

By the Committee on Commerce and Tourism; and Senators Smith, Montford, and Evers

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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 and auction
9 businesses; conforming terminology; amending s.
10 538.04, F.S., relating to recordkeeping requirements;
11 conforming terminology and clarifying provisions;
12 amending s. 538.18, F.S.; revising and providing
13 definitions; amending s. 319.30, F.S.; conforming a
14 cross-reference; amending s. 538.19, F.S.; revising
15 requirements for the types of information that
16 secondary metals recyclers must obtain and maintain
17 regarding purchase transactions, including
18 requirements for the maintenance and transmission of
19 electronic records of such transactions; revising the
20 period required for secondary metals recyclers to
21 maintain certain information regarding purchase
22 transactions involving regulated metals property;
23 limiting the liability of secondary metals recyclers
24 for the conversion of motor vehicles to scrap metal
25 under certain circumstances; amending s. 538.235,
26 F.S.; revising requirements for payments made by
27 secondary metals recyclers to sellers of regulated
28 metals property to prohibit certain cash transactions;
29 providing penalties; providing methods of payment for

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30 restricted regulated metals property; requiring that
31 purchases of certain property be made by check or by
32 electronic payment; providing procedures; amending s.
33 538.26, F.S.; prohibiting secondary metals recyclers
34 from purchasing regulated metals property, restricted
35 regulated metals property, or ferrous metals during
36 specified times or from certain locations; prohibiting
37 the purchase of specified restricted regulated metals
38 property without obtaining certain proof of the
39 seller's ownership and authorization to sell the
40 property; providing penalties; creating s. 538.28,
41 F.S.; preempting to the state the regulation of
42 secondary metals recyclers and purchase transactions
43 involving regulated metals property; exempting county
44 and municipal ordinances and regulations enacted
45 before March 1, 2012, from preemption; reenacting and
46 amending s. 538.23(1)(a), F.S., relating to violations
47 and penalties, to incorporate the amendments made by
48 this act to ss. 538.19 and 538.235, F.S., in
49 references thereto; correcting a cross-reference;
50 amending s. 812.145, F.S.; providing that a person who
51 assists in the taking of certain metals commits a
52 felony of the first degree; limiting the liability of
53 a public or private owner of metal property for
54 injuries occurring during the theft or attempted theft
55 of metal property and for injuries occurring as the
56 result of the theft or attempted theft; providing that
57 no additional duty of care is imposed on the owner of
58 metal property; providing an effective date.

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

Section 1. Subsection (1) of section 538.03, Florida Statutes, is reordered and amended, paragraphs (m) through (q) of subsection (2) of that section are redesignated as paragraphs (k) through (o), respectively, and present paragraphs (k), (l), and (n) of that subsection are amended, to read:

538.03 Definitions; applicability.—

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

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

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

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

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

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88 possession of a third party.

89 ~~(a)-(e)~~ "Acquire" means to obtain by purchase, consignment,
90 or trade.

91 ~~(h)-(f)~~ "Secondhand goods" means personal property
92 previously owned or used, which is not regulated metals property
93 regulated under part II and which is purchased, consigned, or
94 traded as used property. Such secondhand goods do not include
95 office furniture, pianos, books, clothing, organs, coins, motor
96 vehicles, costume jewelry, cardio and strength training or
97 conditioning equipment designed primarily for indoor use, and
98 secondhand sports equipment that is not permanently labeled with
99 a serial number. For purposes of this paragraph, "secondhand
100 sports equipment" does not include golf clubs.

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

103 ~~(e)-(h)~~ "Precious metals" means any item containing any
104 gold, silver, or platinum, or any combination thereof, excluding
105 any chemical or any automotive, photographic, electrical,
106 medical, or dental materials or electronic parts.

