

By the Committees on Criminal Justice; Community Affairs; and  
Commerce and Tourism; and Senators Smith, Montford, Evers, and  
Lynn

591-02723A-12

2012540c3

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

591-02723A-12

2012540c3

30 requiring that purchases of certain property be made  
31 by check or by electronic payment; providing  
32 procedures; amending s. 538.25, F.S.; requiring the  
33 Department of Revenue to accept applications from a  
34 fixed business address; prohibiting the department  
35 from accepting an application that provides an address  
36 from a hotel or motel room, a vehicle, or a post  
37 office box; amending s. 538.26, F.S.; prohibiting  
38 secondary metals recyclers from purchasing regulated  
39 metals property, restricted regulated metals property,  
40 or ferrous metals during specified times or from  
41 certain locations; prohibiting the purchase of  
42 regulated metal property from a seller who uses a name  
43 other than his or her own name or the registered name  
44 of the business, is younger than 18 years of age, or  
45 is under the influence of drugs or alcohol, if such a  
46 condition is visible or apparent; prohibiting the  
47 purchase of specified restricted regulated metals  
48 property without obtaining certain proof of the  
49 seller's ownership and authorization to sell the  
50 property; providing penalties; creating s. 538.28,  
51 F.S.; preempting to the state the regulation of  
52 secondary metals recyclers and purchase transactions  
53 involving regulated metals property; exempting county  
54 and municipal ordinances and regulations enacted  
55 before March 1, 2012, from preemption; prohibiting  
56 requirements for verification of compliance with  
57 certain federal regulations; reenacting and amending  
58 s. 538.23(1)(a), F.S., relating to violations and

591-02723A-12

2012540c3

59 penalties, to incorporate the amendments made by this  
60 act to ss. 538.19 and 538.235, F.S., in references  
61 thereto; correcting a cross-reference; amending s.  
62 812.145, F.S.; redefining the term "utility";  
63 providing that a person who assists in the taking of  
64 certain metals commits a felony of the first degree;  
65 providing that a person who illegally takes copper or  
66 other nonferrous metals from a utility or  
67 communications services provider is liable to the  
68 utility or communications provider for damages equal  
69 to three times the amount of any claim against the  
70 utility or communication services provider resulting  
71 from the illegal taking of copper or other nonferrous  
72 metals; limiting the liability of a public or private  
73 owner of metal property for injuries occurring during  
74 the theft or attempted theft of metal property and for  
75 injuries occurring as the result of the theft or  
76 attempted theft; providing that no additional duty of  
77 care is imposed on the owner of metal property;  
78 providing an effective date.

79  
80 Be It Enacted by the Legislature of the State of Florida:

81  
82 Section 1. Subsection (1) of section 538.03, Florida  
83 Statutes, is reordered and amended, present paragraphs (l)  
84 through (q) of subsection (2) of that section are redesignated  
85 as paragraphs (k) through (p), respectively, and present  
86 paragraphs (k) and (n) of that subsection are amended, to read:  
87 538.03 Definitions; applicability.—

591-02723A-12

2012540c3

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

89 (g)~~(a)~~ "Secondhand dealer" means any person, corporation,  
90 or other business organization or entity that ~~which~~ is not a  
91 secondary metals recycler subject to part II and that ~~which~~ is  
92 engaged in the business of purchasing, consigning, or trading  
93 secondhand goods. A secondary metals recycler may not act as a  
94 secondhand dealer without also conforming to the requirements  
95 for a secondhand dealer pursuant to this part.

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

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

104 (c)~~(d)~~ "Consignment shop" means a shop engaging in the  
105 business of accepting for sale, on consignment, secondhand goods  
106 that ~~which~~, having once been used or transferred from the  
107 manufacturer to the dealer, are then received into the  
108 possession of a third party.

109 (a)~~(e)~~ "Acquire" means to obtain by purchase, consignment,  
110 or trade.

