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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/02/2009	.	
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The Committee on Finance and Tax (Ring) recommended the following:

1 **Senate Substitute for Amendment (538616) (with title**
2 **amendment)**

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

6 Section 1. Paragraph (f) of subsection (1) of section
7 538.03, Florida Statutes, is amended to read;

8 538.03 Definitions; applicability.—

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

10 (f) "Secondhand goods" means personal property previously
11 owned or used, which is not regulated metals property regulated



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12 under part II and which is purchased, consigned, or traded as
13 used property. Such secondhand goods do not include office
14 furniture, pianos, books, clothing, organs, coins, motor
15 vehicles, costume jewelry, cardio and strength training or
16 conditioning equipment designed primarily for indoor use, and
17 secondhand sports equipment that is not permanently labeled with
18 a serial number. For purposes of this paragraph, "secondhand
19 sports equipment" does not include golf clubs.

20 Section 2. Part III of chapter 538, Florida Statutes,
21 consisting of sections 538.31, 538.32, 538.33, 538.34, 538.35,
22 538.36, and 538.37, is created to read:

23 Part III

24 MAIL-IN SECONDHAND PRECIOUS METALS DEALERS

25 538.31 Definitions; applicability.-

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

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

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

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

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

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

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



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

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

47 (2) This part does not apply to:

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

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

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

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

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

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

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

67 (c) A sworn statement made by the seller that the seller is
68 of lawful age and that the driver's license number or other
69 government-issued identification number and other identifying



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70 information provided by the seller is true and correct and that
71 the seller is the lawful owner of the goods with absolute
72 authority to sell the goods. The statement must include the
73 following language: "I declare under penalty of perjury that the
74 foregoing is true and correct."

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

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

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

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

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

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

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



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99 residence and zip code.

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

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

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

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

127 1. The seller must provide the missing information or must



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128 request the return of the property from the secondhand dealer
129 within 30 days after receiving the notice from the secondhand
130 dealer; and

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

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

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

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



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157 (b) If the secondhand dealer maintains possession of the
158 goods during any hold period, the secondhand dealer assumes all
159 responsibility, civil and criminal, for the safekeeping of the
160 property or evidence in question, including responsibility for
161 the actions of any employee of the dealer.

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

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

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

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



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- 186 1. This is an action to recover possession of personal
187 property in _____ County, Florida.
- 188 2. The description of the property is: (list property). To
189 the best of plaintiff's knowledge, information, and belief, the
190 value of the property is \$ _____ .
- 191 3. Plaintiff is entitled to the possession of the property
192 under a security agreement dated _____, (year), a copy of
193 which is attached.
- 194 4. To plaintiff's best knowledge, information, and belief,
195 the property is located at _____ .
- 196 5. The property is wrongfully detained by defendant.
197 Defendant came into possession of the property by (describe
198 method of possession). To plaintiff's best knowledge,
199 information, and belief, defendant detains the property because
200 (give reasons).
- 201 6. The property has not been taken under an execution or
202 attachment against plaintiff's property.
- 203 (b) The filing fees shall be waived by the clerk of the
204 court and the service fees shall be waived by the sheriff. The
205 court shall award the prevailing party attorney's fees and
206 costs. In addition, if the filing party prevails in the replevin
207 action, the court shall order payment of filing fees to the
208 clerk and service fees to the sheriff.
- 209 (c) Upon the filing of the petition, the court shall set a
210 hearing to be held at the earliest possible time. Upon receipt
211 of a petition for a writ by a secondhand dealer, the dealer
212 shall hold the property at issue until the court determines the
213 respective interests of the parties.
- 214 (d) In addition to the civil petition for return remedy,



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215 the state may file a motion as part of a pending criminal case
216 related to the property. The criminal court has jurisdiction to
217 determine ownership, to order return or other disposition of the
218 property, and to order any appropriate restitution to any
219 person. The order must be entered upon hearing after proper
220 notice has been given to the secondhand dealer, the victim, and
221 the defendant in the criminal case.

222 538.33 Tendering payment.-

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

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

232 538.35 Holding period.-

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

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

240 538.36 Acts and practices prohibited; penalties.-

241 (1) Any dealer not registered with the department as a
242 mail-in secondhand precious metals dealer, or who fails to
243 comply with this part, commits a felony of the third degree for



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244 each completed transaction, punishable as provided in s.
245 775.082, s. 775.083, or s. 775.084. If an officer or corporation
246 is convicted or found guilty of, or pleads nolo contendere to,
247 any such offense, the officer or corporation may not operate
248 thereafter for 1 year as a mail-in secondhand precious metals
249 dealer within the state.

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

256 (a) If the value of the money received is less than \$300, a
257 felony of the third degree, punishable as provided in s.
258 775.082, s. 775.083, or s. 775.084.

259 (b) If the value of the money received is \$300 or more, a
260 felony of the second degree, punishable as provided in s.
261 775.082, s. 775.083, or s. 775.084.

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

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

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

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

270 And the title is amended as follows:

271
272 Delete everything before the enacting clause



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273 and insert:

274 A bill to be entitled
275 An act relating to secondhand dealers; amending s.
276 538.03, F.S.; excluding cardio and strength training
277 or conditioning equipment designed primarily for
278 indoor use from the definition of secondhand goods;
279 creating part III of ch. 538, F.S.; providing
280 definitions; providing exceptions; providing for
281 registration; providing for recordkeeping; providing
282 for the tendering of payments; providing for the
283 inspection of records and business premises by a law
284 enforcement agency; providing for a holding period;
285 providing electronic access to transaction files by
286 law enforcement agencies; providing for written
287 notification to seller of transaction deficiencies;
288 providing a method of relinquishment of abandoned
289 property; providing for restitution; providing for
290 replevin; prohibiting certain acts; providing
291 penalties; providing for powers and duties of the
292 Department of Revenue; providing an effective date.