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CS/CS/HB 885, Engrossed 3

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

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29 requiring that purchases of certain property be made
30 by check or by electronic payment; providing
31 procedures; amending s. 538.25, F.S.; requiring an
32 application for registration as a secondary metals
33 recycler to contain the address of a fixed business
34 location; amending s. 538.26, F.S.; prohibiting
35 secondary metals recyclers from purchasing regulated
36 metals property, restricted regulated metals property,
37 or ferrous metals during specified times, from certain
38 locations, or from certain sellers; prohibiting the
39 purchase of specified restricted regulated metals
40 property without obtaining certain proof of the
41 seller's ownership and authorization to sell the
42 property; providing penalties; creating s. 538.28,
43 F.S.; preempting to the state the regulation of
44 secondary metals recyclers and purchase transactions
45 involving regulated metals property; providing
46 exceptions; providing for applicability; amending s.
47 538.23, F.S.; increasing the criminal penalties for
48 specified violations relating to secondary metals
49 recycling; providing increased criminal penalties for
50 third and subsequent criminal violations; amending s.
51 812.145, F.S., relating to theft of copper or other
52 nonferrous metals from a utility or communications
53 services provider; revising and providing definitions;
54 providing civil liability and penalties; prohibiting
55 removing copper or other nonferrous metals from an
56 electrical substation site without authorization of

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57 | the utility; providing criminal penalties; providing
 58 | an effective date.

60 | Be It Enacted by the Legislature of the State of Florida:

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

67 | 538.03 Definitions; applicability.—

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

69 | (a)~~(e)~~ "Acquire" means to obtain by purchase, consignment,
 70 | or trade.

71 | (b) "Appropriate law enforcement official" means the
 72 | sheriff of the county in which a secondhand dealer is located
 73 | or, if the secondhand dealer is located within a municipality,
 74 | both the police chief of the municipality and the sheriff;
 75 | however, the sheriff or police chief may designate as the
 76 | appropriate law enforcement official for that county or
 77 | municipality, as applicable, any law enforcement officer working
 78 | within that respective county or municipality. This paragraph
 79 | does not limit the authority or duties of the sheriff.

80 | (c)~~(d)~~ "Consignment shop" means a shop engaging in the
 81 | business of accepting for sale, on consignment, secondhand goods
 82 | which, having once been used or transferred from the
 83 | manufacturer to the dealer, are then received into the
 84 | possession of a third party.

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

86 (e) ~~(h)~~ "Precious metals" means any item containing any
87 gold, silver, or platinum, or any combination thereof, excluding
88 any chemical or any automotive, photographic, electrical,
89 medical, or dental materials or electronic parts.

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

95 (g) ~~(a)~~ "Secondhand dealer" means any person, corporation,
96 or other business organization or entity which is not a
97 secondary metals recycler subject to part II and which is
98 engaged in the business of purchasing, consigning, or trading
99 secondhand goods.

100 (h) ~~(f)~~ "Secondhand goods" means personal property
101 previously owned or used, which is not regulated metals property
102 regulated under part II and which is purchased, consigned, or
103 traded as used property. Such secondhand goods do not include
104 office furniture, pianos, books, clothing, organs, coins, motor
105 vehicles, costume jewelry, cardio and strength training or
106 conditioning equipment designed primarily for indoor use, and
107 secondhand sports equipment that is not permanently labeled with
108 a serial number. For purposes of this paragraph, "secondhand
109 sports equipment" does not include golf clubs.