111 (h)~~(f)~~ "Secondhand goods" means personal property  
112 previously owned or used, which is not regulated metals property  
113 regulated under part II and which is purchased, consigned, or  
114 traded as used property. Such secondhand goods do not include  
115 office furniture, pianos, books, clothing, organs, coins, motor  
116 vehicles, costume jewelry, cardio and strength training or

591-02723A-12

2012540c3

117 conditioning equipment designed primarily for indoor use, and  
118 secondhand sports equipment that is not permanently labeled with  
119 a serial number. For purposes of this paragraph, "secondhand  
120 sports equipment" does not include golf clubs.

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

123 (e)~~(h)~~ "Precious metals" means any item containing any  
124 gold, silver, or platinum, or any combination thereof, excluding  
125 any chemical or any automotive, photographic, electrical,  
126 medical, or dental materials or electronic parts.

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

128 (b) "Appropriate law enforcement official" means the  
129 sheriff of the county in which a secondhand dealer is located  
130 or, if the secondhand dealer is located within a municipality,  
131 both the police chief of the municipality and the sheriff;  
132 however, the sheriff or police chief may designate as the  
133 appropriate law enforcement official for that county or  
134 municipality, as applicable, any law enforcement officer working  
135 within that respective county or municipality. This paragraph  
136 does not limit the authority or duties of the sheriff.

137 (2) This chapter does not apply to:

138 ~~(k) Any person purchasing, consigning, or trading~~  
139 ~~secondhand goods at a flea market regardless of whether at a~~  
140 ~~temporary or permanent business location at the flea market.~~

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

591-02723A-12

2012540c3

- 146           1. The secondhand goods must be available on the website  
147 for viewing by the public at no charge;
- 148           2. The records of the sale, purchase, consignment, or trade  
149 must be maintained for at least 2 years;
- 150           3. The records of the sale, purchase, consignment, or  
151 trade, and the description of the secondhand goods as listed on  
152 the website, must contain the serial number of each item, if  
153 any;
- 154           4. The secondhand goods listed on the website must be  
155 searchable based upon the state or zip code;
- 156           5. The business must provide the appropriate law  
157 enforcement official ~~agency~~ with the name or names under which  
158 it conducts business on the website;
- 159           6. The business must allow the appropriate law enforcement  
160 official ~~agency~~ to inspect its business premises at any time  
161 during normal business hours;
- 162           7. Any payment by the business resulting from such a sale,  
163 purchase, consignment, or trade must be made to the person or  
164 entity with whom the business contracted to offer the goods and  
165 must be made by check or via a money services business licensed  
166 under part II of chapter 560; and
- 167           8.a. At least 48 hours after the estimated time of  
168 contracting to offer the secondhand goods, the business must  
169 verify that any item having a serial number is not stolen  
170 property by entering the serial number of the item into the  
171 Department of Law Enforcement's stolen article database located  
172 at the Florida Crime Information Center's public access system  
173 website. The business shall record the date and time of such  
174 verification on the contract covering the goods. If such

591-02723A-12

2012540c3

175 verification reveals that an item is stolen property, the  
176 business shall immediately remove the item from any website on  
177 which it is being offered and notify the appropriate law  
178 enforcement official ~~agency~~; or

179 b. The business must provide the appropriate law  
180 enforcement official ~~agency~~ with an electronic copy of the name,  
181 address, phone number, driver ~~driver's~~ license number, and  
182 issuing state of the person with whom the business contracted to  
183 offer the goods, as well as an accurate description of the  
184 goods, including make, model, serial number, and any other  
185 unique identifying marks, numbers, names, or letters that may be  
186 on an item, in a format agreed upon by the business and the  
187 appropriate law enforcement official ~~agency~~. This information  
188 must be provided to the appropriate law enforcement official  
189 ~~agency~~ within 24 hours after entering into the contract unless  
190 other arrangements are made between the business and the law  
191 enforcement official ~~agency~~.

