

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 651 Secondhand Dealers
SPONSOR(S): Kottkamp and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 694

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) <u>Criminal Justice Committee</u> | <u>6 Y, 0 N</u> | <u>Ferguson</u> | <u>Kramer</u> |
| 2) <u>Business Regulation Committee</u> | <u>18 Y, 0 N</u> | <u>Livingston</u> | <u>Liepshutz</u> |
| 3) <u>Governmental Operations Committee</u> | <u>5 Y, 0 N</u> | <u>Brown</u> | <u>Williamson</u> |
| 4) <u>Justice Council</u> | <u> </u> | <u> </u> | <u> </u> |
| 5) <u> </u> | <u> </u> | <u> </u> | <u> </u> |

SUMMARY ANALYSIS

This bill modifies provisions relating to secondhand dealers, and adopts some of the regulatory restrictions currently applicable to pawnbrokers, making them applicable to secondhand dealers. A secondhand dealer is a person who is in the business of purchasing, consigning, or trading certain types of previously owned or used personal property.

- Changes include:
- Revising definitions of what constitutes secondhand goods and exempting persons.
 - Repealing the exemption from regulation for mail order sales.
 - Specifically exempting certain internet business from regulation as a secondhand dealer.
 - Revising the recordkeeping requirements and increasing criminal penalties.
 - Increasing the time law enforcement can order a hold on stolen goods.

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:

A secondhand dealer is a person who is in the business of purchasing, consigning, or trading certain types of previously owned or used personal property. Chapter 538, F.S., regulates secondhand dealers; the registration requirements are administered by the Department of Revenue.¹

Prior to 1996, pawnbrokers also were regulated by chapter 538, F.S., but pawnbrokers are now regulated pursuant to chapter 539, F.S. This bill deletes references to pawnbrokers from chapter 538, F.S., and generally increases the regulation of secondhand dealers. The regulations are similar to the regulations governing pawnbrokers.

Items Regulated

Section 538.03(1)(g), F.S., currently defines "secondhand goods". That definition is limited to a list of specified items. This bill removes the current list and defines secondhand goods as personal property previously owned or used which is not "regulated metals property"² and which is purchased, consigned, or traded as used property. The bill lists goods that are specifically excluded. This list contains office furniture, pianos, books, clothing, organs, coins, motor vehicles, costume jewelry, and secondhand sports equipment that is not permanently labeled with a serial number.

Mail Order Sales/Internet Sales

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

The 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 chapter 538, F.S. However, this bill adds an exception for a business that contracts with other persons or entities to offer its secondhand goods for sale, purchase, consignment, or trade via an internet website, and that maintains a shop, store, or other business premises for this purpose if:

- The secondhand goods are available for viewing on the website at no charge;
- The records of the sale, purchase, consignment, or trade are maintained for two years;
- The records of the sale, purchase, consignment, or trade contain the serial number of each item, if any;
- The secondhand goods are searchable by state or zip code on the website;

¹ 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.

² "Regulated metals property" refers to certain precious metals and is governed by Part II of chapter 538, F.S.

³ Specifically, the current exemption covers: "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 name under which the company conducts business is provided to the appropriate law enforcement agency;
- The business allows the appropriate law enforcement agency to inspect its premises any time during normal business hours;
- Any payment for sale, purchase, consignment, or trade must be made by check or via a money transmitter licensed under part II of chapter 560; and
 - At least 48 hours after the estimated time of contracting to offer the secondhand goods, the business verifies the item is not stolen via its serial number against the FDLE stolen property database; or
 - The business provides the appropriate law enforcement agency with an electronic copy of the name, address, phone number, driver's license number, and issuing state of the person with whom the business contracted to offer the goods, as well as an accurate description of the goods within 24 hours after entering into the contract unless other arrangements are made between the business and law enforcement.

This bill also exempts any person offering his or her own personal property for sale, purchase, consignment, or trade via an internet website when that person is not required to have a local occupational or business license for this purpose.

