

Committee Substitute for
Council Substitute for House Bill No. 105

An act relating to secondary metals recyclers; amending s. 538.18, F.S.; revising the definition of “personal identification card”; deleting an exclusion of transactions under a specified amount from the definition of “purchase transaction” for specified purposes; revising the definition of “regulated metals property”; amending s. 538.19, F.S.; revising recordkeeping requirements for purchase transactions; providing for additional seller information to be obtained; requiring an image of the regulated metals being sold; providing an exemption from a specified recordkeeping provision if the same information is maintained in an electronic database meeting specified requirements; providing a substitute recordkeeping requirement for certain transactions between registered secondary metals recyclers; amending s. 538.23, F.S.; providing for enhanced penalties for third or subsequent violations of a specified provision; providing enhanced penalties for violations of specified provisions relating to false verification of ownership or false or altered identification of a seller of regulated metals; prohibiting engaging in business as a secondary metals recycler without registration with the Department of Revenue under a specified provision; providing criminal penalties; creating s. 538.235, F.S.; prohibiting secondary metals recyclers from entering into cash transactions in certain circumstances; amending s. 538.25, F.S.; requiring the Department of Revenue to provide a law enforcement official, upon request, with specified information regarding certain secondary metals recyclers; amending s. 538.26, F.S.; prohibiting the purchase of any regulated metals property when presented at the property of a secondary metals recycler and not transported in a motor vehicle; providing an effective date.

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

Section 1. Subsections (5), (6), and (7) of section 538.18, Florida Statutes, are amended to read:

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

(5) “Personal identification card” means any government-issued photographic identification card ~~a driver’s license or identification card issued by the Department of Highway Safety and Motor Vehicles under s. 322.03 or s. 322.051, or a similar card issued by another state, a military identification card, a passport, or an appropriate work authorization issued by the United States Bureau of Citizenship and Immigration Services.~~

(6) “Purchase transaction” means a transaction in which a secondary metals recycler gives consideration ~~having a value in excess of \$10 in exchange~~ for regulated metals property.

(7) “Regulated metals property” means any item composed primarily of any nonferrous metals, but shall not include aluminum beverage containers,

used beverage containers, or similar beverage containers. The term shall include stainless steel beer kegs.

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

538.19 Records required.—

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

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

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

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

(c) The date and time of the transaction.

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

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

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

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

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

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

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

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

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

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

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

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

(3) Any secondary metals recycler that maintains an electronic database containing the information required in paragraph (2)(h), along with an oath of ownership with a signature of the seller of the secondary metals being purchased by the secondary metals recycler and a right thumbprint that has no smudges and smears on the oath of ownership for each purchase transaction, shall be exempt from the records requirement of paragraph (2)(h). A secondary metals recycler complies with the requirements of this section if it maintains an electronic database containing the information required by paragraph (2)(h) as long as the electronic information required by paragraph (2)(h), along with an electronic oath of ownership with an electronic signature of the seller of the secondary metals being purchased by the secondary metals recyclers and an electronic image of the seller's right thumbprint that has no smudges and smears, can be downloaded onto a paper form in the image of the form approved by the Department of Law Enforcement as provided in subsection (2).

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

(5) If a purchase transaction involves the transfer of regulated metals property from a secondary metals recycler registered with the department to another secondary metals recycler registered with the department, the secondary metals recycler receiving the regulated metals property shall record the name and address of the secondary metals recycler from which it received the regulated metals property in lieu of the requirements of paragraph (2)(h).

Section 3. Subsections (1), (3), and (4) of section 538.23, Florida Statutes, are amended, and subsection (5) is added to that section, to read:

538.23 Violations and penalties.—

(1)(a) Except as provided in paragraph (b), a secondary metals recycler who shall, upon conviction of knowingly and intentionally:

1.(a) Violates ~~Violating~~ s. 538.20 or s. 538.21;

2.(b) Engages ~~Engaging~~ in a pattern of failing to keep records as required by s. 538.19; ~~or~~

3.(c) Violates ~~Violating~~ s. 538.26(4); ~~or~~

4. Violates s. 538.235.

commits be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082.

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

(3) Any person who knowingly gives false verification of ownership or who gives a false or altered identification and who receives money or other consideration from a secondary metals recycler in return for regulated metals property commits shall, upon conviction, be guilty of:

(a) A ~~felony misdemeanor~~ of the ~~third~~ first degree, punishable as provided in s. 775.082, ~~or s. 775.083, or s. 775.084,~~ if the value of the money or other consideration received is less than \$300.

(b) A felony of the ~~second~~ third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the value of the money or other consideration received is \$300 or more.

(4) ~~If When~~ a lawful owner recovers stolen regulated metals property from a secondary metals recycler who has complied with ~~the provisions of~~ this part, and the person who sold the regulated metals property to the secondary metals recycler is convicted of theft, a violation of this section, or dealing in stolen property, the court shall order the defendant to make full restitution, including, without limitation, attorneys' fees, court costs, and other expenses to the secondary metals recycler pursuant to s. 775.089.

(5) A person acting as a secondary metals recycler who is not registered with the department under s. 538.25 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 4. Section 538.235, Florida Statutes, is created to read:

538.235 Method of payment.—A secondary metals recycler shall not enter into any cash transaction in excess of \$1,000 in payment for the purchase of regulated metals property. Payment in excess of \$1,000 for the purchase of regulated metals property shall be made by check issued to the seller of the metal and payable to the seller.

Section 5. Subsection (6) is added to section 538.25, Florida Statutes, to read:

538.25 Registration.—

(6) Upon the request of a law enforcement official, the Department of Revenue shall release to the official the name and address of any secondary metals recycler registered to do business within the official's jurisdiction.

Section 6. Subsection (4) of section 538.26, Florida Statutes, is amended to read:

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

(4) Purchase regulated metals property from any seller who presents such property for sale at the registered location of the secondary metals

recycler when such property was not transported in a motor vehicle ~~unless the seller can prove ownership of the regulated metals property.~~

Section 7. This act shall take effect October 1, 2008.

Approved by the Governor May 28, 2008.

Filed in Office Secretary of State May 28, 2008.