

CHAPTER 2012-179

Committee Substitute for Committee Substitute for House Bill No. 885

An act relating to transactions by secondhand dealers and secondary metals recyclers; amending s. 538.03, F.S.; defining the term “appropriate law enforcement official”; deleting exemptions from regulation as a secondhand dealer which relate to flea market transactions and auction businesses; conforming terminology; amending s. 538.04, F.S., relating to recordkeeping requirements; conforming terminology and clarifying provisions; amending s. 538.18, F.S.; revising and providing definitions; amending s. 319.30, F.S.; conforming a cross-reference; amending s. 538.19, F.S.; revising requirements for the types of information that secondary metals recyclers must obtain and maintain regarding purchase transactions, including requirements for the maintenance and transmission of electronic records of such transactions; revising the period required for secondary metals recyclers to maintain certain information regarding purchase transactions involving regulated metals property; limiting the liability of secondary metals recyclers for the conversion of motor vehicles to scrap metal under certain circumstances; amending s. 538.235, F.S.; revising requirements for payments made by secondary metals recyclers to sellers of regulated metals property, to prohibit certain cash transactions; providing penalties; providing methods of payment for restricted regulated metals property; requiring that purchases of certain property be made by check or by electronic payment; providing procedures; amending s. 538.25, F.S.; requiring an application for registration as a secondary metals recycler to contain the address of a fixed business location; amending s. 538.26, F.S.; prohibiting secondary metals recyclers from purchasing regulated metals property, restricted regulated metals property, or ferrous metals during specified times, from certain locations, or from certain sellers; prohibiting the purchase of specified restricted regulated metals property without obtaining certain proof of the seller’s ownership and authorization to sell the property; providing penalties; creating s. 538.28, F.S.; preempting to the state the regulation of secondary metals recyclers and purchase transactions involving regulated metals property; providing exceptions; providing for applicability; amending s. 538.23, F.S.; increasing the criminal penalties for specified violations relating to secondary metals recycling; providing increased criminal penalties for third and subsequent criminal violations; amending s. 812.145, F.S., relating to theft of copper or other nonferrous metals from a utility or communications services provider; revising and providing definitions; providing civil liability and penalties; prohibiting removing copper or other nonferrous metals from an electrical substation site without authorization of the utility; providing criminal penalties; providing an effective date.

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

Section 1. Subsection (1) of section 538.03, Florida Statutes, is amended, paragraphs (m) through (q) of subsection (2) of that section are redesignated as paragraphs (l) through (p), 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:

~~(a)~~(e) “Acquire” means to obtain by purchase, consignment, or trade.

~~(b)~~ “Appropriate law enforcement official” means the sheriff of the county in which a secondhand dealer is located or, if the secondhand dealer is located within a municipality, both the police chief of the municipality and the sheriff; however, the sheriff or police chief may designate as the appropriate law enforcement official for that county or municipality, as applicable, any law enforcement officer working within that respective county or municipality. This paragraph does not limit the authority or duties of the sheriff.

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

~~(d)~~(i) “Department” means the Department of Revenue.

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

~~(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.

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

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

~~(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.

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

(2) This chapter does not apply to:

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

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

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

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

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

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

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

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

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

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

8.a. At least 48 hours after the estimated time of contracting to offer the secondhand goods, the business must verify that any item having a serial number is not stolen property by entering the serial number of the item into

the Department of Law Enforcement's stolen article database located at the Florida Crime Information Center's public access system website. The business shall record the date and time of such verification on the contract covering the goods. If such verification reveals that an item is stolen property, the business shall immediately remove the item from any website on which it is being offered and notify the appropriate law enforcement official agency; or

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

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

538.04 Recordkeeping requirements; penalties.—

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

- (a) The time, date, and place of the transaction.
- (b) A complete and accurate description of the goods acquired, including the following information, if applicable:
 1. Brand name.
 2. Model number.
 3. Manufacturer's serial number.
 4. Size.

- 5. Color, as apparent to the untrained eye.
- 6. Precious metal type, weight, and content if known.
- 7. Gemstone description, including the number of stones, if applicable.
- 8. In the case of firearms, the type of action, caliber or gauge, number of barrels, barrel length, and finish.
- 9. Any other unique identifying marks, numbers, or letters.

(c) 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, of the person from whom the goods were acquired.

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

(6) If the appropriate law enforcement official agency supplies a secondhand dealer with appropriate software and the secondhand dealer has computer capability, ~~the secondhand dealer must~~ transactions shall be electronically transmit secondhand dealer transactions required by this section to such official transferred. If a secondhand dealer does not have computer capability, the appropriate law enforcement official agency may provide the secondhand dealer with a computer and all equipment necessary ~~to equipment for the purpose of electronically transmit~~ transferring secondhand dealer transactions. The appropriate law enforcement official agency shall retain ownership of the computer, unless otherwise agreed upon, ~~and~~ the secondhand dealer shall maintain the computer in good working order, except for ordinary wear and tear ~~excepted~~. ~~A~~ If the secondhand dealer who transmits transfers secondhand dealer transactions electronically, ~~the secondhand dealer is not required to also deliver to the appropriate law enforcement agency the original or paper copies of the secondhand transaction forms to the appropriate law enforcement official. However, such official may, for purposes the purpose of a criminal investigation, the appropriate law enforcement agency may request that the secondhand dealer to deliver the produce an original of a transaction form that was has been electronically transmitted~~ transferred. The secondhand dealer shall deliver ~~the this~~ this form to the appropriate law enforcement official agency within 24 hours after receipt of the request.

