



408484

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/25/2009	.	
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The Committee on Commerce (Crist) recommended the following:

1 **Senate Substitute for Amendment (371856) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Part III of chapter 538, Florida Statutes,
7 consisting of sections 538.31, 538.32, 538.33, 538.34, 538.35,
8 538.36, and 538.37 is created to read:

9 Part III

10 MAIL-IN SECONDHAND PRECIOUS METALS DEALERS

11 538.31 Definitions; applicability.--

12 (1) As used in this part, the term:



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13 (a) "Department" means the Department of Revenue.

14 (b) "Jewelry" means a personal ornament that contains
15 precious metals and may contain gemstones.

16 (c) "Mail-in secondhand precious metals dealer" means any
17 person or entity that:

18 1. Conducts business within this state and that contracts
19 with other persons or entities to buy precious metals or jewelry
20 through an Internet website, the United States mail, or
21 telemarketing, or:

22 2. Conducts business within this state and regularly
23 engages in the business of purchasing jewelry or precious metals
24 through the mail or Internet-based transactions.

25 (d) "Precious metals" means any item containing any gold,
26 silver, or platinum, or any combination thereof.

27 (e) "Seller" means any person or entity offering precious
28 metals or jewelry for purchase, which belong solely to that
29 person or entity and has absolute authority to sell such goods.

30 (f) "Transaction" includes any event relating to the
31 purchase of secondhand precious metals or jewelry by a mail-in
32 secondhand precious metals dealer.

33 (2) This part does not apply to:

34 (a) Any person or entity that is available to the public
35 for walk-in business and regulated under Part I.

36 (b) The purchase, consignment, or trade of secondhand
37 precious metals or jewelry with another mail-in secondhand
38 precious metals dealer or secondhand dealer regulated under Part
39 I.

40 538.32 Registration, transaction, and recordkeeping
41 requirements; penalties.--



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42 (1) A mail-in secondhand precious metals dealer may not
43 conduct business under this part without registering with the
44 department and complying with all registration regulations as
45 set forth in s. 538.09.

46 (2) A mail-in secondhand precious metals dealer may not
47 remit payment to a seller unless the seller has provided the
48 following information:

49 (a) The seller's name, address, telephone number, and e-
50 mail address, if available.

51 (b) The seller's driver's license number and issuing state
52 or other government-issued identification number.

53 (c) A sworn statement made by the seller that the driver's
54 license number or other government-issued identification number
55 and other identifying information provided by the seller is true
56 and correct and that the seller is the lawful owner of the goods
57 with absolute authority to sell the goods. The statement must
58 include the following language: "I declare under penalty of
59 perjury that the foregoing is true and correct."

60 (3) For every transaction, the secondhand dealer must keep
61 a record of the following:

62 (a) A complete and accurate description of the seller's
63 goods, including:

64 1. Precious metal type, or, if jewelry, the type of
65 jewelry.

66 2. Any other unique identifying marks, numbers, or letters.
67 The description must be in an electronic format agreed upon by
68 the dealer and the appropriate law enforcement agency.

69 (b) The date that the seller's goods were received by the
70 mail-in secondhand precious metals dealer.



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72 This information must be provided to the appropriate law
73 enforcement agency within 24 hours after entering into the
74 contract unless other arrangements are made between the business
75 and the law enforcement agency.

76 (4) The mail-in secondhand precious metals dealer must
77 maintain, for a period of not less than 2 years, all information
78 under subsections (2) and (3) and all records of any transaction
79 between the dealer and seller in a form that is easily
80 retrievable upon request by a law enforcement agency.

81 (5) The mail-in secondhand precious metals dealer must
82 provide the appropriate law enforcement agency with an
83 electronic copy of the name, address, phone number, driver's
84 license number, or government-issued identification number, and
85 issuing state of the person from whom the dealer purchased or
86 acquired the precious metals or jewelry.

87 538.33 Tendering payment.--

88 (1) Any payment by the mail-in secondhand precious metals
89 dealer resulting from the sale, purchase, consignment, or trade
90 of precious metals must be made to the person or entity by check
91 to a lawful bank account or via a money services business
92 license under part II of chapter 560.

93 538.34 Inspection of records and premises.-- The dealer
94 must allow a law enforcement agency to inspect its business
95 records, inventory, and premises during normal business hours to
96 ensure compliance with this part.

97 538.35 Holding period.--

98 (1) The dealer may not sell, barter, exchange, alter,
99 adulterate, use, or in any way dispose of any goods purchased



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100 from a seller within 10 calendar days of the date payment is
101 issued for acquisition of the goods.

102 (2) Records of the sale, purchase, consignment, or trade of
103 precious metals or jewelry must be maintained by the business
104 for at least 2 years after the date of the transaction.

105 538.36 Acts and practices prohibited; penalties.--

106 (1) Any dealer not registered with the department as a
107 mail-in secondhand precious metals dealer, or who fails to
108 comply with this part, commits a felony of the third degree for
109 each completed transaction, punishable as provided in s.

110 775.082, s. 775.083, or s. 775.084. The officers and
111 corporation, if convicted or found guilty of, or pled nolo
112 contendere, may not operate thereafter for 1 year as a mail-in
113 secondhand precious metals dealer within the state of Florida.

114 (2) Any person who knowingly gives false personal
115 identifying information to the dealer, who provides a driver's
116 license number that does not belong to him or her, or who makes
117 any false statement with respect to his or her age or ownership
118 of goods, and who receives payment from the dealer commits:

119 (a) if the value of the money received is less than
120 \$300.00, a felony of the third degree, punishable as provided in
121 s. 775.082, s. 775.083, or s. 775.084.

122 (b) if the value of the money received is \$300.00 or more,
123 a felony of the second degree, punishable as provided in s.
124 775.082, s. 775.083, or s. 775.084.

125 (3) The penalty provisions of s. 538.07 apply to any dealer
126 who knowingly violates any provision of this part.

127 538.37 Powers and duties of department.--

128 (1) The department shall have all authority provided under



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129 s. 538.11 in regard to registrations issued under this part.

130 Section 2. This act shall take effect October 1, 2009.

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134 ===== T I T L E A M E N D M E N T =====

135 And the title is amended as follows:

136 Delete everything before the enacting clause

137 and insert:

138 A bill to be entitled

139 An act relating to mail-in secondhand precious metals
140 dealers; creating Part III of chapter 538, F.S.; providing a
141 short title; providing definitions; providing exceptions;
142 providing for registration; providing for recordkeeping;
143 providing for the tendering of payments; providing for the
144 inspection of records and business premises by law enforcement;
145 providing for a holding period; prohibiting certain acts;
146 providing penalties; providing for powers and duties of the
147 department; and providing an effective date.

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