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

194 538.04 Recordkeeping requirements; penalties.—

195 (1) A secondhand dealer ~~dealers~~ shall complete a secondhand  
196 dealers transaction form at the time of the actual transaction.  
197 A secondhand dealer shall maintain a copy of a completed  
198 transaction form on the registered premises for at least 1 year  
199 after the date of the transaction. However, the secondhand  
200 dealer shall maintain a copy of the transaction form for not  
201 less than 3 years. Unless other arrangements are ~~have been~~  
202 agreed upon by the secondhand dealer and the appropriate law  
203 enforcement official ~~agency~~, the secondhand dealer shall, within

591-02723A-12

2012540c3

204 24 hours after acquiring ~~the acquisition of~~ any secondhand  
205 goods, deliver to such official ~~the police department of the~~  
206 ~~municipality where the goods were acquired or, if the goods were~~  
207 ~~acquired outside of a municipality, to the sheriff's department~~  
208 ~~of the county where the goods were acquired,~~ a record of the  
209 transaction on a form approved by the Department of Law  
210 Enforcement. Such record shall contain:

211 (a) The time, date, and place of the transaction.

212 (b) A complete and accurate description of the goods  
213 acquired, including the following information, if applicable:

214 1. Brand name.

215 2. Model number.

216 3. Manufacturer's serial number.

217 4. Size.

218 5. Color, as apparent to the untrained eye.

219 6. Precious metal type, weight, and content if known.

220 7. Gemstone description, including the number of stones, if  
221 applicable.

222 8. In the case of firearms, the type of action, caliber or  
223 gauge, number of barrels, barrel length, and finish.

224 9. Any other unique identifying marks, numbers, or letters.

225 (c) A description of the person from whom the goods were  
226 acquired, including:

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

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

231 3. The right thumbprint, free of smudges and smears, of the  
232 person from whom the goods were acquired.



591-02723A-12

2012540c3

233 (d) Any other information required by the form approved by  
234 the Department of Law Enforcement.

235 (6) If the appropriate law enforcement official ~~agency~~  
236 supplies a secondhand dealer with appropriate software and the  
237 secondhand dealer has computer capability, the secondhand dealer  
238 must ~~transactions shall be~~ electronically transmit ~~secondhand~~  
239 dealer transactions required by this section to such official  
240 ~~transferred~~. If a secondhand dealer does not have computer  
241 capability, the appropriate law enforcement official ~~agency~~ may  
242 provide the secondhand dealer with a computer and all equipment  
243 necessary to ~~equipment for the purpose of~~ electronically  
244 transmit ~~transferring~~ secondhand dealer transactions. The  
245 appropriate law enforcement official ~~agency~~ shall retain  
246 ownership of the computer, unless otherwise agreed upon, and~~,~~  
247 the secondhand dealer shall maintain the computer in good  
248 working order, except for ordinary wear and ~~tear~~ ~~excepted~~. A ~~If~~  
249 ~~the~~ secondhand dealer who transmits ~~transfers~~ secondhand dealer  
250 transactions electronically, ~~the secondhand dealer~~ is not  
251 required to also deliver ~~to the appropriate law enforcement~~  
252 ~~agency~~ the original or paper copies of the secondhand  
253 transaction forms to the appropriate law enforcement official.  
254 However, such official may, for purposes ~~the purpose~~ of a  
255 criminal investigation, ~~the appropriate law enforcement agency~~  
256 ~~may request that~~ the secondhand dealer to deliver the ~~produce an~~  
257 original ~~of a~~ transaction form that was ~~has been~~ electronically  
258 transmitted ~~transferred~~. The secondhand dealer shall deliver the  
259 ~~this~~ form to the appropriate law enforcement official ~~agency~~  
260 within 24 hours after receipt of the request.

261 (7) If the original transaction form is lost or destroyed

591-02723A-12

2012540c3

262 by the appropriate law enforcement official ~~agency~~, a copy may  
263 be used by the secondhand dealer as evidence in court. When an  
264 electronic image of a customer's identification is accepted for  
265 a transaction, the secondhand dealer must maintain the  
266 electronic image in order to meet the recordkeeping requirements  
267 applicable to the original transaction form. If a criminal  
268 investigation occurs, the secondhand dealer shall, upon request,  
269 provide a clear and legible copy of the image to the appropriate  
270 law enforcement official ~~agency~~.