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

108 (b) "Appropriate law enforcement official" means the
109 sheriff of the county in which a secondhand dealer is located
110 or, if the secondhand dealer is located within a municipality,
111 both the police chief of the municipality and the sheriff;
112 however, the sheriff or police chief may designate as the
113 appropriate law enforcement official for that county or
114 municipality, as applicable, any law enforcement officer working
115 within that respective county or municipality. This paragraph
116 does not limit the authority or duties of the sheriff.

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117 (2) This chapter does not apply to:

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

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

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

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

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

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

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

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

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

143 7. Any payment by the business resulting from such a sale,
144 purchase, consignment, or trade must be made to the person or
145 entity with whom the business contracted to offer the goods and

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146 must be made by check or via a money services business licensed
147 under part II of chapter 560; and

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

160 b. The business must provide the appropriate law
161 enforcement official ~~agency~~ with an electronic copy of the name,
162 address, phone number, driver ~~driver's~~ license number, and
163 issuing state of the person with whom the business contracted to
164 offer the goods, as well as an accurate description of the
165 goods, including make, model, serial number, and any other
166 unique identifying marks, numbers, names, or letters that may be
167 on an item, in a format agreed upon by the business and the
168 appropriate law enforcement official ~~agency~~. This information
169 must be provided to the appropriate law enforcement official
170 ~~agency~~ within 24 hours after entering into the contract unless
171 other arrangements are made between the business and the law
172 enforcement official ~~agency~~.

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

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175 538.04 Recordkeeping requirements; penalties.—

176 (1) A secondhand dealer ~~dealers~~ shall complete a secondhand
177 dealers transaction form at the time of the actual transaction.

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

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

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

195 1. Brand name.

196 2. Model number.

197 3. Manufacturer's serial number.

198 4. Size.

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

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

201 7. Gemstone description, including the number of stones, if
202 applicable.

203 8. In the case of firearms, the type of action, caliber or

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204 gauge, number of barrels, barrel length, and finish.

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

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

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

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

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

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

216 (6) If the appropriate law enforcement official agency
217 supplies a secondhand dealer with appropriate software and the
218 secondhand dealer has computer capability, the secondhand dealer
219 must ~~transactions shall be~~ electronically transmit secondhand
220 dealer transactions required by this section to such official
221 ~~transferred~~. If a secondhand dealer does not have computer
222 capability, the appropriate law enforcement official agency may
223 provide the secondhand dealer with a computer and all equipment
224 necessary to ~~equipment for the purpose of~~ electronically
225 transmit ~~transferring~~ secondhand dealer transactions. The
226 appropriate law enforcement official agency shall retain
227 ownership of the computer, unless otherwise agreed upon, and
228 the secondhand dealer shall maintain the computer in good
229 working order, except for ordinary wear and ~~tear~~ excepted. A ~~If~~
230 ~~the~~ secondhand dealer who transmits ~~transfers~~ secondhand dealer
231 transactions electronically, ~~the secondhand dealer~~ is not
232 required to also deliver ~~to the appropriate law enforcement~~

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233 ~~agency~~ the original or paper copies of the secondhand
234 transaction forms to the appropriate law enforcement official.
235 However, such official may, for purposes ~~the purpose~~ of a
236 criminal investigation, ~~the appropriate law enforcement agency~~
237 ~~may request that~~ the secondhand dealer to deliver the ~~produce an~~
238 original ~~of a~~ transaction form that was ~~has been~~ electronically
239 transmitted ~~transferred~~. The secondhand dealer shall deliver the
240 ~~this~~ form to the appropriate law enforcement official ~~agency~~
241 within 24 hours after receipt of the request.

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

252 Section 3. Section 538.18, Florida Statutes, is reordered
253 and amended to read:

254 538.18 Definitions.—As used in this part, the term:

255 (1) "Appropriate law enforcement official" means the
256 sheriff of the county in which a secondary metals recycler is
257 located or, if the secondary metals recycler is located within a
258 municipality, the police chief of the municipality in which the
259 secondary metals recycler is located; however, the sheriff or
260 police chief may designate as the appropriate law enforcement
261 official for the county or municipality, as applicable, any law

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262 enforcement officer working within that respective county or
263 municipality. This subsection does not limit the authority or
264 duties of the sheriff.

