

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1485

Secondhand Dealers

SPONSOR(S): Rivera

TIED BILLS:

IDEN./SIM. BILLS: SB 2700

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee		Reilly	Cooper
2)	Civil Justice & Courts Policy Committee			
3)	General Government Policy Council			
4)	Full Appropriations Council on General Government & Health Care			
5)				

SUMMARY ANALYSIS

Secondhand dealers are persons or entities engaged in the business of buying, consigning, or trading certain types of used personal property. Secondhand dealers must register with the Department of Revenue, pay an annual registration fee, and are regulated pursuant to part I of ch. 538, F.S. Pawnbrokers were formerly regulated as secondhand dealers, but are now separately regulated under ch. 539, F.S.

Certain types of businesses and transactions are exempted from regulation as secondhand dealers, including nonprofit organizations registered with the state, auction businesses, garage sale operators who hold garage sales less than ten weekends per year, and Internet sales under specified conditions.

House Bill 1485 exempts from regulation as secondhand dealers under part I of ch. 538, F.S., businesses that contract with persons or entities to buy precious metals valued at less than \$2,500 per transaction through an Internet website, media advertising, or telemarketing.

The bill provides an effective date of July 1, 2009, and should have no more than a minimal fiscal impact on state and local governments.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Secondhand Dealers

Part I of ch. 538, F.S., provides for the regulation of secondhand dealers in Florida. Secondhand dealers are defined as persons, corporations, or other business organizations or entities which are not secondary metals recyclers subject to part II of ch. 538, F.S., and which are engaged in the business of purchasing, consigning, or trading secondhand goods.¹ Secondhand dealers include precious metals dealers,² secondhand stores, and consignment shops, among other entities.

Secondhand goods are defined as personal property previously owned or used, which is not regulated metals property regulated under part II, and which are purchased, consigned, or traded as used property. The term does not include office furniture, pianos, books, clothing, organs, coins, motor vehicles, costume jewelry, secondhand sports equipment that is not permanently labeled with a serial number, or golf clubs.³

The Department of Revenue administers the registration requirements for secondhand dealers.⁴ A secondhand dealer is required to pay an initial fee of \$6 per location and a fingerprinting fee of \$54.25⁵ for the criminal background check for each principal. The annual renewal fee of \$6 per location is due on October 1 of each year. Prior to enactment of The Florida Pawnbroking Act in 1996,⁶ pawnbrokers were regulated under ch 538, F.S. Pawnbrokers are now regulated under ch. 539, F.S.

Secondhand dealers are required to hold property for 15 days prior to selling,⁷ to maintain records of all goods purchased, and to forward a copy of each purchase record to local law enforcement within 24

¹ Section 538.03(1)(a), F.S.

² Pursuant to s. 538.03(1)(b), F.S., 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.

³ Section 538.03(1)(f), F.S.

⁴ See "Secondhand Goods Dealers and Secondary Metals Recyclers" by the Florida Department of Revenue, available at http://dor.myflorida.com/dor/taxes/second_hand.html. Last accessed March 22, 2009.

⁵ Information provided by the Department of Revenue to staff of the Insurance, Business & Financial Affairs Policy Committee.

⁶ Chapter 96-242, L.O.F.

⁷ Section 538.06, F.S.

hours of acquisition.⁸ The premises and records of secondhand dealers are subject to inspection by local law enforcement.⁹

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

Under part I of s. 538, F.S., certain types of businesses and transactions are expressly exempted from registering as secondhand dealers, including:

- Public officials acting under judicial process and law enforcement officers acting in their official capacity.
- Secondhand goods transactions involving a nonprofit organization registered with the state.
- Internet sales when specified conditions are satisfied.
- Persons at antique, coin, or collectable shows or sales.
- Auction businesses.
- Garage sale operators who hold garage sales less than ten weekends per year.
- Persons accepting secondhand goods as a trade-in for similar items of greater value.
- Antique dealers.

Effect of Bill

House Bill 1485 exempts from registration as secondhand dealers businesses that contract with other persons or entities to buy precious metals¹⁰ valued at less than \$2,500 per transaction through an Internet website, media advertising, or telemarketing.

B. SECTION DIRECTORY:

Section 1. Amends s.538.03, F.S., to exempt certain businesses from registering as secondhand dealers.

Section 2. Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Department of Revenue has indicated that House Bill 1485 will have no affect on the department. However, the bill may have a minimal fiscal impact as businesses that qualify for the exemption will not have to register as secondhand dealers and will not be required to pay the \$6 annual registration fee per location.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

⁸ Section 538.04, F.S.

⁹ Section 538.05, F.S.

¹⁰ Under s. 538.03(1)(h), F.S., precious metals means any item containing any gold, silver, or platinum or any combination thereof, excluding any chemical or any automotive, photographic, electrical, medical, or dental materials or electronic parts.

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Businesses that are exempted from registering as secondhand dealers will not be required to pay the \$6 annual registration fee per location, and will not be subject to recordkeeping and other regulatory provisions applicable to secondhand dealers under part I of ch. 538, F.S.

D. FISCAL COMMENTS:

Same as above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES