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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Finance and Tax (Ring) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Paragraph (f) of subsection (1) of section 538.03, Florida Statutes, is amended to read;

538.03 Definitions; applicability.—

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

(f) "Secondhand goods" means personal property previously owned or used, which is not regulated metals property regulated under part II and which is purchased, consigned, or traded as



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13 used property. Such secondhand goods do not include office  
14 furniture, pianos, books, clothing, organs, coins, motor  
15 vehicles, costume jewelry, exercise equipment, and secondhand  
16 sports equipment that is not permanently labeled with a serial  
17 number. For purposes of this paragraph, "secondhand sports  
18 equipment" does not include golf clubs.

19 Section 2. Part III of chapter 538, Florida Statutes,  
20 consisting of sections 538.31, 538.32, 538.33, 538.34, 538.35,  
21 538.36, and 538.37, is created to read:

22 Part III

23 MAIL-IN SECONDHAND PRECIOUS METALS DEALERS

24 538.31 Definitions; applicability.—

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

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

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

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

31 1. Conducts business within this state and that contracts  
32 with other persons or entities to buy precious metals or jewelry  
33 through an Internet website, the United States mail, or  
34 telemarketing; or

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

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

40 (e) "Seller" means any person or entity offering precious  
41 metals or jewelry for purchase which belong solely to that



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42 person or entity and has absolute authority to sell such goods.

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

46 (2) This part does not apply to:

47 (a) Any person or entity that is available to the public  
48 for walk-in business and regulated under part I.

49 (b) The purchase, consignment, or trade of secondhand  
50 precious metals or jewelry with another mail-in secondhand  
51 precious metals dealer or secondhand dealer regulated under part  
52 I.

53 538.32 Registration, transaction, and recordkeeping  
54 requirements; penalties.—

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

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

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

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

66 (c) A sworn statement made by the seller that the seller is  
67 of lawful age and that the driver's license number or other  
68 government-issued identification number and other identifying  
69 information provided by the seller is true and correct and that  
70 the seller is the lawful owner of the goods with absolute



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71 authority to sell the goods. The statement must include the  
72 following language: "I declare under penalty of perjury that the  
73 foregoing is true and correct."

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

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

78 1. Precious metal type, or, if jewelry, the type of  
79 jewelry.

80 2. Any other unique identifying marks, numbers, or letters.

81 The description must be in an electronic format agreed upon by  
82 the dealer and the appropriate law enforcement agency.

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

85  
86 This information must be provided to the appropriate law  
87 enforcement agency within 24 hours after entering into the  
88 contract unless other arrangements are made between the business  
89 and the law enforcement agency.

90 (4) For every transaction, pictures of the secondhand goods  
91 which are the subject of the transaction must be available  
92 online for electronic viewing, via a website accessible by  
93 username and password only, by a law enforcement agency at no  
94 charge. In addition, the electronic files must be searchable by  
95 a law enforcement agency for queries concerning property  
96 descriptions, secondhand dealer transaction information, and the  
97 seller's personal identification including address, state of  
98 residence and zip code.

99 (5) The mail-in secondhand precious metals dealer must



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100 maintain, for a period of not less than 2 years, all information  
101 under subsections (2) and (3) and all records of any transaction  
102 between the dealer and seller in a form that is easily  
103 retrievable upon request by a law enforcement agency.

104 (6) The mail-in secondhand precious metals dealer must  
105 provide the appropriate law enforcement agency with an  
106 electronic copy of the name, address, phone number, driver's  
107 license number, or government-issued identification number, and  
108 issuing state of the person from whom the dealer purchased or  
109 acquired the precious metals or jewelry.

110 (7) (a) If the seller fails to provide the information  
111 required under s. 538.32(2) (a) and (b), the secondhand dealer  
112 may verify the identity and information of the seller through a  
113 national provider of personal identification verification  
114 services. Evidence from the personal identification verification  
115 service must be maintained by the secondhand dealer and  
116 available for review by a law enforcement agency upon request.