265 (3)~~(1)~~ "Ferrous metals" means any metals containing
266 significant quantities of iron or steel.

267 (4)~~(2)~~ "Fixed location" means any site occupied by a
268 secondary metals recycler as owner of the site or as lessee of
269 the site under a lease or other rental agreement providing for
270 occupation of the site by the secondary metals recycler for a
271 total duration of not less than 364 days.

272 (5)~~(3)~~ "Money" means a medium of exchange authorized or
273 adopted by a domestic or foreign government as part of its
274 currency.

275 (6)~~(4)~~ "Nonferrous metals" means metals not containing
276 significant quantities of iron or steel, including, without
277 limitation, copper, brass, aluminum, bronze, lead, zinc, nickel,
278 and alloys thereof, excluding precious metals subject to
279 regulation under part I.

280 (7)~~(5)~~ "Personal identification card" means a valid Florida
281 driver license, a Florida identification card issued by the
282 Department of Highway Safety and Motor Vehicles, an equivalent
283 form of identification issued by another state, a passport, or
284 an employment authorization issued by the United States Bureau
285 of Citizenship and Immigration Services that contains an
286 individual's photograph and current address ~~any government-~~
287 ~~issued photographic identification card.~~

288 (8)~~(6)~~ "Purchase transaction" means a transaction in which
289 a secondary metals recycler gives consideration for regulated
290 metals property.

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291 (9)~~(7)~~ "Regulated metals property" means any item composed
292 primarily of any nonferrous metals. The term does,~~but shall~~ not
293 include aluminum beverage containers, used beverage containers,
294 or similar beverage containers; however,~~the term includes~~
295 ~~shall include~~ stainless steel beer kegs and items made of
296 ferrous metal obtained from any restricted regulated metals
297 property.

298 (11)~~(8)~~ "Secondary metals recycler" means any person who:

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

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

315

316 A secondary metals recycler may not act as a secondhand dealer
317 without also conforming to the requirements of a secondhand
318 dealer pursuant to this part.

319 (2)~~(9)~~ "Department" means the Department of Revenue.

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320 (10) "Restricted regulated metals property" means any
321 regulated metals property listed in s. 538.26(4)(b) the sale of
322 which is restricted as provided in s. 538.26(4)(a).

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

330 Section 4. Paragraph (u) of subsection (1) of section
331 319.30, Florida Statutes, is amended to read:

332 319.30 Definitions; dismantling, destruction, change of
333 identity of motor vehicle or mobile home; salvage.—

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

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

337 Section 5. Section 538.19, Florida Statutes, is amended to
338 read:

339 538.19 Records required; limitation of liability.—

340 (1) A secondary metals recycler shall maintain a legible
341 paper record of all purchase transactions to which such
342 secondary metals recycler is a party. A secondary metals
343 recycler shall also maintain a legible electronic record, in the
344 English language, of all such purchase transactions. The
345 appropriate law enforcement official may provide data
346 specifications regarding the electronic record format, but such
347 format must be approved by the Department of Law Enforcement. An
348 electronic record of a purchase transaction shall be

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349 electronically transmitted to the appropriate law enforcement
350 official no later than 10 a.m. of the business day following the
351 date of the purchase transaction. A secondary metals recycler
352 who transmits such records electronically is not required to
353 also deliver the original or paper copies of the transaction
354 forms to the appropriate law enforcement official. However, such
355 official may, for purposes of a criminal investigation, request
356 the secondary metals recycler to deliver the original
357 transaction form that was electronically transmitted. The
358 secondary metals recycler shall deliver the form to the
359 appropriate law enforcement official within 24 hours after
360 receipt of the request.

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

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

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

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

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

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

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

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378 manufacturer that the seller is the owner of the stainless steel
379 beer keg or is an employee or agent of the manufacturer.

