

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Banking and Insurance Committee

BILL: CS/SB 1864

SPONSOR: Banking and Insurance Committee and Senator Crist

SUBJECT: Secondhand Dealers

DATE: April 13 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Deffenbaugh	BI	Fav/CS
2.			CM	
3.			CJ	
4.				
5.				
6.				

I. Summary:

A secondhand dealer engages in the business of buying, reselling, or consigning certain types of used personal property. Secondhand dealers are required to register with the Department of Revenue (department). Pawnbrokers were formerly regulated as secondhand dealers, but are now separately regulated under the provisions of ch. 539, F.S. The committee substitute provides the following changes relating to the regulation of secondhand dealers, which are intended to assist law enforcement efforts related to stolen property:

- The categories of goods regulated and the types of secondhand dealers regulated are expanded to include mail order and computer assisted (Internet) shopping. Internet shopping and businesses primarily engaged in the rental, sale, or trade of motion picture videos and video games are exempted from regulation if certain conditions are met.
- Criminal penalty provisions are increased for persons knowingly giving false verification that the seller is the rightful owner of goods or is authorized to sell, trade, or consign the goods.
- Recordkeeping requirements are revised. The retention time for transaction records is decreased from 5 to 3 years. Local law enforcement agencies are authorized to supply software and computers to secondhand dealers for electronically transmitting information related to secondhand dealer transactions.
- The bill revises the registration requirements for a principal of a secondhand dealer by allowing the denial, suspension, or revocation of a registration if the department determines that an applicant or registrant has been convicted of certain crimes within the last 10 years

rather than the last 5 years. This provision would apply to persons that apply for registration on or after October 1, 2005.

This bill substantially amends the following sections of the Florida Statutes: 538.03, 538.04, 538.05, 538.06, 538.07, 538.09, 516.02, and 790.335.

The following section of the Florida Statutes is repealed: 538.16.

II. Present Situation:

Part I of ch. 538, F.S., regulates secondhand dealers. Section 538.03, F.S., defines a secondhand dealer to mean any person or business entity engaged in the business of buying, reselling, or consigning used personal property who is not a secondary metals recycler subject to regulation under part II of ch. 538, F.S. The term includes pawnbrokers, jewelers, precious metals dealers, garage sale operators, secondhand stores, and consignment stores. Under part I of ch. 538, F.S., office furniture, pianos, books, clothing, organs, coins, motor vehicles, costume jewelry, and secondhand sports equipment (not permanently labeled with a serial number and equipment other than golf clubs) are exempted from regulation as secondhand goods.

The Department of Revenue administers the registration requirements for secondhand dealers. A secondhand dealer is required to pay an initial fee of \$6 per location and a \$47 fee for a criminal background check of each principal. The annual renewal fee of \$6 per location is due on October 1 of each year. Prior to 1996, pawnbrokers were regulated under ch. 538, F.S., but the regulation of pawnbrokers was transferred to ch. 539, F.S. However, some references to pawnbrokers still exist in ch. 538.

Secondhand dealers are required to maintain certain records and to hold property for 15 days prior to selling. Currently, a secondhand dealer is required to maintain records of all goods purchased, and forward a copy of each purchase record to local law enforcement within 24 hours of acquisition. The premises and records of a secondhand dealer are subject to inspection by the local law enforcement.

Certain practices are prohibited and penalties are specified for noncompliance with provisions of part I of ch. 538, F.S. Presently, s. 538.04(4), F.S., provides that it is a criminal offense for any person to give false verification of ownership or to give false or altered identification to a secondhand dealer, and to receive money for goods sold to that dealer. If the value of the money received is less than \$300, it is a first-degree misdemeanor; if the value of the money received is greater than \$300, it is a third-degree felony.

III. Effect of Proposed Changes:

Section 1 amends s. 538.03, F.S., regarding the definitions applicable to ch. 538, F.S. Currently, this section provides a list of goods that are defined as secondhand goods and are subject to regulation, which include watches, diamonds, video equipment, and many other items.¹ The list

¹ Section 538.03(1)(g), F.S., provides, “. . . 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;

of secondhand goods has not been revised since 1998 to reflect changes in technology and marketing of goods. The bill deletes the list of secondhand goods that are specifically included; thus, any personal property previously owned or used and which is purchased, consigned, or traded as used property would be included, unless it is made exempt.