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

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

115 (2) This chapter does not apply to:

116 (k) Any auction business as defined in s. 468.382
 117 operating as an auction business in the buying and selling of
 118 estates, business inventory, surplus merchandise, or business
 119 liquidations ~~Any person purchasing, consigning, or trading~~
 120 ~~secondhand goods at a flea market regardless of whether at a~~
 121 ~~temporary or permanent business location at the flea market.~~

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

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

128 1. The secondhand goods must be available on the website
 129 for viewing by the public at no charge;

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

132 3. The records of the sale, purchase, consignment, or
 133 trade, and the description of the secondhand goods as listed on
 134 the website, must contain the serial number of each item, if
 135 any;

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

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

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

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

149 8.a. At least 48 hours after the estimated time of
 150 contracting to offer the secondhand goods, the business must
 151 verify that any item having a serial number is not stolen
 152 property by entering the serial number of the item into the
 153 Department of Law Enforcement's stolen article database located
 154 at the Florida Crime Information Center's public access system
 155 website. The business shall record the date and time of such
 156 verification on the contract covering the goods. If such
 157 verification reveals that an item is stolen property, the
 158 business shall immediately remove the item from any website on
 159 which it is being offered and notify the appropriate law
 160 enforcement official ~~agency~~; or

161 b. The business must provide the appropriate law
 162 enforcement official ~~agency~~ with an electronic copy of the name,
 163 address, phone number, driver ~~driver's~~ license number, and
 164 issuing state of the person with whom the business contracted to
 165 offer the goods, as well as an accurate description of the
 166 goods, including make, model, serial number, and any other
 167 unique identifying marks, numbers, names, or letters that may be
 168 on an item, in a format agreed upon by the business and the

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169 appropriate law enforcement official ~~agency~~. This information
 170 must be provided to the appropriate law enforcement official
 171 ~~agency~~ within 24 hours after entering into the contract unless
 172 other arrangements are made between the business and the law
 173 enforcement official ~~agency~~.

174 Section 2. Subsections (1), (6), and (7) of section
 175 538.04, Florida Statutes, are amended to read:

176 538.04 Recordkeeping requirements; penalties.—

177 (1) A secondhand dealer ~~dealers~~ shall complete a
 178 secondhand dealers transaction form at the time of the actual
 179 transaction. A secondhand dealer shall maintain a copy of a
 180 completed transaction form on the registered premises for at
 181 least 1 year after the date of the transaction. However, the
 182 secondhand dealer shall maintain a copy of the transaction form
 183 for not less than 3 years. Unless other arrangements are ~~have~~
 184 ~~been~~ agreed upon by the secondhand dealer and the appropriate
 185 law enforcement official ~~agency~~, the secondhand dealer shall,
 186 within 24 hours after acquiring ~~the acquisition of~~ any
 187 secondhand goods, deliver to such official ~~the police department~~
 188 ~~of the municipality where the goods were acquired or, if the~~
 189 ~~goods were acquired outside of a municipality, to the sheriff's~~
 190 ~~department of the county where the goods were acquired,~~ a record
 191 of the transaction on a form approved by the Department of Law
 192 Enforcement. Such record shall contain:

- 193 (a) The time, date, and place of the transaction.
- 194 (b) A complete and accurate description of the goods
 195 acquired, including the following information, if applicable:
 196 1. Brand name.

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- 197 2. Model number.
- 198 3. Manufacturer's serial number.
- 199 4. Size.
- 200 5. Color, as apparent to the untrained eye.
- 201 6. Precious metal type, weight, and content if known.
- 202 7. Gemstone description, including the number of stones,
- 203 if applicable.
- 204 8. In the case of firearms, the type of action, caliber or
- 205 gauge, number of barrels, barrel length, and finish.
- 206 9. Any other unique identifying marks, numbers, or
- 207 letters.
- 208 (c) A description of the person from whom the goods were
- 209 acquired, including:
 - 210 1. Full name, current residential address, workplace, and
 - 211 home and work phone numbers.
 - 212 2. Height, weight, date of birth, race, gender, hair
 - 213 color, eye color, and any other identifying marks.
 - 214 3. The right thumbprint, free of smudges and smears, of
 - 215 the person from whom the goods were acquired.
 - 216 (d) Any other information required by the form approved by
 - 217 the Department of Law Enforcement.
 - 218 (6) If the appropriate law enforcement official ~~agency~~
 - 219 supplies a secondhand dealer with appropriate software and the
 - 220 secondhand dealer has computer capability, the secondhand dealer
 - 221 must ~~transactions shall be~~ electronically transmit secondhand
 - 222 dealer transactions required by this section to such official
 - 223 ~~transferred~~. If a secondhand dealer does not have computer
 - 224 capability, the appropriate law enforcement official ~~agency~~ may

