

1 A bill to be entitled
2 An act relating to transactions by secondhand dealers
3 and secondary metals recyclers; amending s. 538.03,
4 F.S.; defining the term "appropriate law enforcement
5 official"; deleting exemptions from regulation as a
6 secondhand dealer which relate to flea market
7 transactions and auction businesses; conforming
8 terminology; amending s. 538.04, F.S., relating to
9 recordkeeping requirements; conforming terminology and
10 clarifying provisions; amending s. 538.18, F.S.;
11 revising and providing definitions; amending s.
12 319.30, F.S.; conforming a cross-reference; providing
13 requirements for salvaged motor vehicles and mobile
14 homes; amending s. 538.19, F.S.; revising requirements
15 for the types of information that secondary metals
16 recyclers must obtain and maintain regarding purchase
17 transactions, including requirements for the
18 maintenance and transmission of electronic records of
19 such 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;
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 an
33 | application for registration as a secondary metals
34 | recycler to contain the address of a fixed business
35 | location; amending s. 538.26, F.S.; prohibiting
36 | secondary metals recyclers from purchasing regulated
37 | metals property, restricted regulated metals property,
38 | or ferrous metals during specified times, from certain
39 | locations, or from certain sellers; prohibiting the
40 | purchase of specified restricted regulated metals
41 | property without obtaining certain proof of the
42 | seller's ownership and authorization to sell the
43 | property; providing penalties; creating s. 538.28,
44 | F.S.; preempting to the state the regulation of
45 | secondary metals recyclers and purchase transactions
46 | involving regulated metals property; providing
47 | exceptions; amending s. 538.23, F.S.; increasing the
48 | criminal penalties for specified violations relating
49 | to secondary metals recycling; providing increased
50 | criminal penalties for third and subsequent criminal
51 | violations; amending s. 812.145, F.S., relating to
52 | theft of copper or other nonferrous metals from a
53 | utility or communications services provider; revising
54 | and providing definitions; providing civil liability
55 | and penalties; prohibiting removing copper or other
56 | nonferrous metals from an electrical substation site

57 | without authorization of the utility; providing
 58 | criminal penalties; providing an effective date.

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

61 |
 62 | Section 1. Subsection (1) of section 538.03, Florida
 63 | Statutes, is amended, paragraphs (m) through (q) of subsection
 64 | (2) of that section are redesignated as paragraphs (l) through
 65 | (p), respectively, and present paragraphs (k), (l), and (n) of
 66 | that subsection are amended, to read:

67 | 538.03 Definitions; applicability.—

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

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

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

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

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

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

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

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

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

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

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

115 (2) This chapter does not apply to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

176 538.04 Recordkeeping requirements; penalties.—

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

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

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

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

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

253 law enforcement official ~~agency~~.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

328 Section 4. Paragraph (u) of subsection (1) and paragraph
 329 (b) of subsection (3) of section 319.30, Florida Statutes, are
 330 amended to read:

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

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

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

336 (3)

337 (b) The owner, including persons who are self-insured, of
338 any motor vehicle or mobile home which is considered to be
339 salvage shall, within 72 hours after the motor vehicle or mobile
340 home becomes salvage, forward the title to the motor vehicle or
341 mobile home to the department for processing. However, an
342 insurance company which pays money as compensation for total
343 loss of a motor vehicle or mobile home shall obtain the
344 certificate of title for the motor vehicle or mobile home and,
345 within 72 hours after receiving such certificate of title, shall
346 forward such title to the department for processing. The owner
347 or insurance company, as the case may be, may not dispose of a
348 vehicle or mobile home that is a total loss before it has
349 obtained a salvage certificate of title or certificate of
350 destruction from the department. When applying for a salvage
351 certificate of title or certificate of destruction, the owner or
352 insurance company must provide the department with an estimate
353 of the costs of repairing the physical and mechanical damage
354 suffered by the vehicle for which a salvage certificate of title
355 or certificate of destruction is sought. If a motor vehicle or
356 mobile home is damaged, wrecked, or burned to the extent that
357 the only residual value of the vehicle is as a source of parts
358 or scrap metal or comes into this state under a title or other
359 ownership document that indicates that the vehicle is
360 nonrepairable, junked, or for parts or dismantling only, then
361 the owner or insurance company which pays money as compensation
362 for total loss of a motor vehicle or mobile home shall obtain a
363 certificate of destruction ~~the estimated costs of repairing the~~
364 ~~physical and mechanical damage to the vehicle are equal to 80~~

