

By Senator Crist

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1 A bill to be entitled
2 An act relating to mail-in secondhand dealers of
3 jewelry and precious metals; creating part III of ch.
4 538, F.S.; defining terms; excluding certain persons
5 and businesses from applicability of the act;
6 providing registration and recordkeeping requirements;
7 providing for verification of a seller's
8 identification; requiring the seller to present a
9 notarized statement to the secondhand dealer that the
10 photographic identification is true and accurate under
11 certain circumstances; requiring the seller to provide
12 a sworn statement that the seller is the lawful owner
13 of the jewelry or precious metals that are offered for
14 sale and has the authority to sell the jewelry or
15 precious metals; prescribing procedures for
16 deficiencies in information required to be provided by
17 a seller; providing holding periods for jewelry and
18 precious metals; providing procedures for returning a
19 seller's jewelry and precious metals; providing
20 procedures for notifying a law enforcement agency of
21 transactions; prescribing procedures for tendering
22 payments; requiring the dealer to remit payment to the
23 seller within 2 business days and for the seller to
24 acknowledge receipt of payment within 30-calendar
25 days; providing for the inspection of records and
26 premises by law enforcement agencies; providing
27 holding periods for jewelry and precious metals
28 purchased by a secondhand dealer; providing
29 requirements for the storage of jewelry and precious

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30 metals; describing prohibited acts and practices;
31 providing criminal penalties; providing for a cause of
32 action for stolen jewelry and precious metals;
33 providing for a petition for the return of jewelry and
34 precious metals; providing an effective date.

35
36 Be It Enacted by the Legislature of the State of Florida:

37
38 Section 1. Part III of chapter 538, Florida Statutes,
39 consisting of sections 538.31, 538.32, 538.33, 538.34, 538.35,
40 538.36, 538.37, and 538.38, is created to read:

41 Part III

42 MAIL-IN SECONDHAND JEWELRY AND PRECIOUS METAL DEALERS

43 538.31 Definitions.—As used in this part, the term:

44 (1) "Department" means the Department of Revenue.

45 (2) "Jewelry" means a personal ornament that contains
46 precious metals and may contain gemstones.

47 (3) "Precious metals" means any item containing any gold,
48 silver, or platinum, or any combination thereof.

49 (4) "Secondhand dealer" means any person or business within
50 this state that regularly engages in the business of purchasing
51 jewelry or precious metals only through the mail or package
52 delivery service.

53 (5) "Seller" means any person or business that offers
54 jewelry or precious metals that belong solely to that person or
55 business for sale to another and that person or business has the
56 authority to sell the jewelry or precious metals to another.

57 (6) "Transaction" means the purchase of jewelry or precious
58 metals by a secondhand dealer.

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59 538.32 Applicability.—This part does not apply to:

60 (1) Any person or business that is open to the public for
61 walk-in business at a secondhand store and is regulated under
62 part I.

63 (2) The purchase, consignment, or trade of jewelry or
64 precious metals with another mail-in secondhand precious metal
65 dealer or secondhand dealer regulated under part I.

66 538.33 Registration and recordkeeping requirements.—

67 (1) A secondhand dealer may not conduct business under this
68 part without registering with the department and complying with
69 all registration requirements as set forth in s. 538.09.

70 (2) A secondhand dealer may not pay a seller for jewelry or
71 precious metals until the seller has provided, on a transaction
72 form provided by the secondhand dealer and approved by the
73 Department of Law Enforcement, the following information:

74 (a) The seller's name, address of primary residence,
75 telephone number, and e-mail address, if available.

76 (b) The seller's thumbprint, free of smudges and smears,
77 affixed to a form provided by the secondhand dealer.

78 (c) The seller's driver's license number and issuing state.

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

81 (3) The seller of jewelry or precious metals shall give the
82 secondhand dealer a notarized statement confirming that the
83 identification information supplied on the transaction form is
84 the same that appears on the seller's driver's license or other
85 government-issued identification for which the seller has been
86 photographed, and that the photo identification presented to the
87 notary belongs to the person from whom the secondhand dealer has

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88 received precious metals or jewelry in exchange for payment if
89 any of the following conditions apply:

90 (a) The dealer has not received a notarized statement from
91 the seller in any previous transaction;

92 (b) For any transaction that the seller has evaluated will
93 be worth at least \$300; or

94 (c) The identification or contact information provided to
95 the dealer by the seller has been altered or changed since the
96 seller's most recent transaction with the dealer.

97 (4) The seller must provide a sworn statement made by the
98 seller that the seller is the lawful owner of the jewelry or
99 precious metals that are offered for sale and has the authority
100 to sell the jewelry or precious metals.

101 (5) Before tendering any payment, a secondhand dealer shall
102 verify the seller's address of primary residence or telephone
103 number by matching the information with the United States Postal
104 Service database or a commercial telephone directory. If the
105 secondhand dealer is unable to match the seller's name and
106 address of primary residence or name and telephone number, the
107 secondhand dealer may not complete the purchase of the seller's
108 jewelry or precious metals and must perform only those
109 transactions that are required to return the jewelry or precious
110 metals to the seller.