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225 provide the secondhand dealer with a computer and all equipment
 226 necessary ~~to equipment for the purpose of~~ electronically
 227 transmit ~~transferring~~ secondhand dealer transactions. The
 228 appropriate law enforcement official ~~agency~~ shall retain
 229 ownership of the computer, unless otherwise agreed upon, and—
 230 the secondhand dealer shall maintain the computer in good
 231 working order, except for ordinary wear and ~~tear excepted~~. A If
 232 ~~the~~ secondhand dealer who transmits ~~transfers~~ secondhand dealer
 233 transactions electronically, ~~the secondhand dealer~~ is not
 234 required to also deliver ~~to the appropriate law enforcement~~
 235 ~~agency~~ the original or paper copies of the secondhand
 236 transaction forms to the appropriate law enforcement official.
 237 However, such official may, for purposes ~~the purpose~~ of a
 238 criminal investigation, ~~the appropriate law enforcement agency~~
 239 may request ~~that~~ the secondhand dealer to deliver the ~~produce an~~
 240 original ~~of a~~ transaction form that was ~~has been~~ electronically
 241 transmitted ~~transferred~~. The secondhand dealer shall deliver the
 242 ~~this~~ form to the appropriate law enforcement official ~~agency~~
 243 within 24 hours after receipt of the request.

244 (7) If the original transaction form is lost or destroyed
 245 by the appropriate law enforcement official ~~agency~~, a copy may
 246 be used by the secondhand dealer as evidence in court. When an
 247 electronic image of a customer's identification is accepted for
 248 a transaction, the secondhand dealer must maintain the
 249 electronic image in order to meet the recordkeeping requirements
 250 applicable to the original transaction form. If a criminal
 251 investigation occurs, the secondhand dealer shall, upon request,
 252 provide a clear and legible copy of the image to the appropriate

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253 law enforcement official ~~agency~~.

254 Section 3. Section 538.18, Florida Statutes, is amended to
255 read:

256 538.18 Definitions.—As used in this part, the term:

257 (1) "Appropriate law enforcement official" means the
258 sheriff of the county in which a secondary metals recycler is
259 located or, if the secondary metals recycler is located within a
260 municipality, the police chief of the municipality in which the
261 secondary metals recycler is located; however, the sheriff or
262 police chief may designate as the appropriate law enforcement
263 official for the county or municipality, as applicable, any law
264 enforcement officer working within that respective county or
265 municipality. This subsection does not limit the authority or
266 duties of the sheriff.

267 ~~(2)-(9)~~ "Department" means the Department of Revenue.

268 ~~(3)-(1)~~ "Ferrous metals" means any metals containing
269 significant quantities of iron or steel.

270 ~~(4)-(2)~~ "Fixed location" means any site occupied by a
271 secondary metals recycler as owner of the site or as lessee of
272 the site under a lease or other rental agreement providing for
273 occupation of the site by the secondary metals recycler for a
274 total duration of not less than 364 days.

275 ~~(5)-(3)~~ "Money" means a medium of exchange authorized or
276 adopted by a domestic or foreign government as part of its
277 currency.

278 ~~(6)-(4)~~ "Nonferrous metals" means metals not containing
279 significant quantities of iron or steel, including, without
280 limitation, copper, brass, aluminum, bronze, lead, zinc, nickel,

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281 and alloys thereof, excluding precious metals subject to
 282 regulation under part I.

