

## CHAPTER 538

## SECONDHAND DEALERS AND SECONDARY METALS RECYCLERS

## PART I SECONDHAND DEALERS (ss. 538.03-538.17)

## PART II SECONDARY METALS RECYCLERS (ss. 538.18-538.26)

## PART I

## SECONDHAND DEALERS

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**538.03 Definitions; applicability.—**

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

(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 pawning secondhand goods or entering into title loan transactions. However, secondhand dealers are not limited to dealing only in items defined as secondhand goods in paragraph (g). Except as provided in subsection (2), the term means pawnbrokers, jewelers, precious metals dealers, garage sale operators, secondhand stores, and consignment shops.

(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.

(c) "Pawnbroker" means any person, corporation, or other business organization or entity which is regularly engaged in the business of making pawns but does not include a financial institution as defined in s. 655.005 or any person who regularly loans money or any other thing of value on stocks, bonds, or other securities.

(d) "Pawn" means either of the following transactions:

1. Loan of money.—A written or oral bailment of personal property as security for an engagement or debt, redeemable on certain terms and with the implied power of sale on default.

2. Buy-sell agreement.—An agreement whereby a purchaser agrees to hold property for a specified period of time to allow the seller the exclusive right to repurchase the property. A buy-sell agreement is not a loan of money.

(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, including pawn shops.

(f) "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.

(g) "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 pawned as used property. Such secondhand goods shall be limited to watches; diamonds, gems, and other precious stones; fishing rods, reels, and tackle; audio and video electronic equipment, including television sets, compact disc players, radios, amplifiers, receivers, turntables, tape recorders; video tape recorders; speakers and citizens' band radios; computer equipment; radar detectors; depth finders; trolling motors; outboard motors; sterling silver flatware and serving pieces; photographic equipment, including cameras, video and film cameras, lenses, electronic flashes, tripods, and developing equipment; microwave ovens; animal fur coats; marine equipment; video games and cartridges; power lawn and landscape equipment; office equipment such as copiers, fax machines, and postage machines but excluding furniture; sports equipment; weapons, including knives, swords, and air guns; telephones, including cellular and portable; firearms; tools; calculators; musical instruments, excluding pianos and organs; lawnmowers; bicycles; typewriters; motor vehicles; gold, silver, platinum, and other precious metals excluding coins; and jewelry, excluding costume jewelry.

(h) "Transaction" means any title loan, purchase, consignment, or pawn of secondhand goods by a secondhand dealer.

(i) "Title loan" means a loan of money secured by bailment of a certificate of title to a motor vehicle. A title loan is not a pawn if the secondhand dealer does not maintain physical possession of the vehicle throughout the term of the transaction.

(j) "Precious metals" means any item containing any gold, silver, or platinum, or any combination thereof, excluding:

1. Any chemical or any automotive, photographic, electrical, medical, or dental materials or electronic parts.

2. Any coin with an intrinsic value less than its numismatic value.

3. Any gold bullion coin.

4. Any gold, silver, or platinum bullion that has been assayed and is properly marked as to its weight and fineness.

5. Any coin which is mounted in a jewelry setting.

(k) "Department" means the Department of Revenue.

(l) "Pledge" means pawn or buy-sell agreement.

(2) This chapter does not apply to:

(a) Any secondhand goods transaction involving an organization or entity registered with the state as a non-profit, religious, or charitable organization or any school-sponsored association or organization other than a secondary metals recycler subject to the provisions of part II.

(b) A law enforcement officer acting in an official capacity.

(c) A trustee in bankruptcy, executor, administrator, or receiver who has presented proof of such status to the secondhand dealer.

(d) Any public official acting under judicial process or authority who has presented proof of such status to the secondhand dealer.

(e) A sale on the execution, or by virtue of any process issued by a court, if proof thereof has been presented to the secondhand dealer.

(f) Any garage sale operator who holds garage sales less than 10 weekends per year.

(g) Any person at antique, coin, or collectible shows or sales.

(h) Any person who sells household personal property as an agent for the property owner or their representative pursuant to a written agreement at that person's residence.

(i) The purchase, consignment, or pawn of secondhand goods from one secondhand dealer to another secondhand dealer when the selling secondhand dealer has complied with the requirements of this chapter.