111 (6) (a) If the seller fails to provide the information
112 required on the transaction form under subsection (2), the
113 secondhand dealer must give written notice to the seller of the
114 deficient information within 15 days after the secondhand dealer
115 receives the seller's transaction form. The secondhand dealer
116 must request in the notice that the seller provide the missing

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117 information within 30 days after receiving the secondhand
118 dealer's notice. The notice must state that if the seller does
119 not provide the missing information within the allotted 30 days,
120 the seller's jewelry or precious metals will be held for an
121 additional 30 days before they are deemed abandoned and
122 relinquished to the state under chapter 717. The same
123 notification requirements must apply to any transaction in which
124 the seller has failed to acknowledge receipt of funds within 30-
125 calendar days after the dealer's recorded date of remittance, as
126 required by s. 538.34(2).

127 (b) If the seller fails to remedy the deficiency in the
128 transaction form within 30 days after receiving the notice, the
129 secondhand dealer must hold the seller's property for an
130 additional 30 days.

131 (c) If the secondhand dealer continues to hold the seller's
132 jewelry or precious metals at the end of the 30-day holding
133 period required under paragraph (b), the seller's property is
134 deemed to be abandoned and must be relinquished to the state
135 under chapter 717.

136 (d) After the expiration of the 30-day holding period under
137 paragraph (a) or upon abandonment of the seller's property, the
138 secondhand dealer must notify the local law enforcement agency
139 within 24 hours and the law enforcement agency of competent
140 jurisdiction nearest to the seller's address of the expiration
141 of the 30-day holding period or the abandonment of the property,
142 as applicable. The dealer must provide copies of all written
143 transactions between seller and secondhand dealer to each law
144 enforcement agency in electronic form.

145 (e) During the period in which the secondhand dealer is in

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146 possession of the seller's jewelry or precious metals, the
147 seller may request in writing, or by a consensually recorded
148 telephone call, the return of his or her jewelry or precious
149 metals. The secondhand dealer must comply with seller's request
150 and return the seller's jewelry or precious metals, unless the
151 sale of the items is being investigated by a law enforcement
152 agency.

153 (7) For every transaction, the secondhand dealer must keep
154 a record of:

155 (a) A complete and accurate description of the seller's
156 jewelry or precious metals, including:

157 1. The type, weight, and content of the precious metal, if
158 known.

159 2. A description of the gemstones, including the number and
160 size of each stone, if applicable.

161 3. Any unique identifying marks, numbers, or letters.

162 (b) The date that the seller's jewelry or precious metals
163 were received by the secondhand dealer.

164 (c) The date and time of all communication from the seller.

165 (d) The telephone number of the seller, as captured by
166 caller ID, when communication is made by telephone.

167 (e) A recording of all telephone communication, if
168 consented to by the seller.

169 (f) The Internet Protocol (IP) address, date, and time when
170 communication is made by e-mail.

171 (g) The date and method of disposition of the jewelry or
172 precious metals, as well as a photograph of the jewelry or
173 precious metal.

174 (h) A digital photograph of the item sold and of any unique

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175 identifying mark.

176 (8) The secondhand dealer must maintain, for at least 3
177 years, all information collected pursuant to subsections (2) and
178 (7) and all records of any transaction between the dealer and
179 seller in a form that is easily retrievable upon request by a
180 law enforcement agency. Any information maintained pursuant to
181 this section shall be grouped by each seller's county of primary
182 residence, and shall be organized in ascending order according
183 to the dates upon which each transaction occurred.

184 (9) Unless other arrangements have been agreed upon by the
185 secondhand dealer and the appropriate law enforcement agency,
186 the secondhand dealer shall, within 24 hours after acquiring any
187 secondhand goods, deliver to the police department of the
188 municipality in which the secondhand dealer is registered or, if
189 the secondhand dealer is located outside of a municipality, to
190 the sheriff's department of the county in which the secondhand
191 dealer is registered, a record of the transaction on a form
192 approved by the Department of Law Enforcement.

193 538.34 Tendering payment.-

194 (1) Except as provided in subsection (3), the secondhand
195 dealer shall make payment to the seller by check, payable to the
196 seller using only the seller's name and mailed to the seller's
197 address of primary residence, as submitted by the seller and
198 verified by the dealer under s. 538.33.

199 (2) Upon receipt of all documentation required by the
200 seller in s. 538.33(2), the dealer shall remit payment to the
201 seller within 2 business days and shall provide written
202 notification to the seller that he or she must acknowledge
203 receipt of funds within 30-calendar days by depositing or

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204 cashing the check issued by the dealer, after which the property
205 remitted to the dealer shall be treated as provided in s.
206 538.33(6).

207 (3) Upon request by the seller, a secondhand dealer may
208 make payment by wire transfer into a bank account rather than
209 payment by check. Before completing a wire transfer, the
210 secondhand dealer must obtain a copy of a voided bank check from
211 the seller which contains the seller's name, address of primary
212 residence, or mailing address, if different from the seller's
213 address of primary residence, and bank account number and the
214 name of his or her banking institution. The secondhand dealer
215 must verify the address on the check through the United States
216 Postal Service database, using the same method as set forth in
217 s. 538.33, and may make a wire transfer only to the bank account
218 that has been verified as the seller's account.

219 (4) The secondhand dealer must make wire transfers only
220 through a money transmitter licensed under part II of chapter
221 560.

222 538.35 Inspection of records and premises.—The secondhand
223 dealer must allow a law enforcement agency to inspect its
224 business records, inventory, and premises during normal business
225 hours to ensure compliance with this part. The secondhand
226 dealer, upon request, must provide to the law enforcement agency
227 any transaction form and all items listed on a transaction form,
228 unless the jewelry or precious metals are no longer in the
229 possession of the secondhand dealer.

230 538.36 Holding period.—

231 (1) The dealer may not sell, barter, exchange, alter,
232 adulterate, use, or in any way dispose of any jewelry or

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233 precious metals purchased from a seller until the seller has
234 acknowledged receipt of funds issued to him or her by the dealer
235 in exchange for jewelry or precious metals remitted to the
236 dealer, or if payment has been wired electronically, within 15-
237 calendar days after the dealer has remitted payment to the
238 seller in exchange for jewelry or precious metals, except that
239 this holding period may be extended for purposes of complying
240 with s. 538.33(4) and (6) (e). This holding period terminates if
241 the seller demands in writing, or during a consensually recorded
242 telephone conversation, the return of the seller's jewelry or
243 precious metals and has reimbursed the dealer for any payment
244 paid to the seller for his or her jewelry or precious metals.

245 (2) The secondhand dealer must store all precious metals
246 and jewelry in a secure location during holding periods and make
247 the items available for inspection at the request of a law
248 enforcement agency.

249 (3) The secondhand dealer assumes all responsibility of any
250 property or evidence in question, including responsibility for
251 the actions of his or her employees.

252 538.37 Acts and practices prohibited; penalties.-

253 (1) A secondhand dealer who is not registered with the
254 department as a mail-in secondhand dealer of jewelry and
255 precious metals commits a felony of the third degree, punishable
256 as provided in s. 775.082, s. 775.083, or s. 775.084, for each
257 completed transaction. The officers and corporation, if
258 convicted or found guilty of or pled nolo contendere to a
259 violation of this section, may not operate thereafter for 1 year
260 as a secondhand dealer of jewelry or precious metals within this
261 state.

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262 (2) A seller who knowingly gives false personal identifying
 263 information to a secondhand dealer, provides a driver's license
 264 number that does not belong to him or her, provides a thumbprint
 265 that is not his or her own, or makes a false statement with
 266 respect to his or her age or ownership of the jewelry or
 267 precious metals, and who receives payment from the secondhand
 268 dealer commits:

269 (a) If the value of the money received is less than \$300, a
 270 felony of the third degree, punishable as provided in s.
 271 775.082, s. 775.083, or s. 775.084.

272 (b) If the value of the money received is \$300 or greater,
 273 a felony of the second degree, punishable as provided in s.
 274 775.082, s. 775.083, or s. 775.084.

275 (3) Except as otherwise specifically provided in this
 276 section, the penalty provisions of s. 538.07 apply to any
 277 secondhand dealer who knowingly violates this part.

278 538.38 Stolen goods; petition for return.-

279 (1) If a person other than the seller alleges ownership of
 280 jewelry or precious metals sold to a secondhand dealer, he or
 281 she may bring an action for replevin in the county or circuit
 282 court if a timely report of the theft of the secondhand jewelry
 283 or precious metals was made to the proper authorities. An action
 284 may be initiated by filing a petition in substantially the
 285 following form:

286
 287 Plaintiff A. B., sues defendant C. D., and alleges:
 288 1. This is an action to recover possession of personal
 289 property in County, Florida.
 290 2. The description of the property is: ...(list and

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291 describe property)....

292 3. Plaintiff is entitled to the possession of the property
 293 as evidenced by ...(indicate evidence such as a receipt or
 294 contract and attach evidence to petition as Exhibit A)....

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

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

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

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

310 (3) Upon the filing of the petition, the court shall set a
 311 hearing to be held at the earliest possible time. Upon the
 312 receipt of a petition for a writ by a secondhand dealer of
 313 jewelry and precious metals, the secondhand dealer must hold the
 314 jewelry or precious metals at issue until the court determines
 315 the respective interests of the parties.

316 (4) In addition to the civil petition for return remedy,
 317 the state may file a motion as part of a pending criminal case
 318 related to the jewelry or precious metals. The criminal court
 319 has jurisdiction to determine ownership, to order return or

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320 other disposition of the jewelry or precious metals, and to
321 order any appropriate restitution to any person. The order must
322 be entered upon hearing after proper notice has been given to
323 the secondhand dealer, the victim, and the defendant in the
324 criminal case.

325 Section 2. This act shall take effect July 1, 2009.