The section is amended to provide a list of goods that are not defined as secondhand goods and that would not be regulated under part I of ch. 538, F.S., as secondhand goods. The bill continues to exempt all types of property that are currently exempt under the law. These exemptions include regulated metals property regulated under part II of ch. 583, F.S., which is purchased, consigned, or traded as used property, office furniture, pianos, books, clothing, organs, coins, motor vehicles, costume jewelry, and secondhand sports equipment, excluding golf clubs, that is not permanently labeled with a serial number.

Section 538.03(2), F.S., lists entities and types of sales that are exempt from regulation pursuant to ch. 538, F.S., including the sale of secondhand goods by mail order and computer-assisted or "Internet" shopping. This bill deletes these exemptions, thereby providing that a person in the business of purchasing or consigning secondhand goods through the mail. Businesses engaged in Internet sales would be subject to regulation under ch. 538, F.S., unless the following conditions are met:

- The goods are available for viewing at no cost on the website.
- Transaction records are maintained for two years.
- Records of the sale must contain a record of the serial number for any item with a serial number.
- The website must be searchable by state or zip code
- The business must inform local law enforcement of its address.
- The business must allow inspection of the premises at any time.
- Payment from the business to the seller must be made by check or by a licensed money transmitter.
- The business must either verify any item with a serial number against the FDLE stolen property database; or must give the name, address, phone number and driver's license number of the seller plus a description of the goods including a serial number (if the item has a serial number).

The bill provides a similar exemption for businesses that primarily buy, sell, or trade motion picture videos and video games. This bill adds an exemption from regulation for an individual selling his or her own property through the internet, if such person is not required to have a local occupational or business license.

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; golf clubs; 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."

The bill deletes exemptions and reference to “pawnbroker” and “pawn” since the regulation of pawnbrokers was transferred to ch. 539, F.S.

Section 2 amends s. 538.04, F.S., regarding the recordkeeping requirements for a secondhand dealer. Currently, a secondhand dealer is required to maintain records of all goods purchased, and forward a copy of each purchase record to local law enforcement within 24 hours of purchase. This bill increases the amount of information that must be reported on the form submitted to local law enforcement to include the fingerprint of the person selling or consigning goods to the secondhand dealer.

Secondhand dealers are required to retain transaction records for 3 years, and those records must be maintained at the licensed premises for the first year. Currently, dealers are required to maintain records of all transactions on the premises. This bill also provides that, if local law enforcement provides the software and the equipment, the dealer must transmit transaction information electronically. Currently, secondhand dealers are required to submit hard copies of transaction forms within 24 hours of acquisition to the local law enforcement agency.

This bill increases the criminal penalties for providing false information while selling goods to a secondhand dealer to the same penalties prescribed for providing false information in a pawn transaction. The bill provides that if the money received for the goods is less than \$300, the penalty is a third-degree felony and if the goods are valued at more than \$300, it is a second-degree felony.² Presently, s. 538.04(4), F.S., provides that it is a criminal offense for any person to give false verification of ownership or to give false or altered identification to a secondhand dealer, and to receive money for goods sold to that dealer. If the value of the money received is less than \$300, it is a first-degree misdemeanor; if the value of the money received is greater than \$300, it is a third-degree felony.

Currently, s. 538.07(2), F.S., provides that, upon a conviction for theft, violation of the secondhand dealer law, or dealing in stolen property, a court must order the defendant to make restitution to the secondhand dealer. The bill provides that the defendant must make restitution to the secondhand dealer or to the lawful owner of the property, as applicable.

Section 3 amends s. 538.05, F.S., regarding law enforcement inspection of secondhand goods stores. This bill specifies that the entire registered premises are open to inspection, and provides that any law enforcement officer with jurisdiction over the registered premises may inspect the premises. Currently, the police department may inspect the premises of a secondhand dealer, including the purchase records, if the premises are located in a municipality, or the sheriff, if the premises are located outside of a municipality.