283 (7)~~(5)~~ "Personal identification card" means a valid
 284 Florida driver license, a Florida identification card issued by
 285 the Department of Highway Safety and Motor Vehicles, an
 286 equivalent form of identification issued by another state, a
 287 passport, or an employment authorization issued by the United
 288 States Bureau of Citizenship and Immigration Services that
 289 contains an individual's photograph and current address ~~any~~
 290 ~~government-issued photographic identification card.~~

291 (8)~~(6)~~ "Purchase transaction" means a transaction in which
 292 a secondary metals recycler gives consideration for regulated
 293 metals property.

294 (9)~~(7)~~ "Regulated metals property" means any item composed
 295 primarily of any nonferrous metals. The term does, ~~but shall not~~
 296 include aluminum beverage containers, used beverage containers,
 297 or similar beverage containers; however, ~~the term includes~~
 298 ~~shall include~~ stainless steel beer kegs and items made of
 299 ferrous metal obtained from any restricted regulated metals
 300 property.

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

304 (11)~~(8)~~ "Secondary metals recycler" means any person who:

305 (a) Is engaged, from a fixed location ~~or otherwise,~~ in the
 306 business of purchase transactions or gathering or obtaining
 307 ferrous or nonferrous metals that have served their original
 308 economic purpose or is in the business of performing the

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309 manufacturing process by which ferrous metals or nonferrous
 310 metals are converted into raw material products consisting of
 311 prepared grades and having an existing or potential economic
 312 value; or

313 (b) Has facilities for performing the manufacturing
 314 process by which ferrous metals or nonferrous metals are
 315 converted into raw material products consisting of prepared
 316 grades and having an existing or potential economic value, other
 317 than by the exclusive use of hand tools, by methods including,
 318 without limitation, processing, sorting, cutting, classifying,
 319 cleaning, baling, wrapping, shredding, shearing, or changing the
 320 physical form or chemical content thereof.

321 (12) "Utility" means a public utility or electric utility
 322 as defined in s. 366.02 or a person, firm, corporation,
 323 association, or political subdivision, whether private,
 324 municipal, county, or cooperative, that is engaged in the sale,
 325 generation, provision, or delivery of gas, electricity, heat,
 326 water, oil, sewer service, or telephone, telegraph, radio,
 327 telecommunications, or communications service.

328 Section 4. Paragraph (u) of subsection (1) of section
 329 319.30, Florida Statutes, is amended to read:

330 319.30 Definitions; dismantling, destruction, change of
 331 identity of motor vehicle or mobile home; salvage.—

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

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

335 Section 5. Section 538.19, Florida Statutes, is amended to
 336 read:

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337 538.19 Records required; limitation of liability.-
 338 (1) A secondary metals recycler shall maintain a legible
 339 paper record of all purchase transactions to which such
 340 secondary metals recycler is a party. A secondary metals
 341 recycler shall also maintain a legible electronic record, in the
 342 English language, of all such purchase transactions. The
 343 appropriate law enforcement official may provide data
 344 specifications regarding the electronic record format, but such
 345 format must be approved by the Department of Law Enforcement. An
 346 electronic record of a purchase transaction shall be
 347 electronically transmitted to the appropriate law enforcement
 348 official no later than 10 a.m. of the business day following the
 349 date of the purchase transaction. The record transmitted to the
 350 appropriate law enforcement official must not contain the price
 351 paid for the items. A secondary metals recycler who transmits
 352 such records electronically is not required to also deliver the
 353 original or paper copies of the transaction forms to the
 354 appropriate law enforcement official. However, such official
 355 may, for purposes of a criminal investigation, request the
 356 secondary metals recycler to make available the original
 357 transaction form that was electronically transmitted. This
 358 original transaction form must include the price paid for the
 359 items. The secondary metals recycler shall make the form
 360 available to the appropriate law enforcement official within 24
 361 hours after receipt of the request.
 362 (2) The following information must be maintained on the a
 363 form approved by the Department of Law Enforcement for each
 364 purchase transaction:

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

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

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

369 (d) The weight, quantity, or volume, and a description of
370 the type of regulated metals property purchased in a purchase
371 transaction.