271 Section 3. Section 538.18, Florida Statutes, is reordered  
272 and amended to read:

273 538.18 Definitions.—As used in this part, the term:

274 (1) "Appropriate law enforcement official" means the  
275 sheriff of the county in which a secondary metals recycler is  
276 located or, if the secondary metals recycler is located within a  
277 municipality, the police chief of the municipality in which the  
278 secondary metals recycler is located; however, the sheriff or  
279 police chief may designate as the appropriate law enforcement  
280 official for the county or municipality, as applicable, any law  
281 enforcement officer working within that respective county or  
282 municipality. This subsection does not limit the authority or  
283 duties of the sheriff.

284 (3) ~~(1)~~ "Ferrous metals" means any metals containing  
285 significant quantities of iron or steel.

286 (4) ~~(2)~~ "Fixed location" means any site occupied by a  
287 secondary metals recycler as owner of the site or as lessee of  
288 the site under a lease or other rental agreement providing for  
289 occupation of the site by the secondary metals recycler for a  
290 total duration of not less than 364 days.

591-02723A-12

2012540c3

291        (5)~~(3)~~ "Money" means a medium of exchange authorized or  
292 adopted by a domestic or foreign government as part of its  
293 currency.

294        (6)~~(4)~~ "Nonferrous metals" means metals not containing  
295 significant quantities of iron or steel, including, without  
296 limitation, copper, brass, aluminum, bronze, lead, zinc, nickel,  
297 and alloys thereof, excluding precious metals subject to  
298 regulation under part I.

299        (7)~~(5)~~ "Personal identification card" means a valid Florida  
300 driver license, a Florida identification card issued by the  
301 Department of Highway Safety and Motor Vehicles, an equivalent  
302 form of identification issued by another state, a passport, or  
303 an employment authorization issued by the United States Bureau  
304 of Citizenship and Immigration Services that contains an  
305 individual's photograph and current address ~~any government-~~  
306 ~~issued photographic identification card.~~

307        (8)~~(6)~~ "Purchase transaction" means a transaction in which  
308 a secondary metals recycler gives consideration for regulated  
309 metals property.

310        (9)~~(7)~~ "Regulated metals property" means any item composed  
311 primarily of any nonferrous metals. The term does, ~~but shall~~ not  
312 include aluminum beverage containers, used beverage containers,  
313 or similar beverage containers; however, ~~the term~~ includes  
314 ~~shall include~~ stainless steel beer kegs and items made of  
315 ferrous metal obtained from any restricted regulated metals  
316 property.

317        (11)~~(8)~~ "Secondary metals recycler" means any person who:  
318        (a) Is engaged, from a fixed location or otherwise, in the  
319 business of purchase transactions, gathering or obtaining

591-02723A-12

2012540c3

320 ferrous or nonferrous metals that have served their original  
321 economic purpose, ~~or is in the business of~~ performing the  
322 manufacturing process by which ferrous metals or nonferrous  
323 metals are converted into raw material products consisting of  
324 prepared grades and having an existing or potential economic  
325 value; or

326 (b) Has facilities for performing the manufacturing process  
327 by which ferrous metals or nonferrous metals are converted into  
328 raw material products consisting of prepared grades and having  
329 an existing or potential economic value, other than by the  
330 exclusive use of hand tools, by methods including, without  
331 limitation, processing, sorting, cutting, classifying, cleaning,  
332 baling, wrapping, shredding, shearing, or changing the physical  
333 form or chemical content thereof.

334

335 A secondary metals recycler may not act as a secondhand dealer  
336 without also conforming to the requirements of a secondhand  
337 dealer pursuant to this part.

338 (2)(9) "Department" means the Department of Revenue.

