration.—

250 (1) A person may not engage in business as a secondary  
251 metals recycler at any location without registering with the  
252 department on an application form prescribed by the department.  
253 An application for registration must state the full name of the  
254 applicant, the place where the business is to be conducted, and  
255 any other relevant information required by the department. If  
256 the applicant is not an individual, the applicant must state the  
257 full name and address of each direct or beneficial owner of at  
258 least 10-percent equity interest in the business. If the  
259 applicant is a corporation, the application must state the full  
260 name and address of each officer and director. The department

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261 shall accept applications only from a fixed business address.  
262 The department may not accept an application that provides an  
263 address of a hotel room or motel room, a vehicle, or a post  
264 office box.

265 (a) A fee equal to the federal and state costs for  
266 processing required fingerprints must be submitted to the  
267 department with each application for registration. One  
268 application is required for each secondary metals recycler. If a  
269 secondary metals recycler is the owner of more than one  
270 secondary metals recycling location, the application must list  
271 each location, and the department shall issue a duplicate  
272 registration for each location. For purposes of subsections (3)  
273 and, (4), ~~and (5)~~, these duplicate registrations shall be deemed  
274 individual registrations. A secondary metals recycler shall  
275 remit an annual registration fee of \$350 to the department at  
276 the time of registration for each of the secondary metals  
277 recycler's business locations ~~pay a fee of \$6 per location at~~  
278 ~~the time of registration and an annual renewal fee of \$6 per~~  
279 ~~location on October 1 of each year. All fees collected, less~~  
280 ~~costs of administration,~~ shall be transferred into the General  
281 Inspection Operating Trust Fund.

282 (b) The department shall forward the full set of  
283 fingerprints to the Department of Law Enforcement for state and  
284 federal processing, provided the federal service is available,  
285 to be processed for any criminal justice information as defined  
286 in s. 943.045. The cost of processing such fingerprints shall be

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287 payable to the Department of Law Enforcement by the department.  
288 The department may issue a temporary registration to each  
289 location pending completion of the background check by state and  
290 federal law enforcement agencies but shall revoke such temporary  
291 registration if the completed background check reveals a  
292 prohibited criminal background. The Department of Law  
293 Enforcement shall report its findings to the department ~~of~~  
294 ~~Revenue~~ within 30 days after the date the fingerprints are  
295 submitted for criminal justice information.

296 (c) An applicant for a secondary metals recycler  
297 registration must be a natural person who has reached the age of  
298 18 years or a corporation organized or qualified to do business  
299 in the state.

300 1. If the applicant is a natural person, the registration  
301 must include a complete set of her or his fingerprints,  
302 certified by an authorized law enforcement officer, and a valid  
303 ~~recent~~ fullface photographic identification card of herself or  
304 himself.

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

307 3. If the applicant is a corporation, the registration  
308 must include the name and address of such corporation's  
309 registered agent for service of process in the state and a  
310 certified copy of statement from the Secretary of State that the  
311 corporation is duly organized in the state or, if the  
312 corporation is organized in a state other than Florida, a

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313 certified copy of the statement that the corporation is duly  
314 qualified to do business in this state.

315 (d) Each secondary metals recycler must maintain current  
316 and valid workers' compensation insurance and general liability  
317 insurance coverage in a minimum amount established by the  
318 department throughout the registration period. A secondary  
319 metals recycler must provide the department with written  
320 evidence of workers' compensation insurance coverage and general  
321 liability insurance coverage before registering with the  
322 department under this section. Failure to maintain workers'  
323 compensation insurance or general liability insurance in  
324 accordance with this paragraph constitutes an immediate threat  
325 to the public health, safety, and welfare of the residents of  
326 this state. If a secondary metals recycler fails to maintain  
327 insurance coverage as required by this paragraph, the department  
328 may immediately suspend the secondary metals recycler's  
329 registration or eligibility for registration and the secondary  
330 metals recycler must immediately cease operating in this state.