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

374 (f) A signed statement from the person delivering the
375 regulated metals property stating that she or he is the rightful
376 owner of, or is entitled to sell, the regulated metals property
377 being sold. If the purchase involves a stainless steel beer keg,
378 the seller must provide written documentation from the
379 manufacturer that the seller is the owner of the stainless steel
380 beer keg or is an employee or agent of the manufacturer.

381 (g) The distinctive number from the personal
382 identification card of the person delivering the regulated
383 metals property to the secondary metals recycler.

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

386 1. Full name, current residential address, workplace, and
387 home and work phone numbers.

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

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

391 4. Vehicle description to include the make, model, and tag
392 number of the vehicle and trailer of the person selling the

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393 regulated metals property.

394 5. Any other information required by the form approved by
395 the Department of Law Enforcement.

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

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

401 ~~(3) Any secondary metals recycler that maintains an~~
402 ~~electronic database containing the information required in~~
403 ~~paragraph (2) (h), along with an oath of ownership with a~~
404 ~~signature of the seller of the secondary metals being purchased~~
405 ~~by the secondary metals recycler and a right thumbprint that has~~
406 ~~no smudges and smears on the oath of ownership for each purchase~~
407 ~~transaction, shall be exempt from the records requirement of~~
408 ~~paragraph (2) (h).~~ A secondary metals recycler complies with the
409 requirements of this section if it maintains an electronic
410 database containing the information required by subsection (2)
411 ~~paragraph (2) (h)~~ as long as the electronic information required
412 by subsection (2) ~~paragraph (2) (h)~~, along with an electronic
413 oath of ownership with an electronic signature of the seller of
414 the secondary metals being purchased by the secondary metals
415 recyclers and an electronic image of the seller's right
416 thumbprint that has no smudges and smears, can be downloaded
417 onto a paper form in the image of the form approved by the
418 Department of Law Enforcement as provided in subsection (2).

419 (4) A secondary metals recycler shall maintain or cause to
420 be maintained the information required by this section for not

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421 less than 3 ~~5~~ years from the date of the purchase transaction.
 422 (5) ~~If a purchase transaction involves the transfer of~~
 423 ~~regulated metals property from~~ A secondary metals recycler
 424 registered with the department that purchases a motor vehicle
 425 from a licensed salvage motor vehicle dealer as defined in s.
 426 320.27 or to another secondary metals recycler registered with
 427 the department and uses a mechanical crusher to convert the
 428 vehicle to scrap metal must obtain a signed statement from the
 429 seller stating that the seller has surrendered the vehicle's
 430 certificate of title to the Department of Highway Safety and
 431 Motor Vehicles as provided in s. 319.30 or otherwise complied
 432 with the titling requirements provided by law for conversion of
 433 the vehicle to scrap metal. A, the secondary metals recycler is
 434 not liable for the seller's failure to comply with the titling
 435 requirements provided by law for conversion of a motor vehicle
 436 to scrap metal if the secondary metals recycler obtains and
 437 maintains the seller's signed statement receiving the regulated
 438 ~~metals property shall record the name and address of the~~
 439 ~~secondary metals recycler from which it received the regulated~~
 440 ~~metals property in lieu of the requirements of paragraph (2) (h).~~

441 Section 5. Section 538.235, Florida Statutes, is amended
 442 to read:

443 538.235 Method of payment.—

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

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

448 (b) In any amount for the purchase of restricted regulated

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449 metals property.

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

453 (3) Payment for the purchase of restricted regulated
454 metals property shall be made by check issued to the seller of
455 the metal and payable to the seller or by electronic payment to
456 the seller's bank account or the seller's employer's bank
457 account.

458 (a) Each check shall be mailed by the secondary metals
459 recycler directly to the street address of the seller that is on
460 file with the secondary metals recycler unless otherwise
461 provided in this part. A check may not be mailed to a post
462 office box. Electronic payments shall be transmitted to an
463 account for which the seller is listed as an account holder or
464 an employee or agent of the seller.