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365 ~~percent or more of the current retail cost of the vehicle, as~~
366 ~~established in any official used car or used mobile home guide,~~
367 ~~the department shall declare the vehicle unrebuildable and print~~
368 ~~a certificate of destruction,~~ which authorizes the dismantling
369 or destruction of the motor vehicle or mobile home described
370 therein. However, if the damaged motor vehicle is equipped with
371 custom-lowered floors for wheelchair access or a wheelchair
372 lift, the insurance company may, upon determining that the
373 vehicle is repairable to a condition that is safe for operation
374 on public roads, submit the certificate of title to the
375 department for reissuance as a salvage rebuildable title and the
376 addition of a title brand of "insurance-declared total loss."
377 The certificate of destruction shall be reassignable a maximum
378 of two times before dismantling or destruction of the vehicle
379 shall be required, and shall accompany the motor vehicle or
380 mobile home for which it is issued, when such motor vehicle or
381 mobile home is sold for such purposes, in lieu of a certificate
382 of title, and, thereafter, the department shall refuse issuance
383 of any certificate of title for that vehicle. Nothing in this
384 subsection shall be applicable when a vehicle is worth less than
385 \$1,500 retail in undamaged condition in any official used motor
386 vehicle guide or used mobile home guide or when a stolen motor
387 vehicle or mobile home is recovered in substantially intact
388 condition and is readily resalable without extensive repairs to
389 or replacement of the frame or engine. Any person who knowingly
390 violates this paragraph or falsifies any document to avoid the
391 requirements of this paragraph commits a misdemeanor of the
392 first degree, punishable as provided in s. 775.082 or s.

393 775.083.

394 Section 5. Section 538.19, Florida Statutes, is amended to

395 read:

396 538.19 Records required; limitation of liability.—

397 (1) A secondary metals recycler shall maintain a legible

398 paper record of all purchase transactions to which such

399 secondary metals recycler is a party. A secondary metals

400 recycler shall also maintain a legible electronic record, in the

401 English language, of all such purchase transactions. The

402 appropriate law enforcement official may provide data

403 specifications regarding the electronic record format, but such

404 format must be approved by the Department of Law Enforcement. An

405 electronic record of a purchase transaction shall be

406 electronically transmitted to the appropriate law enforcement

407 official no later than 10 a.m. of the business day following the

408 date of the purchase transaction. The record transmitted to the

409 appropriate law enforcement official must not contain the price

410 paid for the items. A secondary metals recycler who transmits

411 such records electronically is not required to also deliver the

412 original or paper copies of the transaction forms to the

413 appropriate law enforcement official. However, such official

414 may, for purposes of a criminal investigation, request the

415 secondary metals recycler to make available the original

416 transaction form that was electronically transmitted. This

417 original transaction form must include the price paid for the

418 items. The secondary metals recycler shall make the form

419 available to the appropriate law enforcement official within 24

420 hours after receipt of the request.

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

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

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

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

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

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

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

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

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

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

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

- 449 3. The right thumbprint, free of smudges and smears.
- 450 4. Vehicle description to include the make, model, and tag
451 number of the vehicle and trailer of the person selling the
452 regulated metals property.
- 453 5. Any other information required by the form approved by
454 the Department of Law Enforcement.
- 455 (i) A photograph, videotape, or digital image of the
456 regulated metals being sold.
- 457 (j) A photograph, videotape, or similar likeness of the
458 person receiving consideration in which such person's facial
459 features are clearly visible.
- 460 (3) ~~Any secondary metals recycler that maintains an
461 electronic database containing the information required in
462 paragraph (2) (h), along with an oath of ownership with a
463 signature of the seller of the secondary metals being purchased
464 by the secondary metals recycler and a right thumbprint that has
465 no smudges and smears on the oath of ownership for each purchase
466 transaction, shall be exempt from the records requirement of
467 paragraph (2) (h).~~ A secondary metals recycler complies with the
468 requirements of this section if it maintains an electronic
469 database containing the information required by subsection (2)
470 ~~paragraph (2) (h)~~ as long as the electronic information required
471 by subsection (2) ~~paragraph (2) (h)~~, along with an electronic
472 oath of ownership with an electronic signature of the seller of
473 the secondary metals being purchased by the secondary metals
474 recyclers and an electronic image of the seller's right
475 thumbprint that has no smudges and smears, can be downloaded
476 onto a paper form in the image of the form approved by the

