

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/CS/SB's 556 and 748

INTRODUCER: Criminal Justice Committee; Commerce Committee; and Senators Constantine, Crist, and Lynn

SUBJECT: Secondary Metals Recycling

DATE: March 18, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Earlywine	Cooper	CM	Fav/CS
2.	Krol	Cannon	CJ	Fav/CS
3.			FT	
4.			GA	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This committee substitute addresses the regulation of Secondary Metals Recyclers in the following ways:

- Expands the definition of regulated metals to include stainless steel beer kegs;
- Expands the types of transaction records secondary metals recyclers must maintain, to include detailed descriptions of and related personal information from persons from whom metals were acquired with exceptions;
- Creates a penalty of a first degree misdemeanor and third degree felony for third or subsequent violation for secondary metals recyclers who fail to comply with the new cash transaction restrictions proposed in the CS;
- Increases penalties to a third degree felony for third or subsequent violation for secondary metals recyclers who fail to comply with current and proposed requirements related to metal recycling;
- Increases penalties to a third degree felony for third or subsequent violation for persons giving false verification of ownership or false or altered identification in metal recycling transactions;

- Creates a penalty of a third degree felony for secondary metals recyclers that are not registered with the Department of Revenue;
- Requires that all regulated metals be transported to a secondary metals recycler in a motor vehicle, eliminating the current exception; and
- Requires payments for all transactions in excess of \$1000 are made by check.

In addition, it requires the Department of Law Enforcement (FDLE) to approve the form for purchase transactions and requires the Department of Revenue (DOR) to release information relating to secondary metals recyclers to law enforcement officials.

This committee substitute amends sections 538.18, 538.19, 538.23, 538.25, and 538.26 of the Florida Statutes. This committee substitute creates s. 538.235 of the Florida Statutes.

II. Present Situation:

Secondary metals recyclers (also known as scrap-metal dealers) purchase used metals typically salvaged from building demolition, remodeling, etc. and refine those metals (or ship to another country for refinement) into raw materials which can be used to make new products. Secondary metals recyclers are currently regulated under ch. 538, Part II, F.S.

Secondary metals recyclers are required to register with DOR and pay a fee equal to the federal and state costs for processing required fingerprints.¹ Additionally, a secondary metals recycler is required to pay a fee of \$6 per location at the time of registration and a \$6 annual renewal fee per location.² 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.³

A secondary metals recycler must maintain a legible record of all purchase transactions to which such secondary metals recycler is a party.⁴ The following information must be maintained for each purchase transaction:

- The name and address of the secondary metals recycler;
- The name, initials, or other identification of the individual entering the information on the ticket;
- The date and time of the transaction;
- The weight, quantity, or volume, and a description of the type of regulated metals property purchased in a purchase transaction;
- The amount of consideration given in a purchase transaction for the regulated metals property;
- 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;

¹ Section 538.25, F.S.

² Section 538.25, F.S.

³ Section 538.25, F.S.

⁴ Section 538.19, F.S.

- The distinctive number from the personal identification card of the person delivering the regulated metals property to the secondary metals recycler; and
- A photograph, videotape, or similar likeness of the person receiving consideration in which such person's facial features are clearly visible.⁵

A secondary metals recycler is required to maintain the required information for at least 5 years from the date of the purchase transaction.⁶

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

- Purchase regulated metals property between the hours of 9 p.m. and 6 a.m.;
- Fail to pay any sales tax owed to the department or fail to have a sales tax registration number;
- Purchase regulated metals property at a location other than the place of business set forth on the registration;
- 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; or
- Purchase regulated metals property 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. However, regulated metals may be purchased from a non-fixed 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.⁷

Currently, Florida law provides that a secondary metals recycler is guilty of a first degree misdemeanor⁸ if convicted for knowingly and intentionally:

- Failing to allow a law enforcement official access to inspect records of transactions;
- Failing to allow a law enforcement official access to inspect regulated metals in the possession of the secondary metals recycler;
- Failing to gather and maintain records of each transaction;
- Failing, pursuant to a request from law enforcement, to hold regulated metals for a minimum period of time; or
- Purchasing regulated metals from a seller where the metals were not transported in a motor vehicle.⁹

The Department of Revenue may impose a fine up to \$10,000 for secondary metals recyclers who are not registered. If the fine is not paid within 60 days, DOR may bring civil action to recover the fine.¹⁰

⁵ Section 538.19, F.S.

⁶ Section 538.19, F.S.

⁷ Section 538.26, F.S.

⁸ As punishable by s. 775.082, F.S.,

⁹ Section 538.23, F.S.

Recently, there has been an increase of reports of metal theft (especially copper) with the idea that thieves take the stolen metal to a secondary metals recycler and sell the metal for cash. In response, many jurisdictions throughout the U.S. have enacted laws to thwart this activity.

III. Effect of Proposed Changes:

Section 1 amends s. 538.18, F.S., to change the definition of the term “personal identification card” to mean “any government-issued photographic identification card.” Current law limits the definition to a driver’s license, military ID card, or work authorization issued by the US Bureau of Citizenship and Immigration.

Additionally, the term “purchase transaction” is amended to include transactions that have a value of \$10 or less.

Further, this section adds stainless steel beer kegs to the definition of regulated metals property. As a result, secondary metals recyclers would be required to use the same procedures when purchasing stainless steel beer kegs as they would for all regulated metals under Ch. 538, Part II, F.S.