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

342 (12) "Utility" means a public utility or electric utility  
343 as defined in s. 366.02 or a person, firm, cooperative,  
344 association, or political subdivision, whether private,  
345 municipal, county, or cooperative, which is engaged in the sale,  
346 generation, provision, or delivery of heat, water, oil, sewer  
347 service, or telephone, telegraph, radio, telecommunications, or  
348 communications service.

591-02723A-12

2012540c3

349 Section 4. Paragraph (u) of subsection (1) of section  
350 319.30, Florida Statutes, is amended to read:

351 319.30 Definitions; dismantling, destruction, change of  
352 identity of motor vehicle or mobile home; salvage.—

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

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

356 Section 5. Section 538.19, Florida Statutes, is amended to  
357 read:

358 538.19 Records required; limitation of liability.—

359 (1) A secondary metals recycler shall maintain a legible  
360 paper record of all purchase transactions to which such  
361 secondary metals recycler is a party. A secondary metals  
362 recycler shall also maintain a legible electronic record, in the  
363 English language, of all such purchase transactions. The  
364 appropriate law enforcement official may provide data  
365 specifications regarding the electronic record format, but such  
366 format must be approved by the Department of Law Enforcement. An  
367 electronic record of a purchase transaction shall be  
368 electronically transmitted to the appropriate law enforcement  
369 official no later than 10 a.m. of the business day following the  
370 date of the purchase transaction. A secondary metals recycler  
371 who transmits such records electronically is not required to  
372 also deliver the original or paper copies of the transaction  
373 forms to the appropriate law enforcement official. However, such  
374 official may, for purposes of a criminal investigation, request  
375 the secondary metals recycler to deliver the original  
376 transaction form that was electronically transmitted. The  
377 secondary metals recycler shall make available the form to the

591-02723A-12

2012540c3

378 appropriate law enforcement official within 24 hours after  
379 receipt of the request.

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

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

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

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

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

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

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

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

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

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

406 2. Height, weight, date of birth, race, gender, hair color,

591-02723A-12

2012540c3

407 eye color, and any other identifying marks.

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

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

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

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

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

419 ~~(3) Any secondary metals recycler that maintains an~~  
420 ~~electronic database containing the information required in~~  
421 ~~paragraph (2) (h), along with an oath of ownership with a~~  
422 ~~signature of the seller of the secondary metals being purchased~~  
423 ~~by the secondary metals recycler and a right thumbprint that has~~  
424 ~~no smudges and smears on the oath of ownership for each purchase~~  
425 ~~transaction, shall be exempt from the records requirement of~~  
426 ~~paragraph (2) (h).~~ A secondary metals recycler complies with the  
427 requirements of this section if it maintains an electronic  
428 database containing the information required by subsection (2)  
429 ~~paragraph (2) (h)~~ as long as the electronic information required  
430 by subsection (2) paragraph (2) (h), along with an electronic  
431 oath of ownership with an electronic signature of the seller of  
432 the secondary metals being purchased by the secondary metals  
433 recyclers and an electronic image of the seller's right  
434 thumbprint that has no smudges and smears, can be downloaded  
435 onto a paper form in the image of the form approved by the

591-02723A-12

2012540c3

436 Department of Law Enforcement as provided in subsection (2).

437 (4) A secondary metals recycler shall maintain or cause to  
438 be maintained the information required by this section for not  
439 less than 3 ~~5~~ years from the date of the purchase transaction.

440 (5) ~~If a purchase transaction involves the transfer of~~  
441 ~~regulated metals property from~~ A secondary metals recycler  
442 registered with the department who purchases a motor vehicle  
443 from a licensed salvage motor vehicle dealer as defined in s.  
444 320.27 or to another secondary metals recycler registered with  
445 the department and uses a mechanical crusher to convert the  
446 vehicle to scrap metal must obtain a signed statement from the  
447 seller stating that the seller has surrendered the vehicle's  
448 certificate of title to the Department of Highway Safety and  
449 Motor Vehicles as provided in s. 319.30 or has otherwise  
450 complied with the titling requirements provided by law for  
451 conversion of the vehicle to scrap metal. A, the secondary  
452 metals recycler is not liable for the seller's failure to comply  
453 with the titling requirements provided by law for conversion of  
454 a motor vehicle to scrap metal if the secondary metals recycler  
455 obtains and maintains the seller's signed statement receiving  
456 ~~the regulated metals property shall record the name and address~~  
457 ~~of the secondary metals recycler from which it received the~~  
458 ~~regulated metals property in lieu of the requirements of~~  
459 ~~paragraph (2)(h).~~