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

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

481 ~~(5) If a purchase transaction involves the transfer of~~
482 ~~regulated metals property from~~ A secondary metals recycler
483 registered with the department that purchases a motor vehicle
484 from a licensed salvage motor vehicle dealer as defined in s.
485 320.27 or to another secondary metals recycler registered with
486 the department and uses a mechanical crusher to convert the
487 vehicle to scrap metal must obtain a signed statement from the
488 seller stating that the seller has surrendered the vehicle's
489 certificate of title to the Department of Highway Safety and
490 Motor Vehicles as provided in s. 319.30 or otherwise complied
491 with the titling requirements provided by law for conversion of
492 the vehicle to scrap metal. A, the secondary metals recycler is
493 not liable for the seller's failure to comply with the titling
494 requirements provided by law for conversion of a motor vehicle
495 to scrap metal if the secondary metals recycler obtains and
496 maintains the seller's signed statement ~~receiving the regulated~~
497 ~~metals property shall record the name and address of the~~
498 ~~secondary metals recycler from which it received the regulated~~
499 ~~metals property in lieu of the requirements of paragraph (2) (h).~~

500 Section 6. Section 538.235, Florida Statutes, is amended
501 to read:

502 538.235 Method of payment.—

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

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

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

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

512 (3) Payment for the purchase of restricted regulated
 513 metals property shall be made by check issued to the seller of
 514 the metal and payable to the seller or by electronic payment to
 515 the seller's bank account or the seller's employer's bank
 516 account.

517 (a) Each check shall be mailed by the secondary metals
 518 recycler directly to the street address of the seller that is on
 519 file with the secondary metals recycler unless otherwise
 520 provided in this part. A check may not be mailed to a post
 521 office box. Electronic payments shall be transmitted to an
 522 account for which the seller is listed as an account holder or
 523 an employee or agent of the seller.

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

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

531 1. An organization, corporation, or association registered
 532 with the state as a charitable, philanthropic, religious,

533 fraternal, civic, patriotic, social, or school-sponsored
 534 organization or association, or any nonprofit corporation or
 535 association;

536 2. A law enforcement officer acting in an official
 537 capacity;

538 3. A trustee in bankruptcy, executor, administrator, or
 539 receiver who has presented proof of such status to the secondary
 540 metals recycler;

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

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

548 6. A manufacturing, industrial, or other commercial vendor
 549 that generates regulated materials in the ordinary course of
 550 business.

551 Section 7. Subsection (1) of section 538.25, Florida
 552 Statutes, is amended to read:

553 538.25 Registration.—

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

560 (a) A fee equal to the federal and state costs for

561 processing required fingerprints must be submitted to the
562 department with each application for registration. One
563 application is required for each secondary metals recycler. If a
564 secondary metals recycler is the owner of more than one
565 secondary metals recycling location, the application must list
566 each location, and the department shall issue a duplicate
567 registration for each location. For purposes of subsections (3),
568 (4), and (5), these duplicate registrations shall be deemed
569 individual registrations. A secondary metals recycler shall pay
570 a fee of \$6 per location at the time of registration and an
571 annual renewal fee of \$6 per location on October 1 of each year.
572 All fees collected, less costs of administration, shall be
573 transferred into the Operating Trust Fund.

574 (b) The department shall forward the full set of
575 fingerprints to the Department of Law Enforcement for state and
576 federal processing, provided the federal service is available,
577 to be processed for any criminal justice information as defined
578 in s. 943.045. The cost of processing such fingerprints shall be
579 payable to the Department of Law Enforcement by the department.
580 The department may issue a temporary registration to each
581 location pending completion of the background check by state and
582 federal law enforcement agencies, but shall revoke such
583 temporary registration if the completed background check reveals
584 a prohibited criminal background. The Department of Law
585 Enforcement shall report its findings to the Department of
586 Revenue within 30 days after the date fingerprint cards are
587 submitted for criminal justice information.