331 (e) A person applying for or renewing a local business tax  
332 receipt to engage in business as a secondary metals recycler  
333 must exhibit an active registration certificate from the  
334 department before the local business tax receipt may be issued  
335 or renewed.

336 (2) A secondary metals recycler's registration shall be  
337 conspicuously displayed at the place of business set forth on  
338 the registration. A secondary metals recycler must allow

339 department personnel to enter the secondary metals recycler's  
340 place of business in order to verify that a registration is  
341 valid. If department personnel are refused entry for this  
342 purpose, the department may seek injunctive relief in a circuit  
343 court to obtain compliance with this requirement shall not  
344 dispose of property at any location until any holding period has  
345 expired.

346 ~~(3) The Department of Revenue may impose a civil fine of~~  
347 ~~up to \$10,000 for each knowing and intentional violation of this~~  
348 ~~section, which fine shall be transferred into the General~~  
349 ~~Revenue Fund. If the fine is not paid within 60 days, the~~  
350 ~~department may bring a civil action under s. 120.69 to recover~~  
351 ~~the fine.~~

352 (3)(4) In addition to the penalties ~~fine~~ provided in s.  
353 538.27 subsection (3), registration under this section may be  
354 denied or any registration granted may be revoked, restricted,  
355 or suspended by the department if, after October 2, 1989, and  
356 within a 10-year ~~24-month~~ period immediately preceding such  
357 denial, revocation, restriction, or suspension:

358 (a) The applicant or registrant has been convicted of  
359 knowingly and intentionally:

- 360 1. Violating s. 538.20, ~~or~~ s. 538.21, or s. 538.26;
- 361 2. Engaging in a pattern of failing to keep records as  
362 required by s. 538.19;
- 363 3. Making a material false statement in the application  
364 for registration; or

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365 4. Engaging in a fraudulent act in connection with any  
366 purchase or sale of regulated metals property;

367 (b) The applicant or registrant has been convicted of, or  
368 entered a plea of guilty or nolo contendere to, a felony  
369 committed by the secondary metals recycler against the laws of  
370 the state or of the United States involving theft, larceny,  
371 dealing in stolen property, receiving stolen property, burglary,  
372 embezzlement, obtaining property by false pretenses, possession  
373 of altered property, or any felony drug offense or of knowingly  
374 and intentionally violating the laws of the state relating to  
375 registration as a secondary metals recycler; or

376 (c) The applicant has, after receipt of written notice  
377 from the Department of Revenue of failure to pay sales tax,  
378 failed or refused to pay, within 30 days after the secondary  
379 metals recycler's receipt of such written notice, any sales tax  
380 owed to the Department of Revenue.

381 ~~(4)-(5)~~ A denial of an application, or a revocation,  
382 restriction, or suspension of a registration, by the department  
383 shall be probationary for a period of 12 months in the event  
384 that the secondary metals recycler subject to such action has  
385 not had any other application for registration denied, or any  
386 registration revoked, restricted, or suspended, by the  
387 department within the previous 24-month period.

388 (a) If, during the 12-month probationary period, the  
389 department does not again deny an application or revoke,  
390 restrict, or suspend the registration of the secondary metals

391 recycler, the action of the department shall be dismissed and  
 392 the record of the secondary metals recycler cleared thereof.

393 (b) If, during the 12-month probationary period, the  
 394 department, for reasons other than those existing before ~~prior~~  
 395 ~~to~~ the original denial or revocation, restriction, or  
 396 suspension, again denies an application or revokes, restricts,  
 397 or suspends the registration of the secondary metals recycler,  
 398 the probationary nature of such original action shall terminate  
 399 and both the original action of the department and the action of  
 400 the department causing the termination of the probationary  
 401 nature thereof shall immediately be reinstated against the  
 402 secondary metals recycler.

403 (5) The department shall suspend the registration or the  
 404 application for registration of any registrant or applicant who  
 405 has been convicted of a felony under chapter 812 or chapter 817  
 406 immediately upon receiving written verification of the  
 407 conviction from a law enforcement agency, court, or state  
 408 attorney's office or the Department of Law Enforcement.