(j) Any person accepting a secondhand good as a trade-in for a similar item of greater value.

(k) Any person purchasing, consigning, or pawning 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) Any business that is registered with the Department of Revenue for sales tax purposes as an antique dealer pursuant to chapter 212 and that purchases secondhand goods from the property owner or his representative at the property owner's residence pursuant to a written agreement that states the name, address, and telephone number of the property owner and the type of property purchased.

(n) Any person purchasing, consigning, or pawning secondhand goods ordered by mail, computer-assisted shopping, media-assisted, media-facilitated, or media-solicited shopping or shopping by other means of media communication, including, but not limited to, direct mail advertising, unsolicited distribution of catalogs, television, radio, or other electronic media, telephone, magazine, or newspaper advertising, so long as such person is in this state at the time of the order.

(o) A motor vehicle dealer as defined in s. 320.27.

(3) This part does not apply to secondary metals recyclers regulated under part II, except for s. 538.11,

which applies to both secondhand dealers and secondary metals recyclers.

**History.**—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 1, ch. 90-318; s. 4, ch. 91-429; s. 202, ch. 92-303; s. 1, ch. 93-97; s. 1, ch. 95-287.

#### **538.04 Recordkeeping requirements; penalties.—**

(1) Secondhand dealers shall maintain records of all transactions of secondhand goods on the premises. Within 24 hours of the acquisition of any secondhand goods by purchase or pledge as security for a loan, a secondhand dealer shall deliver to the police department of the municipality where the goods were purchased or, if the goods were purchased outside of a municipality, to the sheriff's department of the county where the goods were purchased, 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 any serial numbers, manufacturer's numbers, or other identifying marks or characteristics.

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

1. Full name, 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.

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

(2) The secondhand dealer shall require verification of the identification by the exhibition of a government-issued photographic identification card such as a driver's license or military identification card. The record shall contain the type of identification exhibited, the issuing agency, and the number thereon.

(3) The seller shall sign a statement verifying that the seller is the rightful owner of the goods or is entitled to sell or pledge the goods.

(4) Any person who knowingly gives false verification of ownership or who gives a false or altered identification, and who receives money from a secondhand dealer for goods sold or pledged commits:

(a) If the value of the money received is less than \$300, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) If the value of the money received is \$300 or more, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 2, ch. 90-318; s. 4, ch. 91-429.

#### **538.05 Inspection of records and premises of secondhand dealers.—**

(1) The premises and required records of each secondhand dealer are subject to inspection during regular business hours by the police department if the premises are located within a municipality or, if located outside a municipality, by the sheriff's department of the county in which the premises are located, and by any state law enforcement officer who has jurisdiction over the dealer.

(2) The inspection authorized by subsection (1) shall consist of an examination on the premises of the inventory and required records to determine whether the records and inventory are being maintained on the prem-

ises as required by s. 538.04 and whether the holding period required by s. 538.06 is being complied with.

**History.**—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 3, ch. 90-318; s. 4, ch. 91-429; s. 2, ch. 93-97.

### 538.06 Holding period.—

(1) A secondhand dealer shall not sell, barter, exchange, alter, adulterate, or in any way dispose of any secondhand goods within 15 calendar days of the date of acquisition of the goods. Such holding periods are not applicable when the person known by the secondhand dealer to be the person from whom the goods were acquired desires to redeem, repurchase, or recover the goods, provided the dealer can produce the record of the original transaction with verification that the customer is the person from whom the goods were originally acquired.

(2) A secondhand dealer must maintain actual physical possession of all secondhand goods throughout a transaction. It is unlawful for a secondhand dealer to accept title or any other form of security in secondhand goods in lieu of actual physical possession. A secondhand dealer who accepts title or any other form of security in secondhand goods in lieu of actual physical possession commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Upon probable cause that goods held by a secondhand dealer are stolen, a law enforcement officer with jurisdiction may extend the holding period to a maximum of 60 days. However, the holding period may be extended beyond 60 days by a court of competent jurisdiction upon a finding of probable cause that the property is stolen and further holding is necessary for the purposes of trial or to safeguard such property. The dealer shall assume all responsibility, civil or criminal, relative to the property or evidence in question, including responsibility for the actions of any employee with respect thereto.

(4) All dealers in secondhand property regulated by this chapter shall maintain transaction records for 5 years.

(5) Subject to the restrictions in s. 538.15, a secondhand dealer may engage in a title loan transaction, and the physical possession provisions of subsection (2) shall not apply if the following conditions are met:

(a) The secondhand dealer maintains physical possession of the motor vehicle title.

(b) The owner maintains possession of, or control over, the motor vehicle throughout the transaction.

(c) The owner is not required to pay rent or any other charge for the use of the motor vehicle.

(d) A secondhand dealer who engages in a motor vehicle title loan transaction has the right to repossess the motor vehicle upon failure of the owner to redeem the title. The secondhand dealer shall only repossess a motor vehicle through an agent who is licensed by the state to repossess motor vehicles. The secondhand dealer may dispose of the motor vehicle as provided in s. 538.16. However, any sale or disposal of the motor vehicle shall be made through a motor vehicle dealer licensed under s. 320.27.

(e) A secondhand dealer who accepts a motor vehicle title in a title loan transaction may charge a maximum fee of 22 percent per month.

(f) No charges other than those charges permitted in paragraph (e) shall be allowed, and said charges shall be fully disclosed, conspicuously in writing, and initialed by the motor vehicle owner at the initiation of the transaction.

**History.**—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 4, ch. 90-318; s. 4, ch. 91-429; s. 3, ch. 93-97; s. 2, ch. 95-267.

### 538.07 Penalty for violation of chapter.—

(1) Except where otherwise provided herein, a person who knowingly violates any provision of this chapter commits a misdemeanor of the first degree, punishable as provided in s. 775.082 and by a fine not to exceed \$10,000.

(2) When the lawful owner recovers stolen property from a secondhand dealer and the person who sold or pledged the stolen property to the secondhand dealer is convicted of theft, a violation of this section, or dealing in stolen property, the court shall order the defendant to make restitution to the secondhand dealer pursuant to s. 775.089.

**History.**—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 4, ch. 91-429; s. 3, ch. 93-37.

### 538.08 Stolen goods; petition for return.—

(1) If the secondhand dealer contests the identification or ownership of the property, the person alleging ownership of the property may, provided that a timely report of the theft of the goods was made to the proper authorities, bring an action for replevin in the county or circuit court by petition in substantially the following form:

Plaintiff A. B., sues defendant C. D., and alleges:

1. This is an action to recover possession of personal property in \_\_\_\_\_ County, Florida.

2. The description of the property is: (list property). To the best of plaintiff's knowledge, information, and belief, the value of the property is \$\_\_\_\_\_.

3. Plaintiff is entitled to the possession of the property under a security agreement dated \_\_\_\_\_, 19\_\_\_\_, a copy of which is attached.

4. To plaintiff's best knowledge, information, and belief, the property is located at\_\_\_\_\_.

5. The property is wrongfully detained by defendant. Defendant came into possession of the property by (describe method of possession). To plaintiff's best knowledge, information, and belief, defendant detains the property because (give reasons).

6. The property has not been taken under an execution or attachment against plaintiff's property.

(2) The filing fees shall be waived by the clerk of the court, and the service fees shall be waived by the sheriff. The court shall award the prevailing party attorney's fees and costs. In addition, when the filing party prevails in the replevin action, the court shall order payment of filing fees to the clerk and service fees to the sheriff.

(3) Upon the filing of the petition, the court shall set a hearing to be held at the earliest possible time. Upon the receipt of a petition for a writ by a secondhand dealer, the dealer shall hold the property at issue until the court determines the respective interests of the parties.

(4) In addition to the civil petition for return remedy, the state may file a motion as part of a pending criminal

case related to the property. The criminal court has jurisdiction to determine ownership, to order return or other disposition of the property, and to order any appropriate restitution to any person. Such order shall be entered upon hearing after proper notice has been given to the secondhand dealer, the victim, and the defendant in the criminal case.

**History.**—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 4, ch. 91-429; s. 4, ch. 93-97.

### 538.09 Registration.—

(1) A secondhand dealer shall not engage in the business of purchasing, consigning, or pawning secondhand goods from any location without registering with the Department of Revenue. 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 dealer. If a secondhand dealer is the owner of more than one secondhand store location, the application must list each location, and the department shall issue a duplicate registration for each location. For purposes of subsections (4) and (5) of this section, these duplicate registrations shall be deemed individual registrations. A dealer 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 a trust fund to be established and entitled the Secondhand Dealer and Secondary Metals Recycler Clearing Trust Fund. The Department of Revenue 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 of Revenue. 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. An applicant for a secondhand dealer registration must be a natural person who has reached the age of 18 years.

(a) If the applicant is a partnership, all the partners must apply.

(b) If the applicant is a joint venture, association, or other noncorporate entity, all members of such joint venture, association, or other noncorporate entity must make application for registration as natural persons.

(c) 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 statement from the Secretary of State that the corporation is duly qualified to do business in this state. If the dealer has more than one location, the application must list each location owned by the same legal entity and the department shall issue a duplicate registration for each location.

(2) The secondhand dealer shall furnish with his registration a complete set of his fingerprints, certified by an authorized law enforcement officer, and a recent fullface photographic identification card of himself. 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.

(3) The secondhand dealer's registration shall be conspicuously displayed at his principal place of business. A secondhand dealer must hold secondhand goods at the registered location until 15 days after the secondhand transaction or until any extension of the holding period has expired, whichever is later, and must retain records of each transaction which is not specifically exempted by this chapter. A secondhand dealer shall not dispose of property at any location until the holding period has expired unless the transaction is specifically exempted by this chapter.

(4) The department may impose a civil fine of up to \$10,000 for each violation of this section, which fine shall be transferred into the General Revenue Fund. If the fine is not paid within 60 days, the department may bring a civil action under s. 120.69 to recover the fine.

(5) In addition to the fine provided in subsection (4), registration under this section may be denied or any registration granted may be revoked, restricted, or suspended by the department if the department determines that the applicant or registrant:

(a) Has violated any provision of this chapter or any rule or order made pursuant to this chapter;

(b) Has made a material false statement in the application for registration;

(c) Has been guilty of a fraudulent act in connection with any purchase or sale or has been or is engaged in or is about to engage in any practice, purchase, or sale which is fraudulent or in violation of the law;

(d) Has made a misrepresentation or false statement to, or concealed any essential or material fact from, any person in making any purchase or sale;

(e) Is making purchases or sales through any business associate not registered in compliance with the provisions of this chapter;

(f) Has, within the preceding 5-year period, been convicted of, or has entered a plea of guilty or nolo contendere to, a crime against the laws of this state or any other state or of the United States which relates to registration as a secondhand dealer or which involves theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, any felony drug offense, any violation of s. 812.015, or any fraudulent or dishonest dealing;

(g) Has had a final judgment entered against him in a civil action upon grounds of fraud, embezzlement, misrepresentation, or deceit; or

(h) Has failed to pay any sales tax owed to the Department of Revenue.

In the event the department determines to deny an application or revoke a registration, it shall enter a final order with its findings on the register of secondhand dealers and their business associates, if any; and denial,

suspension, or revocation of the registration of a secondhand dealer shall also deny, suspend, or revoke the registration of such secondhand dealer's business associates.

**History.**—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 5, ch. 90-318; s. 4, ch. 91-429; s. 3, ch. 92-79; s. 16, ch. 94-353.

### 538.11 Powers and duties of department; rules.—

The same duties and privileges imposed by part I of chapter 212 upon dealers of tangible personal property respecting the keeping of books and records and accounts and compliance with rules of the department shall apply to and be binding upon all persons who are subject to the provisions of this chapter. The department shall administer, collect, and enforce the registration authorized under this chapter pursuant to the same procedures used in the administration, collection, and enforcement of the general state sales tax imposed under chapter 212, except as provided in this section. The provisions of part I of chapter 212 regarding the keeping of records and books shall apply. The department, under the applicable rules of the Career Service Commission, is authorized to employ persons and incur other expenses for which funds are appropriated by the Legislature. The department is empowered to adopt such rules, and shall prescribe and publish such forms, as may be necessary to effectuate the purposes of this chapter. The Legislature hereby finds that the failure to promptly implement the provisions of this chapter would present an immediate threat to the welfare of the state. Therefore, the executive director of the department is hereby authorized to adopt emergency rules pursuant to s. 120.54(9), for purposes of implementing this chapter. Notwithstanding any other provision of law, such emergency rules shall remain effective for 6 months from the date of adoption. Other rules of the department related to and in furtherance of the orderly implementation of the chapter shall not be subject to a rule challenge under s. 120.54(4) or a drawout proceeding under s. 120.54(17) but, once adopted, shall be subject to an invalidity challenge under s. 120.56. Such rules shall be adopted by the Governor and Cabinet and shall become effective upon filing with the Department of State, notwithstanding the provisions of s. 120.54(13).

**History.**—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 4, ch. 91-429.

**Note.**—Section 72, ch. 86-163, transferred "the statutory powers, duties, and functions, records and property of the Career Service Commission" to the Public Employees Relations Commission.

**538.15 Certain acts and practices prohibited.**—It is unlawful for a secondhand dealer or any employee thereof to do or allow any of the following acts:

- (1) Knowingly make a transaction with:
  - (a) Any person who is under the influence of drugs or alcohol when such condition is visible or apparent;
  - (b) Any person under the age of 18 years; or
  - (c) Any person using a name other than his own name or the registered name of his business.
- (2) Have a secondhand store open or engage in or conduct business as a secondhand dealer between the hours of 10 p.m. and 8 a.m. A secondhand dealer shall not conduct any transaction at a drive-through window or similar device.
- (3) Fail to pay any sales tax owed to the Department of Revenue or fail to have a sales tax registration number.

(4) Engage in both pawn transactions and title loan transactions from the same secondhand dealer location.

(5) Use the word "pawn" or "pawnbroker" in any transaction, documentation, advertising or promotional materials, signs, displays, banners, or other materials of any nature relating to the secondhand dealer's business if the secondhand dealer engages in title loan transactions.

**History.**—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 4, ch. 91-429; s. 3, ch. 95-287.

### 538.16 Secondhand dealers; disposal of property.

(1) Any personal property pawned with a pawnbroker, whether the pawn is a loan of money or a buy-sell agreement or a motor vehicle which is security for a title loan, is subject to sale or disposal if the pawn is a loan of money and the property has not been redeemed or there has been no payment on account made for a period of 90 days, or if the pawn is a buy-sell agreement or if it is a title loan and the property has not been repurchased from the pawnbroker or the title redeemed from the title lender or there has been no payment made on account within 60 days.

(2) Every pawn ticket and receipt for such pawn shall have printed thereon notice of the provisions of subsection (1), notice of sale or disposal, notice of intention to sell or dispose of the property without further notice, and consent to sale or disposal. Any such sale or disposal shall terminate all liability of the pawnbroker and shall vest in the purchaser the right, title, and interest of the seller or borrower and the pawnbroker.

**History.**—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 4, ch. 91-429; s. 5, ch. 93-97; s. 4, ch. 95-287.

### 538.17 Local regulation of secondhand dealers.—

Nothing in this chapter shall preclude political subdivisions of the state and municipalities from enacting laws more restrictive than the provisions of this chapter.

**History.**—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 4, ch. 91-429.

## PART II

### SECONDARY METALS RECYCLERS

- 538.18 Definitions.
- 538.19 Records required.
- 538.20 Inspection of regulated metals property and records.
- 538.21 Hold notice.
- 538.22 Exemptions.
- 538.23 Violations and penalties.
- 538.24 Stolen regulated metals property; petition for return.
- 538.25 Registration.
- 538.26 Certain acts and practices prohibited.

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

- (1) "Ferrous metals" means any metals containing significant quantities of iron or steel.
- (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.

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

(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.

(5) "Personal identification card" means 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 Immigration and Naturalization Service.

(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.

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

(a) Is engaged, from a fixed location or otherwise, in the business of 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.

(9) "Department" means the Department of Revenue.

**History.**—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 6, ch. 90-318; s. 4, ch. 91-429.

### 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 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 he is the rightful owner of, or is entitled to sell, the regulated metals property being sold.

