

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 855 CS Secondhand Dealers
SPONSOR(S): Sansom; Culp; Porth
TIED BILLS: none **IDEN./SIM. BILLS:** SB 1864

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	5 Y, 0 N, w/CS	Bond	Kramer
2) Justice Council	9 Y, 0 N, w/CS	Bond	De La Paz
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

A secondhand dealer is a person who in the business of buying, reselling, or consigning certain types of used personal property. Pawnbrokers were formerly regulated as secondhand dealers, but are now separately regulated.

This bill adopts some of the regulatory restrictions currently applicable to pawnbrokers, making them applicable to secondhand dealers. Changes include:

- The categories of goods regulated and the types of secondhand dealers regulated are expanded.
- Recordkeeping requirements are increased.
- The minimum hold time before resale is increased from 15 to 30 days.
- The registration requirements for a principal of a secondhand dealer are increased.

This bill does not appear to have a fiscal impact on state or local governments, although it is likely to have a negative fiscal impact on secondhand dealers.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill increases regulation of secondhand dealers.

B. EFFECT OF PROPOSED CHANGES:

Secondhand dealers are persons engaged in the business of buying, reselling, or consigning used personal property. Regulation of secondhand dealers is pursuant to ch. 538, F.S. The minimal registration requirements are administered by the Department of Revenue. Initial registration as a secondhand dealer is \$6.00 per location, plus \$47.00 for each principal to conduct a criminal history background check. Annual renewal is \$6.00 per location.

Prior to 1996, pawnbrokers were also regulated by ch. 538, F.S., but pawnbrokers are now regulated pursuant to ch. 539, F.S. However, the references to pawnbrokers in ch. 538, F.S., still exist.

This bill deletes references to pawnbrokers from ch. 538, F.S., and in general increases some of the regulation of secondhand dealers to be similar to the regulation of pawnbrokers. Specifically, this bill:

Items Regulated

Section 538.03(1)(g), F.S., defines "secondhand goods". The definition is important because only the purchase or consignment of secondhand goods is regulated by ch. 538, F.S. The definition consists of a list of goods that qualify as secondhand goods. As new types of goods are invented, they are not being added to the list, which last had an item added in 1998.¹

This bill expands the definition of secondhand goods to include all personal property previously owned or used, with the exception of certain goods. The exceptions in the bill are all types of property that are excepted under current law.²

Mail Order Sales

Section 538.03(2), F.S., lists entities and types of sales that are exempt from regulation pursuant to ch. 538, F.S. Included in the list of exemptions is the sale of secondhand goods by mail order, including internet sales.³

This bill deletes the exemption, thereby providing that a person in the business of purchasing or consigning secondhand goods through the mail, or through computer services, is subject to regulation as a secondhand goods dealer under ch. 538, F.S. However, this bill adds an exception for internet consignment companies, providing that such companies are exempt if:

¹ Chapter 98-30, L.O.F., added golf clubs.

² There is an exception for regulated metals property regulated under part II of ch. 583, F.S., and which is purchased, consigned, or traded as used property. Also excepted is office furniture, pianos, books, clothing, organs, coins, motor vehicles, costume jewelry, and secondhand sports equipment other than golf clubs that is not permanently labeled with a serial number.

³ Specifically, the exemption deleted is for: "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."

- The goods are available for viewing for free on the website.
- Records of the sale are kept 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 by check or by 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).

This bill also adds an exception for individuals selling their own property through the internet, provided that such person is not required to have a local occupational or business license.

Recordkeeping Requirements

Section 538.04, F.S., requires a secondhand dealer to maintain records of all goods purchased, and requires that a copy of each purchase record be forwarded to local law enforcement within 24 hours of purchase. The form for providing that information must be approved the Florida Department of Law Enforcement. Section 538.06(4), F.S., requires a secondhand dealer to keep the forms for 5 years.

This bill increases the amount of information that must be obtained on the form to match the information that a pawnbroker must collect. The increased information includes a requirement that the person selling or consigning goods to the secondhand dealer must furnish a thumbprint. The retention time for the forms is reduced from 5 years to 3 years, and forms must be maintained at the licensed premises for the first year. This bill also provides that, if local law enforcement provides the software and the equipment, the dealer must transmit the information electronically. These provisions are identical to current pawn shop regulation.

Criminal Penalties

Section 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 thereby 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 greater than \$300, it is a third degree felony. These penalties are in line with theft law, which provide in general that theft of property valued at less than \$300 is petit theft, a misdemeanor, and theft of property valued in excess of \$300 is a felony.⁴ This is not in line with the analogous statute applicable to pawnbrokers, which makes the false information a third degree felony if the money received for the goods is less than \$300, increased to a second degree felony if more than \$300.⁵

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 felony criminal offenses in s. 538.04(4), F.S., are not classified in the offense severity ranking chart of the Criminal Punishment Code. Accordingly, the amended third degree felony will be a Level 1 offense, and the second degree felony will be a Level 4 offense.⁶

⁴ See s. 812.014, F.S.

⁵ Section 539.001(8)(a)8., F.S.

⁶ Section 921.0023, F.S.

Section 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. This bill provides that restitution must be made to the secondhand dealer or to the lawful owner of the property, as applicable.

