

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL: SB 618

INTRODUCER: Senator Grimsley

SUBJECT: Secondary Metals Recyclers

DATE: April 1, 2015

REVISED: _____

| ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|-------------|----------------|-----------|--------------------|
| 1. Harmsen | McKay | CM | Favorable |
| 2. Blizzard | DeLoach | AGG | Pre-meeting |
| 3. _____ | _____ | AP | _____ |

I. Summary:

SB 618 transfers regulatory authority over secondary metals recyclers from the Department of Revenue (DOR) to the Department of Agriculture and Consumer Services (DACS), and makes a number of regulatory changes to provide increased oversight of secondary metals recyclers.

Specifically, the bill:

- Increases the annual registration fee for a secondary metals recycler from \$6 per location to \$350 per location;
- Requires a secondary metals recycler to maintain workers' compensation insurance and general liability insurance;
- Dictates that the DACS shall immediately suspend or deny the registration of a secondary metals recycler if it or its owner, officer, director, or trustee was convicted of certain felonies;
- Allows the DACS to suspend, revoke, or restrict a secondary metals recycler's registration if it or its owner, officer, director, or trustee was convicted of certain crimes or violated certain regulations in the previous ten years;
- Expands the prohibited acts related to secondary metals recyclers which constitute third-degree felonies;
- Specifies that a person who knowingly provides false information and then receives payment from a secondary metals recycler in return for regulated metals commits a second- or third-degree felony, and makes it a second-degree felony if the payment received is for restricted regulated metals;
- Prohibits the purchase of regulated metals, restricted regulated metals, or ferrous metals on Sundays;
- Revises the restricted regulated metals for which the seller must show proper authorization to sell;
- Authorizes a DACS' investigator to inspect a secondary metals recyclers' property and records;

- Authorizes the DACS to seek an inspection warrant if the DACS personnel who seek to verify registration are denied access to a registrant's place of business; and
- Authorizes the DACS to levy administrative penalties for certain violations of the secondary metals recycler regulations.

The bill has a negative fiscal impact to the DACS. (See Fiscal Impact Section.)

The bill has an effective date of July 1, 2015.

II. Present Situation:

Secondary metals recyclers are currently regulated by the Department of Revenue (DOR) under Part II of ch. 538, F.S. A secondary metals recycler is a person or company engaged in the business of obtaining used ferrous¹ or nonferrous² metals or converting such metals into raw material products.³ Current law requires secondary metals recyclers to register with the DOR prior to engaging in business, provides for the inspection of regulated metals and records kept by the recycler, regulates methods of payment, and provides certain prohibitions and penalties.

The DACS is charged with protecting consumers from unsafe or defective products and deceptive business practices. The Division of Consumer Services (division) within the DACS regulates specific business activities, including commercial weight loss practices, telephone solicitations, dance studios, pawnshops, health studios, sellers of travel, and telemarketers. The division is also responsible for protecting consumers from unfair and unsafe business practices involving products, including petroleum products, brake fluid, antifreeze, lubricating oil, and weighing and measuring devices.

III. Effect of Proposed Changes:

Section 1 transfers by a type two transfer, the authority, responsibility, and funding for regulating secondary metals recyclers from the DOR to the DACS.⁴

Confidentiality

Current law makes confidential, except for official purposes, and exempt from section 119.07(1), F.S., the following information received or created by the DOR:⁵

- Tax Returns,
- Reports,
- Accounts,
- Declarations received by the department,

¹ "Ferrous metals" are defined as those metals containing significant quantities of iron or steel. Section 538.18(3), F.S.

² "Nonferrous metals" are defined as those metals not containing significant quantities of iron or steel, including copper, brass, aluminum, lead, zinc, and nickel. Section 538.18(6), F.S.

³ Section 538.18(11), F.S.