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

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

(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.

**History.**—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 4, ch. 91-429.

**538.20 Inspection of regulated metals property and records.**—During the usual and customary business hours of a secondary metals recycler, a law enforcement officer shall, after properly identifying himself as a law enforcement officer, have the right to inspect:

(1) Any and all purchased regulated metals property in the possession of the secondary metals recycler, and

(2) Any and all records required to be maintained under s. 538.19.

**History.**—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 4, ch. 91-429.

### 538.21 Hold notice.—

(1) Whenever a law enforcement officer has reasonable cause to believe that certain items of regulated metals property in the possession of a secondary metals recycler have been stolen, the law enforcement officer may issue a hold notice to the secondary metals recycler.

(a) The hold notice shall be in writing, shall be delivered to the secondary metals recycler, shall specifically identify those items of regulated metals property that are believed to have been stolen and that are subject to the notice, and shall inform the secondary metals recycler of the information contained in this section.

(b) Upon receipt of the notice issued in accordance with this section, the secondary metals recycler receiving the notice may not process or remove the items of regulated metals property identified in the notice, or any portion thereof, from the place of business of the secondary metals recycler for 15 calendar days after receipt of the notice by the secondary metals recycler, unless sooner released by a law enforcement officer.

(2) No later than the expiration of the foregoing 15-day period, a law enforcement officer may issue a second hold notice to the secondary metals recycler, which shall be an extended hold notice.

(a) The extended hold notice shall be in writing, shall be delivered to the secondary metals recycler, shall specifically identify those items of regulated metals property that are believed to have been stolen and that are subject to the extended hold notice, and shall inform the secondary metals recycler of the information contained in this section.

(b) Upon receipt of the extended hold notice issued in accordance with this section, the secondary metals recycler receiving the extended hold notice may not process or remove the items of regulated metals prop-

erty identified in the notice, or any portion thereof, from the place of business of the secondary metals recycler for 45 calendar days after receipt of the extended hold notice by the secondary metals recycler, unless sooner released by a law enforcement officer.

(3) At the expiration of the hold period or, if extended in accordance with this section, at the expiration of the extended hold period, the hold is automatically released and the secondary metals recycler may dispose of the regulated metals property unless other disposition has been ordered by a court of competent jurisdiction.

**History.**—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 4, ch. 91-429.

**538.22 Exemptions.**—This part shall not apply to purchases of regulated metals property from:

(1) Organizations, corporations, or associations registered with the state as charitable, philanthropic, religious, fraternal, civic, patriotic, social, or school-sponsored organizations or associations, or from 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) Any public official acting under judicial process or authority who has presented proof of such status to the secondary metals recycler;

(5) A sale on the 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.

**History.**—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 4, ch. 91-429.

### 538.23 Violations and penalties.—

(1) A secondary metals recycler shall, upon conviction of knowingly and intentionally:

(a) Violating s. 538.20 or s. 538.21;

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

(c) Violating s. 538.26(4),

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

(2) A secondary metals recycler is presumed to know upon receipt of stolen regulated metals property in a purchase transaction that the regulated metals property has been stolen from another if the secondary metals recycler knowingly and intentionally fails to maintain the information required in s. 538.19 and shall, upon conviction of a violation of s. 812.015, be punished as provided in s. 812.014(2) or (3).

(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 shall, upon conviction, be guilty of:

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

(b) A felony of the 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) 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.

**History.**—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 4, ch. 91-429; ss. 3, 4, ch. 92-79; s. 2, ch. 92-157; s. 4, ch. 93-37; s. 10, ch. 95-184.

### 538.24 Stolen regulated metals property; petition for return.—

(1) If the secondary metals recycler contests the identification or ownership of the regulated metals property, the party other than the secondary metals recycler claiming ownership of any stolen goods in the possession of a secondary metals recycler may, provided that a timely report of the theft of the regulated metals property was made to the proper authorities, bring an action for replevin in the county or circuit court by petition in substantially the following form:

Plaintiff A. B. sues defendant C. D., and alleges:

1. This is an action to recover possession of personal property in \_\_\_\_\_ County, Florida.

2. The description of the property is: (list property). To the best of plaintiff's knowledge, information, and belief, the value of the property is \$\_\_\_\_\_.