460 Section 6. Section 538.235, Florida Statutes, is amended to  
461 read:

462 538.235 Method of payment.—

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



591-02723A-12

2012540c3

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

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

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

472 (3) Payment for the purchase of restricted regulated metals  
473 property shall be made by check issued to the seller of the  
474 metal and payable to the seller or by electronic payment to the  
475 seller's bank account or the seller's employer's bank account.

476 (a) Each check shall be mailed by the secondary metals  
477 recycler directly to the street address of the seller which is  
478 on file with the secondary metals recycler, unless otherwise  
479 provided in this part. A check may not be mailed to a post  
480 office box. Electronic payments shall be transmitted to an  
481 account for which the seller is listed as an account holder or  
482 an employee or agent of the seller.

483 (b) Each check or electronic payment shall be mailed or  
484 transmitted by the secondary metals recycler to the seller  
485 within 3 days after the purchase transaction, unless otherwise  
486 provided in this section.

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

490 1. An organization, corporation, or association registered  
491 with the state as a charitable, philanthropic, religious,  
492 fraternal, civic, patriotic, social, or school-sponsored  
493 organization or association, or is a nonprofit corporation or

591-02723A-12

2012540c3

494 association;495 2. A law enforcement officer acting in an official  
496 capacity;497 3. A trustee in bankruptcy or an executor, administrator,  
498 or receiver who has presented proof of such status to the  
499 secondary metals recycler;500 4. A public official acting under judicial process or  
501 authority who has presented proof of such status to the  
502 secondary metals recycler;503 5. A sheriff acting under the authority of a court's writ  
504 of execution, or by virtue of any process issued by a court, if  
505 proof thereof has been presented to the secondary metals  
506 recycler; or507 6. A manufacturing, industrial, or other commercial vendor  
508 that generates regulated materials in the ordinary course of  
509 business.510 Section 7. Subsection (1) of section 538.25, Florida  
511 Statutes, is amended to read:

512 538.25 Registration.—

513 (1) A ~~Ne~~ person may not shall engage in business as a  
514 secondary metals recycler at any location without registering  
515 with the department. The department shall accept applications  
516 only from a fixed business address. The department may not  
517 accept an application that provides an address of a hotel or  
518 motel room, a vehicle, or a post office box.519 (a) A fee equal to the federal and state costs for  
520 processing required fingerprints must be submitted to the  
521 department with each application for registration. One  
522 application is required for each secondary metals recycler. If a

591-02723A-12

2012540c3

523 secondary metals recycler is the owner of more than one  
524 secondary metals recycling location, the application must list  
525 each location, and the department shall issue a duplicate  
526 registration for each location. For purposes of subsections (3),  
527 (4), and (5), these duplicate registrations shall be deemed  
528 individual registrations. A secondary metals recycler shall pay  
529 a fee of \$6 per location at the time of registration and an  
530 annual renewal fee of \$6 per location on October 1 of each year.  
531 All fees collected, less costs of administration, shall be  
532 transferred into the Operating Trust Fund.

533 (b) The department shall forward the full set of  
534 fingerprints to the Department of Law Enforcement for state and  
535 federal processing, provided the federal service is available,  
536 to be processed for any criminal justice information as defined  
537 in s. 943.045. The cost of processing such fingerprints shall be  
538 payable to the Department of Law Enforcement by the department.  
539 The department may issue a temporary registration to each  
540 location pending completion of the background check by state and  
541 federal law enforcement agencies, but shall revoke such  
542 temporary registration if the completed background check reveals  
543 a prohibited criminal background. The Department of Law  
544 Enforcement shall report its findings to the Department of  
545 Revenue within 30 days after the date fingerprint cards are  
546 submitted for criminal justice information.