117 (b) Alternatively, a secondhand dealer must give written  
118 notice to the seller, by United States mail or e-mail if an e-  
119 mail address is provided by the seller, that information  
120 otherwise required to be given by seller under s. 538.32(2) has  
121 not been provided by the seller to the secondhand dealer. Notice  
122 of the deficient information must be sent by the secondhand  
123 dealer no later than 10 days after the transaction is received  
124 by the secondhand dealer. The secondhand dealer must specify in  
125 the notice that:

126 1. The seller must provide the missing information or must  
127 request the return of the property from the secondhand dealer  
128 within 30 days after receiving the notice from the secondhand



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129 dealer; and

130 2. The failure of the seller to provide the missing  
131 information or request return of the property within the  
132 applicable 30-day time period shall result in abandonment of the  
133 seller's property to the Bureau of Unclaimed Property of the  
134 Department of Financial Services pursuant to chapter 717.

135 (c) If the seller fails to remedy the deficiency in  
136 information or request return of the property within 30 days  
137 after receiving the notice, the seller's property is deemed  
138 abandoned and is relinquished to the Bureau of Unclaimed  
139 Property pursuant to under chapter 717 if the property's true  
140 market value is greater than \$50 as defined in chapter 717.

141 (d) Within 24 hours after the expiration of the 30-day hold  
142 period for the property, the secondhand dealer must notify the  
143 appropriate law enforcement agency of the abandonment of the  
144 property by electronic transmission or by sending a copy of the  
145 completed form authorized by chapter 717 to the Department of  
146 Financial Services, Bureau of Unclaimed Property.

147 (8) (a) If there is probable cause that goods held by a  
148 secondhand dealer are stolen, the law enforcement agency with  
149 jurisdiction over the secondhand dealer may place a 90-day  
150 written hold order on the goods and may take possession of the  
151 goods from the dealer during the 90-day hold period. The 90-day  
152 hold period may be extended beyond 90 days by a court of  
153 competent jurisdiction upon a finding of probable cause that the  
154 property is stolen and further holding is necessary for the  
155 purpose of trial or to safeguard the property.

156 (b) If the secondhand dealer maintains possession of the  
157 goods during any hold period, the secondhand dealer assumes all



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158 responsibility, civil and criminal, for the safekeeping of the  
159 property or evidence in question, including responsibility for  
160 the actions of any employee of the dealer.

161 (c) While a hold order is in effect, the secondhand dealer  
162 must, if in possession of the goods, release the property  
163 subject to the hold order to the custody of a law enforcement  
164 agency for use in a criminal investigation. Release of the  
165 property to the law enforcement agency is not considered a  
166 waiver or release of the secondhand dealer's rights or interest  
167 in the property unless the secondhand dealer is not owed  
168 restitution for the property.

169 (d) The property must be returned to the secondhand dealer  
170 upon completion of the criminal proceeding unless the court  
171 orders an alternative disposition or the secondhand dealer is  
172 not due restitution for the property. When another disposition  
173 is ordered, the court shall additionally order the person from  
174 whom the secondhand dealer acquired the property to pay  
175 restitution to the secondhand dealer in the amount that the  
176 secondhand dealer paid for the property together with reasonable  
177 attorney's fees and costs.

178 (9) If a secondhand dealer contests the identification or  
179 ownership of the property, the person alleging ownership of the  
180 property may, if a timely report of the theft of the goods was  
181 made to the proper authorities, bring an action for replevin in  
182 the county or circuit court by petition in substantially the  
183 following form:

184 (a) Plaintiff A. B., sues defendant C. D., and alleges:

185 1. This is an action to recover possession of personal  
186 property in \_\_\_\_\_ County, Florida.



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187       2. The description of the property is: (list property). To  
188 the best of plaintiff's knowledge, information, and belief, the  
189 value of the property is \$ \_\_\_\_\_ .

190       3. Plaintiff is entitled to the possession of the property  
191 under a security agreement dated \_\_\_\_\_, (year), a copy of  
192 which is attached.

193       4. To plaintiff's best knowledge, information, and belief,  
194 the property is located at \_\_\_\_\_ .

195       5. The property is wrongfully detained by defendant.  
196 Defendant came into possession of the property by (describe  
197 method of possession). To plaintiff's best knowledge,  
198 information, and belief, defendant detains the property because  
199 (give reasons).