3. Plaintiff is the lawful owner of the property and can identify the property as belonging to the plaintiff in the following manner: (explain basis of identification).

4. Plaintiff is entitled to the possession of the property under a security agreement dated \_\_\_\_\_, 19\_\_\_\_, a copy of which is attached.

5. To the plaintiff's best knowledge, information, and belief, the property is located at \_\_\_\_\_.

6. The property is wrongfully detained by defendant. Defendant came into possession of the property by (describe method of possession). To plaintiff's best knowledge, information, and belief, defendant detains the property because (give reasons).

7. The property has not been taken under an execution or attachment against plaintiff's property.

(2) The filing fees shall be waived by the clerk of the court and the service fee shall be waived by the sheriff. The court may award the prevailing party reasonable attorney's fees and costs.

(3) Upon the filing of the petition, the court shall set a hearing to be held at the earliest possible time. Upon the receipt by a secondary metals recycler of a petition for return, the secondary metals recycler shall hold, and shall not process or otherwise alter, the regulated metals property at issue, or any portion thereof, until the court determines the respective interests of the parties.

**History.**—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 4, ch. 91-429.

**538.25 Registration.—**

(1) No person shall engage in business as a secondary metals recycler at any location without registering with the department.

(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 Secondhand Dealer and Secondary Metals Recycler Clearing Trust Fund established pursuant to s. 538.09.

(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 his fingerprints, certified by an authorized law enforcement officer, and a recent fullface photographic identification card of 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.

(2) A secondary metals recycler's registration shall be conspicuously displayed at the place of business set forth on the registration. A secondary metals recycler shall not dispose of property at any location until any holding period has expired.

(3) The Department of Revenue may impose a civil fine of up to \$10,000 for each knowing and intentional

violation of this section, which fine shall be transferred into the General Revenue Fund. If the fine is not paid within 60 days, the department may bring a civil action under s. 120.69 to recover the fine.

(4) In addition to the fine provided in subsection (3), registration under this section may be denied or any registration granted may be revoked, restricted, or suspended by the department if, after October 2, 1989, and within a 24-month period immediately preceding such denial, revocation, restriction, or suspension:

(a) The applicant or registrant has been convicted of knowingly and intentionally:

1. Violating s. 538.20 or s. 538.21;

2. Engaging in a pattern of failing to keep records as required by s. 538.19;

3. Making a material false statement in the application for registration; or

4. Engaging in a fraudulent act in connection with any purchase or sale of regulated metals property;

(b) The applicant or registrant has been convicted of, or entered a plea of guilty or nolo contendere to, a felony committed by the secondary metals recycler against the laws of the state or of the United States involving theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, or any felony drug offense or of knowingly and intentionally violating the laws of the state relating to registration as a secondary metals recycler; or

(c) The applicant has, after receipt of written notice from the department of failure to pay sales tax, failed or refused to pay, within 30 days after the secondary metals recycler's receipt of such written notice, any sales tax owed to the department.

(5) A denial of an application, or a revocation, restriction, or suspension of a registration, by the department shall be probationary for a period of 12 months in the event that the secondary metals recycler subject to such action has not had any other application for registration denied, or any registration revoked, restricted, or suspended, by the department within the previous 24-month period.

(a) If, during the 12-month probationary period, the department does not again deny an application or revoke, restrict, or suspend the registration of the secondary metals recycler, the action of the department shall be dismissed and the record of the secondary metals recycler cleared thereof.

(b) If, during the 12-month probationary period, the department, for reasons other than those existing prior to the original denial or revocation, restriction, or suspension, again denies an application or revokes, restricts, or suspends the registration of the secondary metals recycler, the probationary nature of such original action shall terminate and both the original action of the department and the action of the department causing the termination of the probationary nature thereof shall immediately be reinstated against the secondary metals recycler.

**History.**—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 7, ch. 90-318; s. 4, ch. 91-429; s. 17, ch. 94-353.



**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 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.

(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.

(5) 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 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.

**History.**—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 8, ch. 90-318; s. 4, ch. 91-429; s. 1, ch. 92-157.