547 (c) An applicant for a secondary metals recycler  
548 registration must be a natural person who has reached the age of  
549 18 years or a corporation organized or qualified to do business  
550 in the state.

551 1. If the applicant is a natural person, the registration

591-02723A-12

2012540c3

552 must include a complete set of her or his fingerprints,  
553 certified by an authorized law enforcement officer, and a recent  
554 fullface photographic identification card of herself or himself.

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

557 3. If the applicant is a corporation, the registration must  
558 include the name and address of such corporation's registered  
559 agent for service of process in the state and a certified copy  
560 of statement from the Secretary of State that the corporation is  
561 duly organized in the state or, if the corporation is organized  
562 in a state other than Florida, a certified copy of the statement  
563 that the corporation is duly qualified to do business in this  
564 state.

565 Section 8. Section 538.26, Florida Statutes, is amended to  
566 read:

567 538.26 Certain acts and practices prohibited.—It is  
568 unlawful for a secondary metals recycler to do or allow any of  
569 the following acts:

570 (1) Purchase regulated metals property, restricted  
571 regulated metals property, or ferrous metals on weekdays before  
572 7 a.m. or after 6 p.m., on Saturdays before 7 a.m. or after 1  
573 p.m., or on Sundays. ~~between the hours of 9 p.m. and 6 a.m.~~

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

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

578 (2)(4) Purchase regulated metals property, restricted  
579 regulated metals property, or ferrous metals from any seller who  
580 presents such property for sale at the registered location of

591-02723A-12

2012540c3

581 the secondary metals recycler when such property was not  
582 transported in a motor vehicle.

583 (3)-(5) Purchase regulated metals property, restricted  
584 regulated metals property, or ferrous metals in return for money  
585 from a trailer, a vehicle, or any location other than a fixed  
586 location or from any person who is required to prove ownership  
587 pursuant to subsection (4). However, regulated metals may be  
588 purchased from a nonfixed location, or from such person, with  
589 any negotiable or nonnegotiable instrument, including a check or  
590 draft or any other type of instrument purchased with money and  
591 sold for the purpose of making payments or transfers to others.

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

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

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

596 (c) Is under the influence of drugs or alcohol, if such  
597 condition is visible or apparent.

598 (5) (a) Purchase any restricted regulated metals property  
599 listed in paragraph (b), unless the secondary metals recycler  
600 obtains reasonable proof that the seller:

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

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

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

591-02723A-12

2012540c3

610 property is subject to the restrictions provided in paragraph

611 (a):

612 1. A manhole cover.

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

616 3. A guard rail.

617 4. A street sign, traffic sign, or traffic signal and its  
618 fixtures and hardware.

619 5. Communication, transmission, distribution, and service  
620 wire from a utility, including copper or aluminum bus bars,  
621 connectors, grounding plates, or grounding wire.

622 6. A funeral marker or funeral vase.

623 7. A historical marker.

624 8. Railroad equipment, including, but not limited to, a tie  
625 plate, signal house, control box, switch plate, E clip, or rail  
626 tie junction.

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

630 10. A copper, aluminum, or aluminum-copper condensing or  
631 evaporator coil, including its tubing or rods, from an air-  
632 conditioning or heating unit, excluding coils from window air-  
633 conditioning or heating units and motor vehicle air-conditioning  
634 or heating units.

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

637 12. A stainless steel beer keg.

638 13. A catalytic converter or any nonferrous part of a

591-02723A-12

2012540c3

639 catalytic converter unless purchased as part of a motor vehicle.

640 14. Metallic wire that has been burned in whole or in part  
641 to remove insulation.

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

646 16. A brass or bronze commercial potable water backflow  
647 preventer valve that is commonly used to prevent backflow of  
648 potable water from commercial structures into municipal domestic  
649 water service systems.

