

By the Committee on Commerce; and Senator Gelber

577-03422A-09

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1 A bill to be entitled
2 An act relating to mail-in secondhand precious metals
3 dealers; creating part III of ch. 538, F.S.; providing
4 a short title; providing definitions; providing
5 exceptions; providing for registration; providing for
6 recordkeeping; providing for the tendering of
7 payments; providing for the inspection of records and
8 business premises by a law enforcement agency;
9 providing for a holding period; prohibiting certain
10 acts; providing penalties; providing for powers and
11 duties of the Department of Revenue; providing an
12 effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

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16 Section 1. Part III of chapter 538, Florida Statutes,
17 consisting of sections 538.31, 538.32, 538.33, 538.34, 538.35,
18 538.36, and 538.37 is created to read:

19 Part III

20 MAIL-IN SECONDHAND PRECIOUS METALS DEALERS

21 538.31 Definitions; applicability.—

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

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

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

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

28 1. Conducts business within this state and that contracts
29 with other persons or entities to buy precious metals or jewelry

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30 through an Internet website, the United States mail, or
31 telemarketing, or:

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

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

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

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

43 (2) This part does not apply to:

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

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

50 538.32 Registration, transaction, and recordkeeping
51 requirements; penalties.—

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

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

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

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

63 (c) A sworn statement made by the seller that the driver's
64 license number or other government-issued identification number
65 and other identifying information provided by the seller is true
66 and correct and that the seller is the lawful owner of the goods
67 with absolute authority to sell the goods. The statement must
68 include the following language: "I declare under penalty of
69 perjury that the foregoing is true and correct."

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

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

74 1. Precious metal type, or, if jewelry, the type of
75 jewelry.

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

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

81
82 This information must be provided to the appropriate law
83 enforcement agency within 24 hours after entering into the
84 contract unless other arrangements are made between the business
85 and the law enforcement agency.

86 (4) The mail-in secondhand precious metals dealer must
87 maintain, for a period of not less than 2 years, all information

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88 under subsections (2) and (3) and all records of any transaction
89 between the dealer and seller in a form that is easily
90 retrievable upon request by a law enforcement agency.

91 (5) The mail-in secondhand precious metals dealer must
92 provide the appropriate law enforcement agency with an
93 electronic copy of the name, address, phone number, driver's
94 license number, or government-issued identification number, and
95 issuing state of the person from whom the dealer purchased or
96 acquired the precious metals or jewelry.

97 538.33 Tendering payment.—

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

103 538.34 Inspection of records and premises.—The dealer must
104 allow a law enforcement agency to inspect its business records,
105 inventory, and premises during normal business hours to ensure
106 compliance with this part.

107 538.35 Holding period.—

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

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

115 538.36 Acts and practices prohibited; penalties.—

116 (1) Any dealer not registered with the department as a

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117 mail-in secondhand precious metals dealer, or who fails to
118 comply with this part, commits a felony of the third degree for
119 each completed transaction, punishable as provided in s.
120 775.082, s. 775.083, or s. 775.084. If an officer or corporation
121 is convicted or found guilty of, or pleads nolo contendere to,
122 any such offense, the officer or corporation may not operate
123 thereafter for 1 year as a mail-in secondhand precious metals
124 dealer within the state.

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

130 (a) If the value of the money received is less than \$300, a
131 felony of the third degree, punishable as provided in s.
132 775.082, s. 775.083, or s. 775.084.

133 (b) If the value of the money received is \$300 or more, a
134 felony of the second degree, punishable as provided in s.
135 775.082, s. 775.083, or s. 775.084.

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

138 538.37 Powers and duties of department.—

139 (1) The department shall have all authority provided under
140 s. 538.11 in regard to registrations issued under this part.

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