⁴ Section 20.06(2), F.S., defines a type two transfer as the merger of an existing agency or department or a program, activity, or function thereof into another agency or department. Any program transferred by this transfer retains all its statutory powers, duties, and functions. Unless provided by law, the administrative rules of any agency or department involved in the transfer which are in effect immediately before the transfer remain in effect until specifically changed.

⁵Section 213.053(1), (2), F.S.

- Investigative reports and information, and
- Letters of technical advice.

Pursuant to a written agreement between the DOR and the division, the DOR is also specifically permitted to reveal names, addresses, and sales tax registration information to the division.⁶

Section 2 extends the DOR's authority to share information, to include all information relative to ch. 212, F.S.,⁷ and part II of ch. 538, F.S.,⁸ pursuant to a written agreement with the DACS. This section also transfers from the DOR to the DACS the authority to disclose the status of a secondary metals recycler's certificate of registration, and the name of the certificate holder to law enforcement officers.⁹

Registration

Currently, s. 538.25, F.S., requires secondary metals recyclers to register with the DOR and to pay a \$6, per-annum, per-location fee. An applicant's request for registration with the DOR must include the applicant's recent photo identification card, the applicant's fingerprints, and the costs for processing the fingerprints.¹⁰ The DOR forwards the applicant's costs and fingerprints to the Florida Department of Law Enforcement (FDLE) for a criminal background check on the applicant. An applicant's request for registration may be denied by the DOR if, within the last 24 months:

- The applicant was convicted of or pled guilty or nolo contendere to a felony involving property or drugs;
 - The applicant was convicted of or pled guilty or nolo contendere to any crime relating to registration as a secondary metals recycler;
 - The applicant failed to pay sales tax within 30 days of receipt of written notice from the DOR of his failure to do so;
 - The applicant violated provisions related to business inspections¹¹ or hold notices;¹²
 - The applicant engaged in a pattern of failing to keep business records;¹³
 - The applicant made a material false statement on the request for registration; or
 - The applicant engaged in fraud in connection with the purchase or sale of regulated metals.
- In addition, the DOR may currently impose a fine of up to \$10,000 for each knowing and intentional violation of the registration requirements.

Section 9 amends s. 538.25, F.S., to require a secondary metals recycler to register on an application form prescribed by the DACS. Registrants must submit their fingerprints and processing fees to an approved agency, entity, or vendor for state and national background checks. The FDLE must retain those fingerprints and enroll them in the Federal Bureau of

⁶ Section 213.053(8), F.S.

⁷ Chapter 212, F.S., "Tax on Sales, Use, and Other Transactions."

⁸ Part II, ch. 538, F.S., "Secondary Metals Recyclers."

⁹ Section 213.053911), F.S.

¹⁰ Section 538.24, F.S.

¹¹ Section 538.20, F.S.

¹² Section 538.21, F.S.

¹³ Section 538.19, F.S.

Investigation's (FBI) national retained print arrest notification program upon participation in the program by the FDLE.

Upon a registrant's request for renewal as a secondary metals recycler, the DACS must request another fingerprint-based criminal history background report from the FDLE. The DACS must collect from the renewal registrant any fees related to the renewal fingerprinting process, which the DACS shall forward to the FDLE. The DACS must notify the FDLE if a registrant is no longer registered as a secondary metals recycler with the DACS.

Upon receipt of the background check's results, the DACS must screen the results to determine if the applicant meets registration requirements. The registration requirements are generally the same as those stated above. The DACS would be authorized to deny, suspend, revoke, or restrict a registration if, the registrant or applicant, or owner, director, or trustee was convicted of certain crimes within the last 10 years. The DACS is authorized to immediately suspend a registration or application for registration.

A secondary metals recycler's registration shall be immediately suspended upon notice to the DACS that the applicant has been convicted of a felony under ch. 812¹⁴ or ch. 817,¹⁵ F.S.

Secondary metals recyclers must also maintain workers' compensation insurance and general liability insurance under the bill.

