

By Senator Smith

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1 A bill to be entitled
2 An act relating to secondary metals recyclers;
3 amending s. 538.18, F.S.; revising and providing
4 definitions; amending s. 538.19, F.S.; revising the
5 period required for secondary metals recyclers to
6 maintain certain information regarding purchase
7 transactions involving regulated metals property;
8 revising requirements for the types of information
9 that secondary metals recyclers must obtain and
10 maintain regarding purchase transactions; limiting the
11 liability of secondary metals recyclers for the
12 conversion of motor vehicles to scrap metal under
13 certain circumstances; amending s. 538.235, F.S.;
14 revising requirements for payments made by secondary
15 metals recyclers to sellers of regulated metals
16 property, to which penalties apply; providing methods
17 of payment for restricted regulated metals property;
18 requiring that purchases of certain property be made
19 by check or by electronic payment; amending s. 538.26,
20 F.S.; prohibiting secondary metals recyclers from
21 purchasing regulated metals property without
22 maintaining certain records; deleting provisions
23 prohibiting the purchase of regulated metals property
24 from certain persons or at certain locations;
25 prohibiting the purchase of specified restricted
26 regulated metals property without obtaining certain
27 proof of the seller's ownership and authorization to
28 sell the property; creating s. 538.27, F.S.; limiting
29 civil liability of secondary metals recyclers under

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30 certain circumstances; establishing an inference that
31 secondary metals recyclers do not commit theft or deal
32 in stolen property under certain circumstances;
33 creating s. 538.28, F.S.; preempting to the state the
34 regulation of secondary metals recyclers and purchase
35 transactions involving regulated metals property;
36 exempting certain ordinances and regulations from
37 preemption; amending s. 812.022, F.S.; establishing an
38 inference that secondary metals recyclers do not
39 commit theft or deal in stolen property under certain
40 circumstances; amending s. 319.30, F.S.; conforming a
41 cross-reference; providing an effective date.

42
43 Be It Enacted by the Legislature of the State of Florida:

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45 Section 1. Section 538.18, Florida Statutes, is reordered
46 and amended to read:

47 538.18 Definitions.—As used in this part, the term:

48 (2)~~(1)~~ "Ferrous metals" means any metals containing
49 significant quantities of iron or steel.

50 (3)~~(2)~~ "Fixed location" means any site occupied by a
51 secondary metals recycler as owner of the site or as lessee of
52 the site under a lease or other rental agreement providing for
53 occupation of the site by the secondary metals recycler for a
54 total duration of not less than 364 days.

55 (4)~~(3)~~ "Money" means a medium of exchange authorized or
56 adopted by a domestic or foreign government as part of its
57 currency.

58 (5)~~(4)~~ "Nonferrous metals" means metals not containing

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significant quantities of iron or steel, including, without limitation, copper, brass, aluminum, bronze, lead, zinc, nickel, and alloys thereof, excluding precious metals subject to regulation under part I.

(6) ~~(5)~~ "Personal identification card" means any government-issued photographic identification card.

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

(8) ~~(7)~~ "Regulated metals property" means any item composed primarily of any nonferrous metals. The term does, but shall not include aluminum beverage containers, used beverage containers, or similar beverage containers; however, the term includes ~~shall include~~ stainless steel beer kegs.

(9) "Restricted regulated metals property" means any regulated metals property listed in s. 538.26(6)(b) the sale of which is restricted as provided in s. 538.26(6)(a).

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

(a) Is engaged, from a fixed location ~~or otherwise~~, in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or

(b) Has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, other than by the

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exclusive use of hand tools, by methods including, without limitation, processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content thereof.

~~(1)-(9)~~ "Department" means the Department of Revenue.

(11) "Utility" means a person, firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, which is engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, or telephone, telegraph, radio, or telecommunications service.

Section 2. Section 538.19, Florida Statutes, is amended to read:

538.19 Records required; limitation of liability.—

(1) A secondary metals recycler shall maintain a legible record of all purchase transactions to which such secondary metals recycler is a party.

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

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

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

(c) The date and time of the transaction.

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

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

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

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

(h) A description of the person from whom the goods were acquired, including:

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

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

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

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

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

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

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

(3) Any secondary metals recycler that maintains an electronic database containing the information required in

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146 paragraph (2)(h), along with an oath of ownership with a
147 signature of the seller of the secondary metals being purchased
148 by the secondary metals recycler and a right thumbprint that has
149 no smudges and smears on the oath of ownership for each purchase
150 transaction, is ~~shall be~~ exempt from the records requirement of
151 paragraph (2)(h). A secondary metals recycler complies with the
152 requirements of this section if it maintains an electronic
153 database containing the information required by paragraph (2)(h)
154 as long as the electronic information required by paragraph
155 (2)(h), along with an electronic oath of ownership with an
156 electronic signature of the seller of the secondary metals being
157 purchased by the secondary metals recyclers and an electronic
158 image of the seller's right thumbprint that has no smudges and
159 smears, can be downloaded onto a paper form in the image of the
160 form approved by the Department of Law Enforcement as provided
161 in subsection (2).

162 (4) A secondary metals recycler shall maintain or cause to
163 be maintained the information required by this section for not
164 less than 2 5 years from the date of the purchase transaction.