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

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

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

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

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

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

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

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

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

400 ~~(3) Any secondary metals recycler that maintains an~~
401 ~~electronic database containing the information required in~~
402 ~~paragraph (2) (h), along with an oath of ownership with a~~
403 ~~signature of the seller of the secondary metals being purchased~~
404 ~~by the secondary metals recycler and a right thumbprint that has~~
405 ~~no smudges and smears on the oath of ownership for each purchase~~
406 ~~transaction, shall be exempt from the records requirement of~~

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407 ~~paragraph (2)(h)~~. A secondary metals recycler complies with the
408 requirements of this section if it maintains an electronic
409 database containing the information required by subsection (2)
410 ~~paragraph (2)(h)~~ as long as the electronic information required
411 by subsection (2) ~~paragraph (2)(h)~~, along with an electronic
412 oath of ownership with an electronic signature of the seller of
413 the secondary metals being purchased by the secondary metals
414 recyclers and an electronic image of the seller's right
415 thumbprint that has no smudges and smears, can be downloaded
416 onto a paper form in the image of the form approved by the
417 Department of Law Enforcement as provided in subsection (2).

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

421 (5) ~~If a purchase transaction involves the transfer of~~
422 ~~regulated metals property from~~ A secondary metals recycler
423 registered with the department who purchases a motor vehicle
424 from a licensed salvage motor vehicle dealer as defined in s.
425 320.27 or to another secondary metals recycler registered with
426 the department and uses a mechanical crusher to convert the
427 vehicle to scrap metal must obtain a signed statement from the
428 seller stating that the seller has surrendered the vehicle's
429 certificate of title to the Department of Highway Safety and
430 Motor Vehicles as provided in s. 319.30 or has otherwise
431 complied with the titling requirements provided by law for
432 conversion of the vehicle to scrap metal. A, the secondary
433 metals recycler is not liable for the seller's failure to comply
434 with the titling requirements provided by law for conversion of
435 a motor vehicle to scrap metal if the secondary metals recycler

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436 obtains and maintains the seller's signed statement ~~receiving~~
437 ~~the regulated metals property shall record the name and address~~
438 ~~of the secondary metals recycler from which it received the~~
439 ~~regulated metals property in lieu of the requirements of~~
440 ~~paragraph (2) (h).~~

441 Section 6. Section 538.235, Florida Statutes, is amended to
442 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
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 metals
454 property shall be made by check issued to the seller of the
455 metal and payable to the seller or by electronic payment to the
456 seller's bank account or the seller's employer's bank account.

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

464 (b) Each check or electronic payment shall be mailed or

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465 transmitted by the secondary metals recycler to the seller
466 within 3 days after the purchase transaction, unless otherwise
467 provided in this section.

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

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

476 2. A law enforcement officer acting in an official
477 capacity;

478 3. A trustee in bankruptcy or an executor, administrator,
479 or receiver who has presented proof of such status to the
480 secondary metals recycler;

481 4. A public official acting under judicial process or
482 authority who has presented proof of such status to the
483 secondary metals recycler;

484 5. A sheriff acting under the authority of a court's writ
485 of execution, or by virtue of any process issued by a court, if
486 proof thereof has been presented to the secondary metals
487 recycler; or

488 6. A manufacturing, industrial, or other commercial vendor
489 that generates regulated materials in the ordinary course of
490 business.

491 Section 7. Section 538.26, Florida Statutes, is amended to
492 read:

493 538.26 Certain acts and practices prohibited.—It is

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494 unlawful for a secondary metals recycler to do or allow any of
495 the following acts:

496 (1) Purchase regulated metals property, restricted
497 regulated metals property, or ferrous metals on weekdays before
498 7 a.m. or after 6 p.m., on Saturdays before 7 a.m. or after 1
499 p.m., or on Sundays. ~~between the hours of 9 p.m. and 6 a.m.~~

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

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

504 (2)~~(4)~~ Purchase regulated metals property, restricted
505 regulated metals property, or ferrous metals from any seller who
506 presents such property for sale at the registered location of
507 the secondary metals recycler when such property was not
508 transported in a motor vehicle.