The DACS may immediately suspend a recycler's registration or eligibility for registration based on its failure to provide proof of valid insurance to the DACS.

In addition to the right of certain the DACS employees to inspect a secondary metals recycler's property and records (**Section 7**, below), **section 9** of the bill authorizes all department personnel to enter a secondary metals recycler's place of business to verify that a valid registration is properly displayed. If the DACS employee is denied entry for this purpose, the DACS may seek an inspection warrant.¹⁶

The bill increases the annual registration fee for each secondary metals recycler's location from \$6 to \$350.

The fine of up to \$10,000 for each knowing and intentional violation of the registration requirements is repealed.¹⁷

Inspections

A law enforcement officer who properly identifies himself during usual business hours may inspect any purchased regulated metals property in the secondary metals recycler's possession,

¹⁴ Ch. 812, F.S., relating to "Theft, Robbery and Related Crimes."

¹⁵ Ch. 817, F.S., relating to "Fraudulent Practices."

¹⁶ Section 933.20-933.30, F.S.

¹⁷ A secondary metals recycler who does not register still commits a third-degree felony, pursuant to s. 538.23(5), F.S., and may also be subject to additional administrative fines under s. 538.27, F.S., which is created in section 11 of this bill.

and all records required to be maintained by the recycler.^{18,19} A violation of this section constitutes a third-degree felony.²⁰ **Section 6** amends s. 538.20, F.S., to allow non-sworn trained regulatory investigators employed by the DACS, in addition to law enforcement officers, to inspect secondary metals recyclers' required records, and regulated materials in the secondary metals recyclers' possession.

Violations

Section 538.19, F.S., dictates that a secondary metals recycler must maintain both a paper and electronic record of all purchases made. **Section 5** transfers authority to approve the form of these purchase records from the FDLE to the DACS. A secondary metals recyclers' repeated failures to maintain this documentation subjects him or her to a third degree felony under s. 538.23, F.S.

Section 7 clarifies that a secondary metals recycler may not dispose of property subject to a hold notice²¹ until the hold notice expires. A violation of this section constitutes a third-degree felony.²²

Currently, s. 538.23, F.S., makes it a third-degree felony for a secondary metals recycler to knowingly and intentionally violate s. 538.26(2), F.S., which prohibits a secondary metals recycler from purchasing regulated metals, restricted regulated metals, or ferrous metals from a seller when the items were not transported in a motor vehicle. Although s. 538.26, F.S. lists several prohibited acts, this is the only one punishable as a third-degree felony. The remaining acts prohibited under s. 538.26, F.S., are currently first-degree misdemeanors with a fine of up to \$10,000.²³

Section 538.23(3), F.S., also prohibits persons from knowingly providing false verification of ownership or providing false or altered identification and receiving payment from a secondary metals recycler in return for regulated materials. If the person receives less than \$300 as payment, he is guilty of a third-degree felony. If the payment is \$300 or more, it is a second-degree felony.²⁴

Section 8 amends 538.23(1)(a), F.S., to make any knowing and intentional violation of the prohibitions listed in s. 538.26, F.S., (see Prohibited Acts, below) by a secondary metals recycler a third-degree felony. The bill also makes the knowing provision of false information a third-degree felony if the value of the money or other consideration is less than \$300. If the person who provides false information receives \$300 or more, the violation is a second-degree felony. In

¹⁸ Section 538.20, F.S.

¹⁹ See, *Moore v. State*, 442 So. 2d 215 (Fla. 1983), allowing warrantless administrative searches of business property where the business could easily be involved in theft, and the inspection is restricted to normal business hours.

²⁰ Section 528.23(1)(a), F.S.

²¹ A law enforcement officer may issue a hold notice on an item she has reasonable cause to believe has been stolen. See section 538.21, F.S.

²² Section 538.23(1)(a), F.S.

²³ Section 538.07, F.S. A first-degree misdemeanor is punishable by a term of imprisonment not to exceed 1 year. Section 775.082, F.S.