Section 4 amends s. 538.06, F.S., relating to holding periods and property records. The bill also allows law enforcement officers to place a 90-day written hold order on goods held by secondhand dealers, when such goods are suspected of being stolen. Presently, the maximum written hold period is 60 days. While such a hold order is in effect, the bill requires a secondhand dealer to release the property to the custody of a law enforcement officer with jurisdiction in a criminal investigation. The property must be returned to the secondhand dealer unless the court

² Section 539.001(8)(a)8., F.S.

orders other disposition. If the court orders other disposition, the person from whom the secondhand dealer acquired the property is required to pay restitution to the secondhand dealer together with reasonable attorney's fees and costs. The section is also amended to reduce the retention period for transaction records from 5 to 3 years.

Section 5 amends s. 538.07, F.S., regarding actions for recovery of damages by a victim, to provide that restitution ordered by the court can be made either to the secondhand dealer or to the lawful owner, as applicable. Currently, when a 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 or dealing in stolen property, the court will order the defendant to make restitution to the secondhand dealer pursuant to s. 775.089, F.S.

Section 6 amends s. 538.09, F.S., relating to registration requirements for a secondhand dealer. A secondhand dealer would be required to display the registration in a conspicuous place at the registered location rather than the principal place of business. Upon the request of a law enforcement officer, the Department of Revenue (department) is required to release the name and address of any secondhand dealer registered to conduct business within the officer's jurisdiction. Presently, the department will only verify whether a particular secondhand dealer is registered with the department. References to pawning are eliminated.

Presently, the department may deny, revoke, or suspend registration for any person who has been convicted of, or entered a plea of guilty or no contest to, a crime against the laws of this state or any other state 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, F.S., or any fraudulent or dishonest dealing, within the previous 5 years. This bill changes the time period from the previous 5 years to the previous 10 years, and adds that "adjudication withheld" for any of the enumerated offenses will also disqualify a person from being a principal in a business acting as a secondhand dealer. The bill provides that the 10-year background check on applicants would apply to persons applying on or after October 1, 2005 to coincide with the annual registration deadline and to clarify that this provision only applies to new applicants.

Section 7 repeals s. 538.16, F.S., relating to the disposal of pawned property, since ch. 538, F.S., no longer regulates pawnbrokers.

Section 8 amends s. 516.02, F.S., regarding exceptions to the usury laws, to delete the references to title loans and pawns from the exceptions to the usury law. However, this deletion does not appear to have any apparent legal effect. Usury laws prohibit excessive rates of interest. Section 516.02, F.S., provides, in part, that the usury laws do not apply to title loans, as defined in s. 538.03(1)(i), F.S., or pawns, as defined in s. 538.03(1)(d), F.S. Title loans,³ and pawn transactions,⁴ each have authorized statutory rates of interest that are in excess of those rates allowed under the general usury law.

³ Section 537.011, F.S.

⁴ Section 539.001(11), F.S.

Section 9 reenacts s. 790.335, F.S., for purposes of incorporating the amendment to s. 538.03, F.S.

Section 10 provides that this act is effective on October 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By expanding the definition of secondhand dealers to include mail order and computer-assisted (Internet) shopping, an additional number of businesses would be subject to regulation as a secondhand dealer by the Department of Revenue and local law enforcement. Computer-assisted shopping entities and businesses that primarily buy, sell, and trade motion picture videos and video games are exempt from regulation as a secondhand dealer if certain conditions are met. The number of impacted businesses is indeterminate.

The electronic submission of transactions to local law enforcement will reduce some of the recordkeeping burden currently associated with submitting hard copies of such forms to law enforcement within 24 hours of acquiring goods.

C. Government Sector Impact:

The bill provides greater enforcement tools for law enforcement by increasing the criminal penalty provisions for persons knowingly giving false verification that the seller is the rightful owner of goods or is authorized to sell, trade, or consign the goods.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

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