409 (6) Upon the request of a law enforcement official, the  
 410 department ~~of Revenue~~ shall release to the official the name and  
 411 address of any secondary metals recycler registered to do  
 412 business within the official's jurisdiction.

413 Section 10. Subsection (1) and paragraph (b) of subsection  
 414 (5) of section 538.26, Florida Statutes, are amended to read:

415 538.26 Certain acts and practices prohibited.—It is  
 416 unlawful for a secondary metals recycler to do or allow any of



417 the following acts:

418 (1) Purchase regulated metals property, restricted  
 419 regulated metals property, or ferrous metals between the hours  
 420 of 7 p.m. and before 7 a.m. or any time on Sunday after 7 p.m.

421 (5)

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

424 (a):

425 1. A manhole cover.

426 2. A metal ~~An~~ electric light pole ~~or other utility~~  
 427 ~~structure~~ and its fixtures, ~~wires,~~ and hardware that is ~~are~~  
 428 readily identifiable as connected to a metal electric light ~~the~~  
 429 ~~utility~~ structure.

430 3. A guard rail.

431 4. A street sign, traffic sign, or traffic signal and its  
 432 fixtures and hardware.

433 5. Communication, transmission, distribution, and service  
 434 ~~wire from a utility,~~ including, but not limited to, jelly wire,  
 435 copper or aluminum bus bars, connectors, grounding plates,  
 436 waveguide (heliac), underground cable, or heavy-gauge copper or  
 437 aluminum wire measuring 0.75 inches or greater in diameter  
 438 without insulation or 1 inch or greater in diameter with  
 439 insulation ~~grounding wire.~~

440 6. A funeral marker or funeral vase.

441 7. A historical marker.

442 8. Railroad equipment, including, but not limited to, a

443 tie plate, signal house, control box, switch plate, E clip, or  
444 rail tie junction.

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

449 10. A copper, aluminum, or aluminum-copper condensing or  
450 evaporator coil, including its tubing or rods, from an air-  
451 conditioning or heating unit, excluding coils from window air-  
452 conditioning or heating units and motor vehicle air-conditioning  
453 or heating units.

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

456 12. A stainless steel beer keg.

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

459 14. Metallic wire that has been burned in whole or in part  
460 to remove insulation.

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

465 16. A brass or bronze commercial potable water backflow  
466 preventer valve that is commonly used to prevent backflow of  
467 potable water from commercial structures into municipal domestic  
468 water service systems.

- 469 17. A shopping cart.
- 470 18. A brass water meter.
- 471 19. A storm grate.
- 472 20. A brass sprinkler head used in commercial agriculture.
- 473 21. Three or more ~~than two~~ lead-acid batteries, or any
- 474 part or component thereof, in a single purchase or from the same
- 475 individual in a single day.

476 Section 11. Section 538.27, Florida Statutes, is created  
 477 to read:

478 538.27 Administrative penalties.—

479 (1) Upon the entry of a final order determining that a  
 480 violation of s. 538.19, s. 538.235, or s. 538.26 has occurred,  
 481 the department may take one or more of the following actions:

482 (a) Issue a notice of noncompliance pursuant to s.  
 483 120.695.

484 (b) Impose an administrative fine up to \$200 per  
 485 violation, but not to exceed \$5,000 per inspection. Any fine  
 486 collected shall be deposited in the General Inspection Trust  
 487 Fund. If a fine is not paid within 60 days after imposition, the  
 488 department may bring a civil action under s. 120.69 to recover  
 489 the fine.

490 (c) Direct that the secondary metals recycler cease and  
 491 desist specified activities.

492 (2) The administrative proceedings that could result in  
 493 the entry of an order imposing any of the penalties specified in  
 494 this section shall be conducted in accordance with chapter 120.

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495 Section 12. Section 538.29, Florida Statutes, is created  
496 to read:

497 538.29 Rulemaking authority.—The department may adopt  
498 rules to implement this part. Such rules shall include tiered  
499 penalties for violations of this part.

500 Section 13. This act shall take effect July 1, 2014.