Inspection by Law Enforcement

The registered premises of a secondhand dealer, including the purchase records, may be inspected by the police department, if the premises is located in a municipality, or the sheriff, if located outside a municipality, during regular business hours.

This bill specifies that the “entire” registered premises is open to inspection, and provides that any law enforcement officer with jurisdiction over the registered premises may inspect the premises. Thus, this bill provides that county sheriffs may inspect secondhand dealers located anywhere in their county.

Minimum Holding Period

Section 538.06(1), F.S., provides that a secondhand dealer must hold property 15 days before re-selling the property, unless the person who sold the property to the dealer buys it back. Ch. 539, F.S., requires a pawnbroker to hold property 30 days before offering the property for sale to the public.

This bill amends s. 538.06(1), F.S., to require that a secondhand dealer must hold property for 30 days. This bill adds that the dealer may not utilize the property during those 30 days. This bill also removes the exception for repurchase by the seller of the property.⁷

Law Enforcement Hold

Section 538.06(3), F.S., provides that a law enforcement officer may extend the hold period for 60 days if the law enforcement officer has probable cause to believe the property is stolen. Pawnbrokers are subject to a 90 day hold by law enforcement. This bill amends the law enforcement hold period for secondhand dealers to 90 days.

This bill also provides that, if a 90 day hold is in effect, the secondhand dealer may be compelled to surrender property believed to be stolen property to local law enforcement for use in a criminal proceeding. The criminal court may order the property returned to the person from whom it was stolen, in which case the thief must pay restitution, including attorney’s fees and costs, to the secondhand dealer. This provision is identical to one currently applicable to pawnbrokers.⁸

Registration as a Secondhand Dealer

Section 538.09(5), F.S., provides the requirements for registration as a secondhand goods dealer. Included is a requirement that any principal in the business not have 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 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, within the previous 5 years.

⁷ A sale-resale agreement is a form of a pawn transaction.

⁸ Section 539.001(16)(e)2., F.S.

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 disqualifying a person from being a principal in a business acting as a secondhand dealer.⁹

This bill also amends s. 538.09, F.S., to add a provision requiring the Department of Revenue to provide law enforcement officials with a list of all licensed secondhand dealers registered to do business in the law enforcement official's jurisdiction.

Usury

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. This bill deletes the references to title loans and pawns from the exceptions to the usury law, but this deletion has no apparent legal effect. The general rules of statutory construction provide that specific regulatory law controls over a more general law that may also regulate the conduct.¹⁰ Title loans¹¹, and pawn transactions¹², each have authorized statutory rates of interest that are in excess of those rates allowed under the general usury law.

The effective date of this bill is July 1, 2005.

C. SECTION DIRECTORY:

Section 1 amends s. 538.03, F.S., regarding the definitions applicable to ch. 538, F.S.

Section 2 amends s. 538.04, F.S., regarding the recordkeeping requirements of a secondhand goods dealer.

Section 3 amends s. 538.05, F.S., regarding law enforcement inspection of secondhand goods stores.

Section 4 amends s. 538.06, F.S., regarding how long a secondhand goods dealer must hold goods prior to sale.

Section 5 amends s. 538.07, F.S., regarding actions for recovery of damages by a victim.

Section 6 amends s. 538.09, F.S., regarding registration as a secondhand goods dealer.

Section 7 repeals s. 538.16, F.S., regarding disposal of pawned property.

Section 8 amends s. 516.02, F.S., regarding exceptions to the usury laws.

Section 9 reenacts a portion of s. 790.335, F.S.

Section 10 provides an effective date of July 1, 2005.

⁹ Pawnbroker registration also has a 10 year restriction, and counts offenses for which adjudication was withheld. Pawnbroker law, however, has additional disqualifying offenses. See s. 539.001(4)(a)4., F.S.

¹⁰ "It is a well settled rule of statutory construction, however, that a special statute covering a particular subject matter is controlling over a general statutory provision covering the same and other subjects in general terms. In this situation "the statute relating to the particular part of the general subject will operate as an exception to or qualification of the general terms of the more comprehensive statute to the extent only of the repugnancy, if any." *Adams v. Culver*, 111 So.2d 655, 667 (Fla. 1959).

¹¹ Section 537.011, F.S.

¹² Section 539.001(11), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will have a direct negative fiscal impact on businesses that deal in secondhand goods and are not exempt from the regulation. They will be required to hold merchandise longer before selling it, which is likely to increase storage costs and floor plan interest costs. They will also have increased transactional and recordkeeping costs related to the increased amount of information required for the secondhand transaction form.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to expend funds, to reduce the authority of counties or municipalities to raise revenues, or to reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Current law limits the scope of regulation of secondhand dealers by limiting the types of goods that makes a person subject to regulation. By eliminating the limited list, it is possible that this bill may regulate businesses or individuals that are not anticipated.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 16, 2005, the Criminal Justice Committee adopted one amendment to this bill. Current law provides that a motor vehicle dealer is exempt from regulation as a secondhand dealer. The bill as originally filed removed the exemption, the amendment returns to current law (that a motor vehicle is exempt from regulation as a secondhand dealer). The bill was then reported favorably with a committee substitute.

On April 6, 2005, the Justice Council adopted one amendment to this bill. The amendment added the exception related to internet consignment sales. The bill was then reported favorably with a committee substitute.