165 (5) ~~If a purchase transaction involves the transfer of~~
166 ~~regulated metals property from~~ A secondary metals recycler
167 registered with the department which purchases a motor vehicle
168 from a licensed salvage motor vehicle dealer as defined in s.
169 320.27 or to another secondary metals recycler registered with
170 the department and uses a mechanical crusher to convert the
171 vehicle to scrap metal must obtain a signed statement from the
172 seller stating that the seller has surrendered the vehicle's
173 certificate of title to the Department of Highway Safety and
174 Motor Vehicles as provided in s. 319.30 or otherwise complied

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with the titling requirements provided by law for conversion of the vehicle to scrap metal. ~~A, the secondary metals recycler is not liable for the seller's failure to comply with the titling requirements provided by law for conversion of a motor vehicle to scrap metal if the secondary metals recycler obtains and maintains the seller's signed statement receiving the regulated metals property shall record the name and address of the secondary metals recycler from which it received the regulated metals property in lieu of the requirements of paragraph (2) (h).~~

Section 3. Section 538.235, Florida Statutes, is amended to read:

538.235 Method of payment.—

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

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

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

(2) Payment in excess of \$1,000 for the purchase of regulated metals property or payment in any amount for the purchase of restricted regulated metals property must ~~shall~~ be made by check issued and payable to the seller or by electronic payment to the seller's bank account or the bank account of the seller's employer ~~metal and payable to the seller.~~

Section 4. Subsection (5) of section 538.26, Florida Statutes, is amended, and subsection (6) is added to that section, to read:

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

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the following acts:

(5) Purchase regulated metals property ~~in return for money~~ from a trailer, a vehicle, or any location other than a fixed location or from any person who is required to prove ownership under s. 538.19 ~~pursuant to subsection (4). However, regulated metals may be purchased from a nonfixed location, or from such person, with any negotiable or nonnegotiable instrument, including a check or draft or any other type of instrument purchased with money and sold for the purpose of making payments or transfers to others.~~

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

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

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

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

1. A manhole cover.

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

3. A guard rail.

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233 4. A street sign, traffic sign, or traffic signal and its
234 fixtures and hardware.

235 5. Communication, transmission, distribution, and service
236 wire from a utility, including copper or aluminum bus bars,
237 connectors, grounding plates, or grounding wire.

238 6. A funeral marker or funeral vase.

239 7. A historical marker.

240 8. Railroad equipment, including, but not limited to, a tie
241 plate, signal house, control box, switch plate, E-clip, or rail
242 tie junction.

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

246 10. A copper, aluminum, or aluminum-copper condensing or
247 evaporator coil, including its tubing or rods, from an air
248 conditioning or heating unit, excluding coils from window air
249 conditioning or heating units and motor vehicle air conditioning
250 or heating units.

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

253 12. A stainless steel beer keg.

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

256 14. Metallic wire that has been burned in whole or in part
257 to remove insulation.

258 15. A brass or bronze commercial valve or fitting, referred
259 to as a "fire department connection and control valve" or an
260 "FDC valve," which is commonly used on structures for access to
261 water for the purpose of extinguishing fires.

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262 16. A brass or bronze commercial potable water backflow
263 preventer valve that is commonly used to prevent backflow of
264 potable water from commercial structures into municipal domestic
265 water service systems.

266 17. A shopping cart.

267 Section 5. Section 538.27, Florida Statutes, is created to
268 read:

269 538.27 Secondary metals recyclers; limitation of liability;
270 inference.—

271 (1) A secondary metals recycler is not liable for any civil
272 claim of replevin or damages resulting from a purchase
273 transaction of regulated metals property which complies with
274 this chapter.

275 (2) As provided in s. 812.022(7), proof that a purchase
276 transaction for regulated metals property by a secondary metals
277 recycler complied with this part gives rise to an inference that
278 the secondary metals recycler did not know or have reason to
279 believe that the property was stolen and did not have intent to
280 commit theft or deal in stolen property.

281 Section 6. Section 538.28, Florida Statutes, is created to
282 read:

283 538.28 Local government regulation; preemption.—

284 (1) The regulation of purchase transactions involving
285 regulated metals property is preempted to the state. Except as
286 provided in subsection (2), an ordinance or regulation adopted
287 by a county or municipality relating to the purchase or sale of
288 regulated metals property or the registration or licensure of
289 secondary metals recyclers is void.

290 (2) This part does not preempt an ordinance or regulation

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originally enacted by a county or municipality before March 1, 2011, or any subsequent amendment to such ordinance or regulation.

Section 7. Subsection (7) is added to section 812.022, Florida Statutes, to read:

812.022 Evidence of theft or dealing in stolen property.—

(7) Proof that a purchase transaction for regulated metals property by a secondary metals recycler complied with part II of chapter 538 gives rise to an inference that the secondary metals recycler did not know or have reason to believe that the property was stolen and did not have intent to commit theft or deal in stolen property.

Section 8. Paragraph (u) of subsection (1) of section 319.30, Florida Statutes, is amended to read:

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

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

(u) "Secondary metals recycler" means secondary metals recycler as defined in s. 538.18(10) ~~538.18(8)~~.

Section 9. This act shall take effect July 1, 2012.