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

202       (b) The filing fees shall be waived by the clerk of the  
203 court and the service fees shall be waived by the sheriff. The  
204 court shall award the prevailing party attorney's fees and  
205 costs. In addition, if the filing party prevails in the replevin  
206 action, the court shall order payment of filing fees to the  
207 clerk and service fees to the sheriff.

208       (c) Upon the filing of the petition, the court shall set a  
209 hearing to be held at the earliest possible time. Upon receipt  
210 of a petition for a writ by a secondhand dealer, the dealer  
211 shall hold the property at issue until the court determines the  
212 respective interests of the parties.

213       (d) In addition to the civil petition for return remedy,  
214 the state may file a motion as part of a pending criminal case  
215 related to the property. The criminal court has jurisdiction to





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216 determine ownership, to order return or other disposition of the  
217 property, and to order any appropriate restitution to any  
218 person. The order must be entered upon hearing after proper  
219 notice has been given to the secondhand dealer, the victim, and  
220 the defendant in the criminal case.

221 538.33 Tendering payment.-

222 (1) Any payment by the mail-in secondhand precious metals  
223 dealer resulting from the sale, purchase, consignment, or trade  
224 of precious metals must be made to the person or entity by check  
225 to a lawful bank account or via a money services business  
226 licensed under part II of chapter 560.

227 538.34 Inspection of records and premises.-The dealer must  
228 allow a law enforcement agency to inspect its business records,  
229 inventory, and premises during normal business hours to ensure  
230 compliance with this part.

231 538.35 Holding period.-

232 (1) The dealer may not sell, barter, exchange, alter,  
233 adulterate, use, or in any way dispose of any goods purchased  
234 from a seller within 10 calendar days after the date payment is  
235 issued for acquisition of the goods.

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

239 538.36 Acts and practices prohibited; penalties.-

240 (1) Any dealer not registered with the department as a  
241 mail-in secondhand precious metals dealer, or who fails to  
242 comply with this part, commits a felony of the third degree for  
243 each completed transaction, punishable as provided in s.  
244 775.082, s. 775.083, or s. 775.084. If an officer or corporation



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245 is convicted or found guilty of, or pleads nolo contendere to,  
246 any such offense, the officer or corporation may not operate  
247 thereafter for 1 year as a mail-in secondhand precious metals  
248 dealer within the state.

249 (2) Any person who knowingly gives false personal  
250 identifying information to the dealer, who provides a driver's  
251 license number or government-issued identification number that  
252 does not belong to him or her, or who makes any false statement  
253 with respect to being of lawful age or his or her ownership of  
254 goods, and who receives payment from the dealer commits:

255 (a) If the value of the money received is less than \$300, a  
256 felony of the third degree, punishable as provided in s.  
257 775.082, s. 775.083, or s. 775.084.

258 (b) If the value of the money received is \$300 or more, a  
259 felony of the second degree, punishable as provided in s.  
260 775.082, s. 775.083, or s. 775.084.

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

263 538.37 Powers and duties of department.—The department has  
264 the authority provided under s. 538.11 in regard to  
265 registrations issued under this part.

266 Section 3. This act shall take effect up on becoming law.

267  
268 ===== T I T L E A M E N D M E N T =====

269 And the title is amended as follows:

270 Delete everything before the enacting clause  
271 and insert:

272 A bill to be entitled

273 An act relating to secondhand dealers; amending s.



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274 538.03, F.S.; excluding exercise equipment from the  
275 definition of secondhand goods; creating part III of  
276 ch. 538, F.S.; providing definitions; providing  
277 exceptions; providing for registration; providing for  
278 recordkeeping; providing for the tendering of  
279 payments; providing for the inspection of records and  
280 business premises by a law enforcement agency;  
281 providing for a holding period; providing electronic  
282 access to transaction files by law enforcement  
283 agencies; providing for written notification to seller  
284 of transaction deficiencies; providing a method of  
285 relinquishment of abandoned property; providing for  
286 restitution; providing for replevin; prohibiting  
287 certain acts; providing penalties; providing for  
288 powers and duties of the Department of Revenue;  
289 providing an effective date.