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

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

472 1. An organization, corporation, or association registered
473 with the state as a charitable, philanthropic, religious,
474 fraternal, civic, patriotic, social, or school-sponsored
475 organization or association, or any nonprofit corporation or
476 association;

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- 477 2. A law enforcement officer acting in an official
- 478 capacity;
- 479 3. A trustee in bankruptcy, executor, administrator, or
- 480 receiver who has presented proof of such status to the secondary
- 481 metals recycler;
- 482 4. A public official acting under judicial process or
- 483 authority who has presented proof of such status to the
- 484 secondary metals recycler;
- 485 5. A sheriff acting under the authority of a court's writ
- 486 of execution, or by virtue of any process issued by a court, if
- 487 proof thereof has been presented to the secondary metals
- 488 recycler; or
- 489 6. A manufacturing, industrial, or other commercial vendor
- 490 that generates regulated materials in the ordinary course of
- 491 business.

492 Section 6. Subsection (1) of section 538.25, Florida
 493 Statutes, is amended to read:

494 538.25 Registration.—

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

501 (a) A fee equal to the federal and state costs for
 502 processing required fingerprints must be submitted to the
 503 department with each application for registration. One
 504 application is required for each secondary metals recycler. If a

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505 secondary metals recycler is the owner of more than one
506 secondary metals recycling location, the application must list
507 each location, and the department shall issue a duplicate
508 registration for each location. For purposes of subsections (3),
509 (4), and (5), these duplicate registrations shall be deemed
510 individual registrations. A secondary metals recycler shall pay
511 a fee of \$6 per location at the time of registration and an
512 annual renewal fee of \$6 per location on October 1 of each year.
513 All fees collected, less costs of administration, shall be
514 transferred into the Operating Trust Fund.

515 (b) The department shall forward the full set of
516 fingerprints to the Department of Law Enforcement for state and
517 federal processing, provided the federal service is available,
518 to be processed for any criminal justice information as defined
519 in s. 943.045. The cost of processing such fingerprints shall be
520 payable to the Department of Law Enforcement by the department.
521 The department may issue a temporary registration to each
522 location pending completion of the background check by state and
523 federal law enforcement agencies, but shall revoke such
524 temporary registration if the completed background check reveals
525 a prohibited criminal background. The Department of Law
526 Enforcement shall report its findings to the Department of
527 Revenue within 30 days after the date fingerprint cards are
528 submitted for criminal justice information.

529 (c) An applicant for a secondary metals recycler
530 registration must be a natural person who has reached the age of
531 18 years or a corporation organized or qualified to do business
532 in the state.

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

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

539 3. If the applicant is a corporation, the registration
 540 must include the name and address of such corporation's
 541 registered agent for service of process in the state and a
 542 certified copy of statement from the Secretary of State that the
 543 corporation is duly organized in the state or, if the
 544 corporation is organized in a state other than Florida, a
 545 certified copy of the statement that the corporation is duly
 546 qualified to do business in this state.

547 Section 7. Section 538.26, Florida Statutes, is amended to
 548 read:

549 538.26 Certain acts and practices prohibited.—It is
 550 unlawful for a secondary metals recycler to do or allow any of
 551 the following acts:

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

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

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

559 (2)(4) Purchase regulated metals property, restricted
 560 regulated metals property, or ferrous metals from any seller who

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561 presents such property for sale at the registered location of
 562 the secondary metals recycler when such property was not
 563 transported in a motor vehicle.

564 (3)~~(5)~~ Purchase regulated metals property, restricted
 565 regulated metals property, or ferrous metals ~~in return for money~~
 566 ~~from a trailer, a vehicle, or any location other than a fixed~~
 567 ~~location or from any person who is required to prove ownership~~
 568 ~~pursuant to subsection (4). However, regulated metals may be~~
 569 ~~purchased from a nonfixed location, or from such person, with~~
 570 ~~any negotiable or nonnegotiable instrument, including a check or~~
 571 ~~draft or any other type of instrument purchased with money and~~
 572 ~~sold for the purpose of making payments or transfers to others.~~

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

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

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

577 (c) Is visibly or apparently under the influence of drugs
 578 or alcohol.