²⁴ A second-degree felony is punishable by up to 15 years in prison, or up to 30 years for a habitual offender, and a \$10,000 fine. Sections 775.082(3)(c), 775.083(1)(b), and 775.084(4)(a), F.S.

addition, the bill adds that a person commits a second-degree felony if the payment received is for restricted regulated metals.²⁵

Prohibited Acts

Currently, s. 538.26, F.S., contains a number of unlawful acts that a secondary metals recycler may not commit, including:

- Purchasing regulated metals²⁶, restricted regulated metals²⁷, or ferrous metals before 7 a.m. or after 7 p.m.; and
- Purchasing restricted regulated metals without proper proof that the seller is authorized to sell them, including:
 - An electric light pole or other utility structure and its fixtures, wires, and hardware that are identifiable as connected to a utility structure;
 - A guard rail, street sign, traffic sign, or traffic signal and its fixtures and hardware;
 - A funeral marker or vase or historical marker;
 - Railroad equipment;
 - A stainless steel beer keg;
 - Two or more lead-acid batteries, in a single purchase or from the same individual during one day.

Section 10 amends s. 538.26, F.S., to prohibit the purchase of regulated metals property, restricted regulated metals property, or ferrous metals on Sunday. The bill amends the restriction related to utility poles to instead restrict the purchase of a *metal* electric light pole and its fixtures and hardware that is readily identifiable as connected to a *metal electric light* structure; it removes the utility structures' *wires* from this restriction. Additionally, the bill increases the number of lead-acid batteries that a secondary metals recycler may purchase without proof of ownership from two to three.

Section 11 authorizes the DACS to take the following actions for violations of ss. 538.18, 538.236, or 538.26, F.S.:

- Issue a notice of noncompliance pursuant to s. 120.695, F.S.;
- Impose an administrative fine up to \$200 per violation, but not to exceed a total of \$5,000 per inspection; and
- Issue a cease and desist order.

Administrative proceeding initiated by DACS must be conducted in accordance with the Administrative Procedures Act.²⁸ Any fines collected by DACS under this section must be deposited into the General Inspection Trust Fund.

Sections 3 and 4 amend ss. 319.30 and 538.18, F.S., respectively, to correct references to the DACS.

²⁵ "Restricted regulated metals" are defined in s. 538.18(10) and 538.26(5), F.S., as regulated metals such as manhole covers, electrical wiring, and railroad equipment.

²⁶ Section 538.18(9), F.S.

²⁷ Section 538.18(10), F.S.

²⁸ Chapter 120, F.S.

Section 12 grants the DACS rulemaking authority to implement the bill, and directs that such rules must include tiered penalties for violations.

Section 13 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

See Private Sector Impact Section.

B. Private Sector Impact:

SB 618 requires secondary metals recyclers to pay an increased annual registration fee of \$350 for each location instead of the current \$6 fee. Secondary metals recyclers will also be required to maintain current and valid workers' compensation insurance and general liability coverage.

Secondary metals recyclers may incur greater costs due to fines levied by the DACS and any litigation related to criminal prosecutions by the Attorney General or State Attorney.

Additionally, some secondary metals recyclers may lose revenue from a loss of business on Sundays.

C. Government Sector Impact:

Based on the increased registration fee, the DACS estimates \$290,150 in revenue will be deposited into the General Inspection Trust Fund. For Fiscal Year 2015-2016, the DACS will require four positions and \$450,755 to implement the provisions of this bill.²⁹ The revenue in administrative penalties is undetermined by the DACS.

²⁹ DACS, Agency Analysis. The DACS revenue estimate is based on an estimated 829 registrants.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 213.053, 319.30, 538.18, 538.19, 538.20, 538.21, 538.23, 538.25, 538.26, 538.27, and 538.29.

This bill creates the following sections of the Florida Statutes: 538.27 and 538.29.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.