588 (c) An applicant for a secondary metals recycler

589 registration must be a natural person who has reached the age of
 590 18 years or a corporation organized or qualified to do business
 591 in the state.

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

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

598 3. If the applicant is a corporation, the registration
 599 must include the name and address of such corporation's
 600 registered agent for service of process in the state and a
 601 certified copy of statement from the Secretary of State that the
 602 corporation is duly organized in the state or, if the
 603 corporation is organized in a state other than Florida, a
 604 certified copy of the statement that the corporation is duly
 605 qualified to do business in this state.

606 Section 8. Section 538.26, Florida Statutes, is amended to
 607 read:

608 538.26 Certain acts and practices prohibited.—It is
 609 unlawful for a secondary metals recycler to do or allow any of
 610 the following acts:

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

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

616 ~~(3) Purchase regulated metals property at a location other~~

617 ~~than the place of business set forth on the registration.~~

618 (2)~~(4)~~ Purchase regulated metals property, restricted
 619 regulated metals property, or ferrous metals from any seller who
 620 presents such property for sale at the registered location of
 621 the secondary metals recycler when such property was not
 622 transported in a motor vehicle.

623 (3)~~(5)~~ Purchase regulated metals property, restricted
 624 regulated metals property, or ferrous metals ~~in return for money~~
 625 ~~from a trailer, a vehicle, or any location other than a fixed~~
 626 ~~location or from any person who is required to prove ownership~~
 627 ~~pursuant to subsection (4). However, regulated metals may be~~
 628 ~~purchased from a nonfixed location, or from such person, with~~
 629 ~~any negotiable or nonnegotiable instrument, including a check or~~
 630 ~~draft or any other type of instrument purchased with money and~~
 631 ~~sold for the purpose of making payments or transfers to others.~~

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

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

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

636 (c) Is visibly or apparently under the influence of drugs
 637 or alcohol.

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

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

643 2. Is an employee, agent, or contractor of the property's
 644 owner who is authorized to sell the property on behalf of the

645 owner. Reasonable proof of authorization to sell the property
 646 includes, but is not limited to, a signed letter on the owner's
 647 letterhead, dated no later than 90 days before the sale,
 648 authorizing the seller to sell the property.

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

652 1. A manhole cover.

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

656 3. A guard rail.

657 4. A street sign, traffic sign, or traffic signal and its
 658 fixtures and hardware.

659 5. Communication, transmission, distribution, and service
 660 wire from a utility, including copper or aluminum bus bars,
 661 connectors, grounding plates, or grounding wire.

662 6. A funeral marker or funeral vase.

663 7. A historical marker.

664 8. Railroad equipment, including, but not limited to, a
 665 tie plate, signal house, control box, switch plate, E clip, or
 666 rail tie junction.

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

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

673 conditioning or heating unit, excluding coils from window air-
 674 conditioning or heating units and motor vehicle air-conditioning
 675 or heating units.

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

678 12. A stainless steel beer keg.

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

681 14. Metallic wire that has been burned in whole or in part
 682 to remove insulation.

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

687 16. A brass or bronze commercial potable water backflow
 688 preventer valve that is commonly used to prevent backflow of
 689 potable water from commercial structures into municipal domestic
 690 water service systems.

691 17. A shopping cart.

692 18. A brass water meter.

693 19. A storm grate.

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

695 Section 9. Section 538.28, Florida Statutes, is created to
 696 read:

697 538.28 Local government regulation.—

698 (1) The regulation of purchase transactions involving
 699 regulated metals property is preempted to the state. Except as
 700 provided in subsection (2), an ordinance or regulation adopted

701 by a county or municipality relating to the purchase or sale of
 702 regulated metals property or the registration or licensure of
 703 secondary metals recyclers is void.

704 (2) This part does not preempt an ordinance or regulation
 705 originally enacted by a county or municipality before March 1,
 706 2012. Such ordinance or regulation may subsequently be amended
 707 to incorporate any provision of this part.