Section 2 amends s. 538.19, F.S., to expand the types of transaction records secondary metals recyclers must maintain. Recyclers will also be required to maintain, on a form approved by FDLE, a description of the person from whom the goods were acquired, including:

- The full name, current residential address, workplace, and home and work phone numbers;
- The height, weight, date of birth, race, gender, hair color, eye color, and any other identifying marks;
- The right thumbprint, free of smudges and smears;
- A vehicle description, which must include the make, model, and tag number of the vehicle and trailer of the person selling the regulated metals property; and
- Any other information required by the form approved by FDLE.

In addition, secondary metals recyclers must maintain a photograph, videotape, or digital image of the regulated metals being sold. For purchases of stainless steel beer kegs, this section also requires the seller to provide written documentation from the manufacturer that the seller is the owner of the keg or an employee or agent of the manufacturer.

This section exempts, from the requirements above, secondary metals recyclers that maintain an electronic database that contains the new information secondary metals recycler must gather about the sellers of regulated metals required by this section, provided that the electronic database also contain an electronic oath of ownership with the seller’s signature and an electronic image of the seller’s thumbprint. The section also requires that the information on the electronic database must be able to be downloaded on a FDLE approved form.

¹⁰ Section 120.69, F.S.

If a purchase transaction is between two secondary metals recyclers, the secondary metals recycler purchasing the regulated metals must record only the name and address of the secondary metals recycler from which the regulated metals were received instead of the above requirements.

Section 3 amends s. 538.23, F.S., to increase penalties for secondary metals recyclers who fail to comply with current requirements and new requirements proposed in this committee substitute. Specifically, this provision establishes a third degree felony for a third or subsequent violation of current s. 538.19 (record requirements), s. 538.20 (access to records by law enforcement), s. 538.21 (compliance with a hold notice issued by law enforcement), and s. 538.26(4), F.S., (prohibited purchase practices).¹¹

Additionally, this section increases penalties for persons giving false verification of ownership or false or altered identification in metal recycling transactions. The penalty is increased from a first degree misdemeanor to a third degree felony for transactions of less than \$300.¹² Under this increase of penalty, the offender can also be tried as a "habitual felony offender."¹³ The penalty is increased from a third to a second degree felony for transactions of \$300 or more.¹⁴

This section also creates a third degree felony penalty for secondary metals recyclers who are not registered with DOR.

Section 4 creates s. 538.235, F.S., to require secondary metals recyclers to make payment to the seller by check if the transaction amount exceeds \$1,000.

Section 5 amends s. 538.25, F.S., to require DOR to release to a law enforcement official the name and address of any secondary metal recycler registered to do business within the official's jurisdiction.

Section 6 amends s. 538.26, F.S., to eliminate the exception which allows the purchase of regulated metals when the metal was not transported in a motor vehicle if the seller can prove ownership of the regulated metals, thereby requiring sellers to transport all regulated metals to a secondary metals recycler in a motor vehicle.

Section 7 provides an effective state of October 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹¹ As punishable by s. 775.082, s. 775.083, or s. 775.084, F.S.

¹² As punishable by s. 775.082 or s. 775.083, F.S.

¹³ As punishable by s. 775.084, F.S.

¹⁴ As punishable by s. 775.082, s. 775.083, or s. 775.084, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There may be an indeterminate economic impact on secondary metals recyclers due to the committee substitute's requirement to gather and maintain additional information about sellers of regulated metals.

C. Government Sector Impact:

FDLE is required to develop and make available a form used by Secondary Metals Recyclers to record purchase transactions. FDLE reports that work effort, additional positions, and cost cannot be determined with the information provided.

This bill may affect prison bed space. To determine the level of bed space impact, the bill has been referred to the Criminal Justice Impact Conference for further review.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 18, 2008:

- Creates a third degree felony penalty for secondary metals recyclers who are not registered with the Department of Revenue.

CS by Commerce on February 19, 2008:

This committee substitute combines original provisions of the bills as filed and includes additional provisions. The combinations of these result in the following:

- Expands the definition of regulated metals to include stainless steel beer kegs;
- Requires sellers of stainless steel beer kegs to provide written documentation from the manufacturer that the seller is the owner of the keg or an employee or agent of the manufacturer;
- Expands the types of transaction records secondary metals recyclers must maintain, to include detailed descriptions of and related personal information from persons from whom metals were acquired, with the following exceptions:
 - o Secondary metals recyclers that maintain an electronic database with the required new information in a format that can be downloaded onto a form approved by FDLE, provided that the electronic database also contain an electronic oath of ownership with the seller's signature and an electronic image of the seller's thumbprint.
 - o If a purchase transaction is between two secondary metals recyclers, the secondary metals recycler purchasing the regulated metals is only required to record the name and address of the secondary metals recycler from which the regulated metals were received instead of the above requirements.
- Requires the Department of Law Enforcement (FDLE) to approve the form for purchase transactions;
- Increases penalties for secondary metals recyclers who continue to comply with existing requirements related to metals recycling;
- Creates a penalty for secondary metals recyclers who fail to comply with the new cash transaction restrictions proposed in the CS;
- Increases penalties for persons giving false verification of ownership or false or altered identification in metal recycling transactions;
- Requires payments for all transactions in excess of \$1000 to be made by check;
- Requires DOR to release the name and address of a registered Secondary Metals Recycler, upon request of a law enforcement official; and
- Eliminates the current exception which allows for the purchase of regulated metals when the metal was not transported in a motor vehicle under limited circumstances.

B. Amendments:

None.