650 17. A shopping cart.

651 18. A brass water meter.

652 19. A storm grate.

653 20. A brass sprinkler head used in commercial agriculture.

654 Section 9. Section 538.28, Florida Statutes, is created to  
655 read:

656 538.28 Local government regulation; preemption.-

657 (1) The regulation of purchase transactions involving  
658 regulated metals property is preempted to the state. Except as  
659 provided in subsection (2), an ordinance or regulation adopted  
660 by a county or municipality relating to the purchase or sale of  
661 regulated metals property or the registration or licensure of  
662 secondary metals recyclers is void.

663 (2) This part does not preempt an ordinance or regulation  
664 originally enacted by a county or municipality before March 1,  
665 2012. Such an ordinance or regulation may subsequently be  
666 amended to meet or exceed the requirements of this part.

667 (3) A county or municipal ordinance may not require

591-02723A-12

2012540c3

668 verification of compliance with 40 C.F.R. part 82.

669 Section 10. For the purpose of incorporating the amendments  
670 made by this act to sections 538.19 and 538.235, Florida  
671 Statutes, in references thereto, paragraph (a) of subsection (1)  
672 of section 538.23, Florida Statutes, is reenacted and amended to  
673 read:

674 538.23 Violations and penalties.—

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

677 1. Violates s. 538.20 or s. 538.21;

678 2. Engages in a pattern of failing to keep records required  
679 by s. 538.19;

680 3. Violates s. 538.26(2) ~~538.26(4)~~; or

681 4. Violates s. 538.235,

682

683 commits a misdemeanor of the first degree, punishable as  
684 provided in s. 775.082.

685 Section 11. Paragraph (d) of subsection (1) and subsection  
686 (2) of section 812.145, Florida Statutes, are amended, and  
687 subsection (3) is added to that section, to read:

688 812.145 Theft of copper or other nonferrous metals.—

689 (1) As used in this section, the terms:

690 (d) "Utility" means a public utility or electric utility as  
691 defined in s. 366.02, or a ~~includes any~~ person, firm,

692 cooperative, corporation, association, or political subdivision,

693 whether private, municipal, county, or cooperative, which is

694 engaged in the sale, generation, provision, or delivery of heat,

695 water, oil, sewer service, telephone or telegraph service,

696 radio, telecommunications, communications, gas, or electricity



591-02723A-12

2012540c3

697 services.

698 (2) A person who knowingly and intentionally takes or  
699 assists with the taking of copper or other nonferrous metals  
700 from a utility or communications services provider, thereby  
701 causing damage to the facilities of a utility or communications  
702 services provider, interrupting or interfering with utility  
703 service or communications services, or interfering with the  
704 ability of a utility or communications services provider to  
705 provide service, commits a felony of the first degree,  
706 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

707 (3) A person who is found in a civil action to have  
708 illegally taken copper or other nonferrous metals from a utility  
709 or communications services provider based upon a conviction for  
710 a violation of subsection (2) is liable to the utility or  
711 communications services provider for damages in an amount equal  
712 to three times the actual damages sustained by the utility or  
713 communications services provider due to any personal injury,  
714 wrongful death, or property damage caused by the illegal taking  
715 of the nonferrous metals or an amount equal to three times any  
716 claim made against the utility or communications services  
717 provider for any personal injury, wrongful death, or property  
718 damage caused by the malfunction of the facilities of the  
719 utility or communications services provider resulting from the  
720 violation of subsection (2), whichever is greater.

721 Section 12. (1) A public or private owner of metal property  
722 is not civilly liable to a person who is injured during the  
723 theft or attempted theft of metal property.

724 (2) A public or private owner of metal property is not  
725 civilly liable to a person for injuries caused by a dangerous

591-02723A-12

2012540c3

726 condition created as a result of the theft or attempted theft of  
727 the owner's metal property when the owner did not know, and  
728 could not have reasonably known, of the dangerous condition.

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

732 Section 13. This act shall take effect July 1, 2012.