(7) If the original transaction form is lost or destroyed by the appropriate law enforcement official agency, a copy may be used by the secondhand

dealer as evidence in court. When an electronic image of a customer's identification is accepted for a transaction, the secondhand dealer must maintain the electronic image in order to meet the recordkeeping requirements applicable to the original transaction form. If a criminal investigation occurs, the secondhand dealer shall, upon request, provide a clear and legible copy of the image to the appropriate law enforcement official agency.

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

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

(1) “Appropriate law enforcement official” means the sheriff of the county in which a secondary metals recycler is located or, if the secondary metals recycler is located within a municipality, the police chief of the municipality in which the secondary metals recycler is located; however, the sheriff or police chief may designate as the appropriate law enforcement official for the county or municipality, as applicable, any law enforcement officer working within that respective county or municipality. This subsection does not limit the authority or duties of the sheriff.

~~(2)~~(9) “Department” means the Department of Revenue.

~~(3)~~(1) “Ferrous metals” means any metals containing significant quantities of iron or steel.

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

~~(5)~~(3) “Money” means a medium of exchange authorized or adopted by a domestic or foreign government as part of its currency.

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

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

~~(8)~~(6) “Purchase transaction” means a transaction in which a secondary metals recycler gives consideration for regulated metals property.

~~(9)~~(7) “Regulated metals property” means any item composed primarily of any nonferrous metals. The term does, but shall not include aluminum

beverage containers, used beverage containers, or similar beverage containers; ~~however,~~ the term includes shall ~~include~~ stainless steel beer kegs and items made of ferrous metal obtained from any restricted regulated metals property.

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

~~(11)(8)~~ “Secondary metals recycler” means any person who:

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

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

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

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

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

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

(u) “Secondary metals recycler” means secondary metals recycler as defined in s. ~~538.18~~ 538-18(8).

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

538.19 Records required; limitation of liability.—

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

the English language, of all such purchase transactions. The appropriate law enforcement official may provide data specifications regarding the electronic record format, but such format must be approved by the Department of Law Enforcement. An electronic record of a purchase transaction shall be electronically transmitted to the appropriate law enforcement official no later than 10 a.m. of the business day following the date of the purchase transaction. The record transmitted to the appropriate law enforcement official must not contain the price paid for the items. A secondary metals recycler who transmits such records electronically is not required to also deliver the original or paper copies of the transaction forms to the appropriate law enforcement official. However, such official may, for purposes of a criminal investigation, request the secondary metals recycler to make available the original transaction form that was electronically transmitted. This original transaction form must include the price paid for the items. The secondary metals recycler shall make the form available to the appropriate law enforcement official within 24 hours after receipt of the request.

(2) The following information must be maintained on the 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 regulated metals property was goods were acquired, including:

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

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

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

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

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

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

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

~~(3) Any secondary metals recycler that maintains an electronic database containing the information required in 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 subsection (2) paragraph (2)(h) as long as the electronic information required by subsection (2) 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) A secondary metals recycler shall maintain or cause to be maintained the information required by this section for not less than ~~3~~ 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 that purchases a motor vehicle from a licensed salvage motor vehicle dealer as defined in s. 320.27 or to another secondary metals recycler registered with the department and uses a mechanical crusher to convert the vehicle to scrap metal must obtain a signed statement from the seller stating that the seller has surrendered the vehicle's certificate of title to the Department of Highway Safety and Motor Vehicles as provided in s. 319.30 or otherwise complied with the titling requirements provided by law for conversion of the vehicle to scrap metal. ~~A, the secondary metals recycler is not liable for the seller's failure to comply with the titling requirements provided by law for conversion of a motor vehicle to scrap metal if the secondary metals recycler~~

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

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

538.235 Method of payment.—

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

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

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

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

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

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

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

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

1. An organization, corporation, or association registered with the state as a charitable, philanthropic, religious, fraternal, civic, patriotic, social, or school-sponsored organization or association, or any nonprofit corporation or association;

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

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

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

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

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

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

538.25 Registration.—

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

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

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

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

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

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

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

Section 8. 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:

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

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

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

~~(2)(4)~~ Purchase regulated metals property, restricted regulated metals property, or ferrous metals 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.

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

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

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

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

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

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

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

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

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

1. A manhole cover.

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

3. A guard rail.

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

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

6. A funeral marker or funeral vase.

7. A historical marker.

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

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

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

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

12. A stainless steel beer keg.

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

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

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

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

17. A shopping cart.

18. A brass water meter.

19. A storm grate.

20. A brass sprinkler head used in commercial agriculture.

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

538.28 Local government regulation.—

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

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

(3) This section does not apply to a county as defined in s. 125.011(1) until July 1, 2013.

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

538.23 Violations and penalties.—

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

1. Violates s. 538.20 or s. 538.21;

- 2. Engages in a pattern of failing to keep records required by s. 538.19;
- 3. Violates s. 538.26(4); or
- 4. Violates s. 538.235,

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

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

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

812.145 Theft of copper or other nonferrous metals.—

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

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

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

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

(d) “Electrical substation” means a facility that takes electricity from the transmission grid and converts it to a lower voltage so it can be distributed to customers in the local area on the local distribution grid through one or more distribution lines less than 69 kilovolts in size.

~~(e)~~(d) “Utility” means a public utility or electric utility as defined in s. 366.02, or a person, firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, which is engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, or telephone, telegraph, radio, telecommunications, or

communications service. The term includes any person, firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, which is engaged in the sale, generation, provision, or delivery of gas or electricity services.

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

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

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

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

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

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

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

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

Approved by the Governor April 27, 2012.

Filed in Office Secretary of State April 27, 2012.