708 Section 10. Subsection (1) of section 538.23, Florida
 709 Statutes, is amended to read:

710 538.23 Violations and penalties.—

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

- 713 1. Violates s. 538.20 or s. 538.21;
- 714 2. Engages in a pattern of failing to keep records
 715 required by s. 538.19;
- 716 3. Violates s. 538.26(4); or
- 717 4. Violates s. 538.235,

718
 719 commits a felony of the third ~~misdemeanor of the first~~ degree,
 720 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

721 (b) A secondary metals recycler who commits a third or
 722 subsequent violation of paragraph (a) commits a felony of the
 723 first ~~third~~ degree, punishable as provided in s. 775.082, s.
 724 775.083, or s. 775.084.

725 Section 11. Section 812.145, Florida Statutes, is amended
 726 to read:

727 812.145 Theft of copper or other nonferrous metals.—

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

729 (a) "Communications services" means the transmission,
730 conveyance, or routing of voice, data, audio, video, or any
731 other information or signals, including cable services, to a
732 point, or between or among points, by or through any electronic,
733 radio, satellite, cable, optical, microwave, or other medium or
734 method now in existence or hereafter devised, regardless of the
735 protocol used for such transmission or conveyance. The term
736 includes such transmission, conveyance, or routing in which
737 computer processing applications are used to act on the form,
738 code, or protocol of the content for purposes of transmission,
739 conveyance, or routing without regard to whether such service is
740 referred to as voice-over-Internet-protocol services or is
741 classified by the Federal Communications Commission as enhanced
742 or value-added.

743 (b) "Communications services provider" includes any
744 person, firm, corporation, or political subdivision, whether
745 private, municipal, county, or cooperative, which is engaged in
746 the sale, generation, provision, or delivery of communications
747 services.

748 (c) "Copper or other nonferrous metals" means metals not
749 containing significant quantities of iron or steel, including,
750 without limitation, copper, copper alloy, copper utility or
751 communications service wire, brass, aluminum, bronze, lead,
752 zinc, nickel, and alloys thereof.

753 (d) "Electrical substation" means a facility that takes
754 electricity from the transmission grid and converts it to a
755 lower voltage so it can be distributed to customers in the local
756 area on the local distribution grid through one or more

757 distribution lines less than 69 kilovolts in size.

758 (e)~~(d)~~ "Utility" means a public utility or electric
 759 utility as defined in s. 366.02, or a person, firm, corporation,
 760 association, or political subdivision, whether private,
 761 municipal, county, or cooperative, which is engaged in the sale,
 762 generation, provision, or delivery of gas, electricity, heat,
 763 water, oil, sewer service, or telephone, telegraph, radio,
 764 telecommunications, or communications service. The term includes
 765 any person, firm, corporation, association, or political
 766 subdivision, whether private, municipal, county, or cooperative,
 767 which is engaged in the sale, generation, provision, or delivery
 768 of gas or electricity services.

769 (f)~~(e)~~ "Utility service" means electricity for light,
 770 heat, or power and natural or manufactured gas for light, heat,
 771 or power, including the transportation, delivery, transmission,
 772 and distribution of electricity or natural or manufactured gas.

773 (2) A person who knowingly and intentionally takes copper
 774 or other nonferrous metals from a utility or communications
 775 services provider, thereby causing damage to the facilities of a
 776 utility or communications services provider, interrupting or
 777 interfering with utility service or communications services, or
 778 interfering with the ability of a utility or communications
 779 services provider to provide service, commits a felony of the
 780 first degree, punishable as provided in s. 775.082, s. 775.083,
 781 or s. 775.084.

782 (3) A person who is found in a civil action to have
 783 illegally taken copper or other nonferrous metals from a utility
 784 or communications services provider based on a conviction for a

785 violation of subsection (2) is liable to the utility or
786 communications services provider for damages in an amount equal
787 to three times the actual damages sustained by the utility or
788 communications services provider due to any personal injury,
789 wrongful death, or property damage caused by the illegal taking
790 of the nonferrous metals or an amount equal to three times any
791 claim made against the utility or communications services
792 provider for any personal injury, wrongful death, or property
793 damage caused by the malfunction of the facilities of the
794 utility or communications services provider resulting from the
795 violation of subsection (2), whichever is greater.

796 (4) A person who knowingly and intentionally removes
797 copper or other nonferrous metals from an electrical substation
798 without authorization of the utility commits a felony of the
799 first degree, punishable as provided in s. 775.082, s. 775.083,
800 or s. 775.084.

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

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

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

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