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

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

584 2. Is an employee, agent, or contractor of the property's
 585 owner who is authorized to sell the property on behalf of the
 586 owner. Reasonable proof of authorization to sell the property
 587 includes, but is not limited to, a signed letter on the owner's
 588 letterhead, dated no later than 90 days before the sale,

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589 authorizing the seller to sell the property.

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

591 property is subject to the restrictions provided in paragraph

592 (a):

593 1. A manhole cover.

594 2. An electric light pole or other utility structure and

595 its fixtures, wires, and hardware that are readily identifiable

596 as connected to the utility structure.

597 3. A guard rail.

598 4. A street sign, traffic sign, or traffic signal and its

599 fixtures and hardware.

600 5. Communication, transmission, distribution, and service

601 wire from a utility, including copper or aluminum bus bars,

602 connectors, grounding plates, or grounding wire.

603 6. A funeral marker or funeral vase.

604 7. A historical marker.

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

606 tie plate, signal house, control box, switch plate, E clip, or

607 rail tie junction.

608 9. Any metal item that is observably marked upon

609 reasonable inspection with any form of the name, initials, or

610 logo of a governmental entity, utility company, cemetery, or

611 railroad.

612 10. A copper, aluminum, or aluminum-copper condensing or

613 evaporator coil, including its tubing or rods, from an air-

614 conditioning or heating unit, excluding coils from window air-

615 conditioning or heating units and motor vehicle air-conditioning

616 or heating units.

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- 617 11. An aluminum or stainless steel container or bottle
- 618 designed to hold propane for fueling forklifts.
- 619 12. A stainless steel beer keg.
- 620 13. A catalytic converter or any nonferrous part of a
- 621 catalytic converter unless purchased as part of a motor vehicle.
- 622 14. Metallic wire that has been burned in whole or in part
- 623 to remove insulation.
- 624 15. A brass or bronze commercial valve or fitting,
- 625 referred to as a "fire department connection and control valve"
- 626 or an "FDC valve," that is commonly used on structures for
- 627 access to water for the purpose of extinguishing fires.
- 628 16. A brass or bronze commercial potable water backflow
- 629 preventer valve that is commonly used to prevent backflow of
- 630 potable water from commercial structures into municipal domestic
- 631 water service systems.
- 632 17. A shopping cart.
- 633 18. A brass water meter.
- 634 19. A storm grate.
- 635 20. A brass sprinkler head used in commercial agriculture.
- 636 Section 8. Section 538.28, Florida Statutes, is created to
- 637 read:
- 638 538.28 Local government regulation.—
- 639 (1) The regulation of purchase transactions involving
- 640 regulated metals property is preempted to the state. Except as
- 641 provided in subsection (2), an ordinance or regulation adopted
- 642 by a county or municipality relating to the purchase or sale of
- 643 regulated metals property or the registration or licensure of
- 644 secondary metals recyclers is void.

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645 (2) This part does not preempt an ordinance or regulation
 646 originally enacted by a county or municipality before March 1,
 647 2012. Such ordinance or regulation may subsequently be amended
 648 to incorporate any provision of this part.

649 (3) This section does not apply to a county as defined in
 650 s. 125.011(1) until July 1, 2013.

651 Section 9. Subsection (1) of section 538.23, Florida
 652 Statutes, is amended to read:

653 538.23 Violations and penalties.—

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

- 656 1. Violates s. 538.20 or s. 538.21;
- 657 2. Engages in a pattern of failing to keep records
- 658 required by s. 538.19;
- 659 3. Violates s. 538.26(4); or
- 660 4. Violates s. 538.235,

661
 662 commits a felony of the third ~~misdemeanor of the first~~ degree,
 663 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

664 (b) A secondary metals recycler who commits a third or
 665 subsequent violation of paragraph (a) commits a felony of the
 666 second ~~third~~ degree, punishable as provided in s. 775.082, s.
 667 775.083, or s. 775.084.