The bill exempts a business whose primary business is the sale, rental, or trade of motion picture videos or video games if the business:

- Requires the sellers to have a current account with the business;
- Has on file the name, address, home and work telephone numbers, government-issued identification number, place of employment, date of birth, gender, and right thumbprint of each seller of secondhand goods;
- Purchases secondhand goods from the property owner or representative at the place of business pursuant to an agreement in writing and signed by the property owner which describes the property purchased, states the date and time of the purchase, and states the seller is the lawful owner;
- Retains such purchase agreements for at least one year; and
- Pays for the purchased property in the form of a store credit that is issued to the seller and is redeemable solely by the seller or authorized user of seller's account.

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 by the Florida Department of Law Enforcement. Section 538.06(4), F.S., requires a secondhand dealer to keep the forms for five 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 five years to three years and forms must be maintained at the licensed premises for the first year. This bill also provides that if local law enforcement provides appropriate software and equipment, the dealer must transmit the information electronically. These provisions are identical to current pawn shop regulations in chapter 539, F.S.

Criminal Penalties

Section 538.04(4), F.S., provides that it is a criminal offense for any person to knowingly give false verification of ownership⁴ and receive money from a secondhand dealer for goods sold. If the amount

⁴ This includes false or altered identification. See s. 538.04(4), F.S.

received is less than \$300, it is a first degree misdemeanor; if greater than \$300, it is a third degree felony.

This bill adds goods “consigned or traded” to the penalty provisions and increases the penalties to a third degree felony when the amount received is less than \$300 and a second degree felony when the amount received is greater than \$300. These penalties are analogous to the statute applicable to pawnbrokers.⁵

Section 538.07(2), F.S., currently 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 any purchase records, may be inspected during regular business hours. The local police department may inspect the premises if they are located in a municipality. The sheriff may inspect, if the premises are located outside a municipality.

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 and Law Enforcement Holds

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. Chapter 539, F.S., requires a pawnbroker to hold property 30 days before offering the property for sale to the public.

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.

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.⁶

Registration as a Secondhand Dealer

Section 538.09(5), F.S., currently provides the requirements for registration as a secondhand goods dealer. Included is a requirement that a principal in the business may not have been convicted of, or entered a plea of guilty or no contest to a crime against the laws of Florida, any other state, or 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 section 812.015, or any fraudulent dealing within the previous five years.

⁵ See section 539.001(8)(b)8.a. and b., F.S. 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. [s. 921.0023, F.S.]

⁶ Section 539.001(16)(e)2., F.S.

This bill changes the time period from “previous 5 years” to “previous 10 years,” and adds that merely having adjudication withheld for any of the enumerated offenses disqualifies a person from being a principal in a business acting as a secondhand dealer.⁷

This bill also amends section 538.09, F.S., to add, upon the request of a law enforcement official, the Department of Revenue shall release the name and address of any secondhand dealer registered to do business within the official’s jurisdiction.

The effective date of this bill is October 1, 2006.

C. SECTION DIRECTORY:

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

Section 2 amends s. 538.04, F.S., regarding the recordkeeping requirements to provide criminal penalties.

Section 3 amends s. 538.05, F.S., regarding provisions relating to the inspection or records and premises.

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

Section 5 amends s. 538.07, F.S., regarding restitution from a secondhand dealer.

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., to remove cross-references.

Section 9 reenacts s. 790.335 (3)(f), F.S., regarding firearm records to provide criminal penalties.

Section 10 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

The bill does not create, modify, amend, or eliminate a state expenditure.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

The bill does not create, modify, amend, or eliminate a local expenditure.

⁷ Pawnbroker registration also has a 10 year restriction, and counts offenses for which adjudication was withheld. Pawnbroker law, however, has additional disqualifying offenses. See section 539.001(4)(a)4., F.S.

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 take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.