509 (3)~~(5)~~ Purchase regulated metals property, restricted
510 regulated metals property, or ferrous metals in return for money
511 from a trailer, a vehicle, or any location other than a fixed
512 location or from any person who is required to prove ownership
513 pursuant to subsection (4). However, regulated metals may be
514 purchased from a nonfixed location, or from such person, with
515 any negotiable or nonnegotiable instrument, including a check or
516 draft or any other type of instrument purchased with money and
517 sold for the purpose of making payments or transfers to others.

518 (4) (a) Purchase any restricted regulated metals property
519 listed in paragraph (b), unless the secondary metals recycler
520 obtains reasonable proof that the seller:

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

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

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

531 (a):

532 1. A manhole cover.

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

536 3. A guard rail.

537 4. A street sign, traffic sign, or traffic signal and its
538 fixtures and hardware.

539 5. Communication, transmission, distribution, and service
540 wire from a utility, including copper or aluminum bus bars,
541 connectors, grounding plates, or grounding wire.

542 6. A funeral marker or funeral vase.

543 7. A historical marker.

544 8. Railroad equipment, including, but not limited to, a tie
545 plate, signal house, control box, switch plate, E clip, or rail
546 tie junction.

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

550 10. A copper, aluminum, or aluminum-copper condensing or
551 evaporator coil, including its tubing or rods, from an air-

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552 conditioning or heating unit, excluding coils from window air-
553 conditioning or heating units and motor vehicle air-conditioning
554 or heating units.

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

557 12. A stainless steel beer keg.

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

560 14. Metallic wire that has been burned in whole or in part
561 to remove insulation.

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

566 16. A brass or bronze commercial potable water backflow
567 preventer valve that is commonly used to prevent backflow of
568 potable water from commercial structures into municipal domestic
569 water service systems.

570 17. A shopping cart.

571 18. A brass water meter.

572 19. A storm grate.

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

574 Section 8. Section 538.28, Florida Statutes, is created to
575 read:

576 538.28 Local government regulation; preemption.-

577 (1) The regulation of purchase transactions involving
578 regulated metals property is preempted to the state. Except as
579 provided in subsection (2), an ordinance or regulation adopted
580 by a county or municipality relating to the purchase or sale of

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581 regulated metals property or the registration or licensure of
582 secondary metals recyclers is void.

583 (2) This part does not preempt an ordinance or regulation
584 originally enacted by a county or municipality before March 1,
585 2012. Such an ordinance or regulation may subsequently be
586 amended to meet or exceed the requirements of this part.

587 Section 9. For the purpose of incorporating the amendments
588 made by this act to sections 538.19 and 538.235, Florida
589 Statutes, in references thereto, paragraph (a) of subsection (1)
590 of section 538.23, Florida Statutes, is reenacted and amended to
591 read:

592 538.23 Violations and penalties.—

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

- 595 1. Violates s. 538.20 or s. 538.21;
596 2. Engages in a pattern of failing to keep records required
597 by s. 538.19;
598 3. Violates s. 538.26(2) ~~538.26(4)~~; or
599 4. Violates s. 538.235,

600

601 commits a misdemeanor of the first degree, punishable as
602 provided in s. 775.082.

603 Section 10. Subsection (2) of s. 812.145, Florida Statutes,
604 is amended to read:

605 812.145 Theft of copper or other nonferrous metals.—

606 (2) A person who knowingly and intentionally takes or
607 assists with the taking of copper or other nonferrous metals
608 from a utility or communications services provider, thereby
609 causing damage to the facilities of a utility or communications

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610 services provider, interrupting or interfering with utility
611 service or communications services, or interfering with the
612 ability of a utility or communications services provider to
613 provide service, commits a felony of the first degree,
614 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

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

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