668 Section 10. Section 812.145, Florida Statutes, is amended
 669 to read:

670 812.145 Theft of copper or other nonferrous metals.—

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

672 (a) "Communications services" means the transmission,

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673 conveyance, or routing of voice, data, audio, video, or any
674 other information or signals, including cable services, to a
675 point, or between or among points, by or through any electronic,
676 radio, satellite, cable, optical, microwave, or other medium or
677 method now in existence or hereafter devised, regardless of the
678 protocol used for such transmission or conveyance. The term
679 includes such transmission, conveyance, or routing in which
680 computer processing applications are used to act on the form,
681 code, or protocol of the content for purposes of transmission,
682 conveyance, or routing without regard to whether such service is
683 referred to as voice-over-Internet-protocol services or is
684 classified by the Federal Communications Commission as enhanced
685 or value-added.

686 (b) "Communications services provider" includes any
687 person, firm, corporation, or political subdivision, whether
688 private, municipal, county, or cooperative, which is engaged in
689 the sale, generation, provision, or delivery of communications
690 services.

691 (c) "Copper or other nonferrous metals" means metals not
692 containing significant quantities of iron or steel, including,
693 without limitation, copper, copper alloy, copper utility or
694 communications service wire, brass, aluminum, bronze, lead,
695 zinc, nickel, and alloys thereof.

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

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701 (e)-~~d~~ "Utility" means a public utility or electric
 702 utility as defined in s. 366.02, or a person, firm, corporation,
 703 association, or political subdivision, whether private,
 704 municipal, county, or cooperative, which is engaged in the sale,
 705 generation, provision, or delivery of gas, electricity, heat,
 706 water, oil, sewer service, or telephone, telegraph, radio,
 707 telecommunications, or communications service. The term includes
 708 any person, firm, corporation, association, or political
 709 subdivision, whether private, municipal, county, or cooperative,
 710 which is engaged in the sale, generation, provision, or delivery
 711 of gas or electricity services.

712 (f)-~~e~~ "Utility service" means electricity for light,
 713 heat, or power and natural or manufactured gas for light, heat,
 714 or power, including the transportation, delivery, transmission,
 715 and distribution of electricity or natural or manufactured gas.

716 (2) A person who knowingly and intentionally takes copper
 717 or other nonferrous metals from a utility or communications
 718 services provider, thereby causing damage to the facilities of a
 719 utility or communications services provider, interrupting or
 720 interfering with utility service or communications services, or
 721 interfering with the ability of a utility or communications
 722 services provider to provide service, commits a felony of the
 723 first degree, punishable as provided in s. 775.082, s. 775.083,
 724 or s. 775.084.

725 (3) A person who is found in a civil action to have
 726 illegally taken copper or other nonferrous metals from a utility
 727 or communications services provider based on a conviction for a
 728 violation of subsection (2) is liable to the utility or

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729 communications services provider for damages in an amount equal
 730 to three times the actual damages sustained by the utility or
 731 communications services provider due to any personal injury,
 732 wrongful death, or property damage caused by the illegal taking
 733 of the nonferrous metals or an amount equal to three times any
 734 claim made against the utility or communications services
 735 provider for any personal injury, wrongful death, or property
 736 damage caused by the malfunction of the facilities of the
 737 utility or communications services provider resulting from the
 738 violation of subsection (2), whichever is greater.

739 (4) A person who knowingly and intentionally removes
 740 copper or other nonferrous metals from an electrical substation
 741 without authorization of the utility commits a felony of the
 742 first degree, punishable as provided in s. 775.082, s. 775.083,
 743 or s. 775.084.

744 Section 11. (1) A public or private owner of metal
 745 property is not civilly liable to a person who is injured during
 746 the theft or attempted theft of metal property.

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

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

755 Section 12. This act shall take effect July 1, 2012.