

20092700e1

1 A bill to be entitled
2 An act relating to secondhand dealers; amending s.
3 538.03, F.S.; excluding cardio and strength training
4 or conditioning equipment designed primarily for
5 indoor use from the definition of secondhand goods;
6 creating part III of ch. 538, F.S.; providing
7 definitions; providing exceptions; providing for
8 registration; providing for recordkeeping; providing
9 for the tendering of payments; providing for the
10 inspection of records and business premises by a law
11 enforcement agency; providing for a holding period;
12 providing electronic access to transaction files by
13 law enforcement agencies; providing for written
14 notification to seller of transaction deficiencies;
15 providing a method of relinquishment of abandoned
16 property; providing for restitution; providing for
17 replevin; prohibiting certain acts; providing
18 penalties; providing for powers and duties of the
19 Department of Revenue; providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Paragraph (f) of subsection (1) of section
24 538.03, Florida Statutes, is amended to read;

25 538.03 Definitions; applicability.—

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

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

20092700e1

30 used property. Such secondhand goods do not include office
31 furniture, pianos, books, clothing, organs, coins, motor
32 vehicles, costume jewelry, cardio and strength training or
33 conditioning equipment designed primarily for indoor use, and
34 secondhand sports equipment that is not permanently labeled with
35 a serial number. For purposes of this paragraph, "secondhand
36 sports equipment" does not include golf clubs.

37 Section 2. Part III of chapter 538, Florida Statutes,
38 consisting of sections 538.31, 538.32, 538.33, 538.34, 538.35,
39 538.36, and 538.37, is created to read:

40 Part III

41 MAIL-IN SECONDHAND PRECIOUS METALS DEALERS

42 538.31 Definitions; applicability.—

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

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

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

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

49 1. Conducts business within this state and that contracts
50 with other persons or entities to buy precious metals or jewelry
51 through an Internet website, the United States mail, or
52 telemarketing; or

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

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

58 (e) "Seller" means any person or entity offering precious

20092700e1

59 metals or jewelry for purchase which belong solely to that
60 person or entity and has absolute authority to sell such goods.

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

64 (2) This part does not apply to:

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

67 (b) The purchase, consignment, or trade of secondhand
68 precious metals or jewelry with another mail-in secondhand
69 precious metals dealer or secondhand dealer regulated under part
70 I.

71 538.32 Registration, transaction, and recordkeeping
72 requirements; penalties.-

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

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

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

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

84 (c) A sworn statement made by the seller that the seller is
85 of lawful age and that the driver's license number or other
86 government-issued identification number and other identifying
87 information provided by the seller is true and correct and that

20092700e1

88 the seller is the lawful owner of the goods with absolute
89 authority to sell the goods. The statement must include the
90 following language: "I declare under penalty of perjury that the
91 foregoing is true and correct."

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

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

96 1. Precious metal type, or, if jewelry, the type of
97 jewelry.

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

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

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

103
104 This information must be provided to the appropriate law
105 enforcement agency within 24 hours after entering into the
106 contract unless other arrangements are made between the business
107 and the law enforcement agency.

108 (4) For every transaction, pictures of the secondhand goods
109 which are the subject of the transaction must be available
110 online for electronic viewing, via a website accessible by
111 username and password only, by a law enforcement agency at no
112 charge. In addition, the electronic files must be searchable by
113 a law enforcement agency for queries concerning property
114 descriptions, secondhand dealer transaction information, and the
115 seller's personal identification including address, state of
116 residence and zip code.

20092700e1

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

122 (6) The mail-in secondhand precious metals dealer must
123 provide the appropriate law enforcement agency with an
124 electronic copy of the name, address, phone number, driver's
125 license number, or government-issued identification number, and
126 issuing state of the person from whom the dealer purchased or
127 acquired the precious metals or jewelry.

128 (7) (a) If the seller fails to provide the information
129 required under s. 538.32(2) (a) and (b), the secondhand dealer
130 may verify the identity and information of the seller through a
131 national provider of personal identification verification
132 services. Evidence from the personal identification verification
133 service must be maintained by the secondhand dealer and
134 available for review by a law enforcement agency upon request.

135 (b) Alternatively, a secondhand dealer must give written
136 notice to the seller, by United States mail or e-mail if an e-
137 mail address is provided by the seller, that information
138 otherwise required to be given by seller under s. 538.32(2) has
139 not been provided by the seller to the secondhand dealer. Notice
140 of the deficient information must be sent by the secondhand
141 dealer no later than 10 days after the transaction is received
142 by the secondhand dealer. The secondhand dealer must specify in
143 the notice that:

144 1. The seller must provide the missing information or must
145 request the return of the property from the secondhand dealer

20092700e1

146 within 30 days after receiving the notice from the secondhand
147 dealer; and

148 2. The failure of the seller to provide the missing
149 information or request return of the property within the
150 applicable 30-day time period shall result in abandonment of the
151 seller's property to the Bureau of Unclaimed Property of the
152 Department of Financial Services pursuant to chapter 717.

153 (c) If the seller fails to remedy the deficiency in
154 information or request return of the property within 30 days
155 after receiving the notice, the seller's property is deemed
156 abandoned and is relinquished to the Bureau of Unclaimed
157 Property pursuant to chapter 717 if the property's true market
158 value is greater than \$50 as defined in chapter 717.

159 (d) Within 24 hours after the expiration of the 30-day hold
160 period for the property, the secondhand dealer must notify the
161 appropriate law enforcement agency of the abandonment of the
162 property by electronic transmission or by sending a copy of the
163 completed form authorized by chapter 717 to the Department of
164 Financial Services, Bureau of Unclaimed Property.

165 (8) (a) If there is probable cause that goods held by a
166 secondhand dealer are stolen, the law enforcement agency with
167 jurisdiction over the secondhand dealer may place a 90-day
168 written hold order on the goods and may take possession of the
169 goods from the dealer during the 90-day hold period. The 90-day
170 hold period may be extended beyond 90 days by a court of
171 competent jurisdiction upon a finding of probable cause that the
172 property is stolen and further holding is necessary for the
173 purpose of trial or to safeguard the property.

174 (b) If the secondhand dealer maintains possession of the

20092700e1

175 goods during any hold period, the secondhand dealer assumes all
176 responsibility, civil and criminal, for the safekeeping of the
177 property or evidence in question, including responsibility for
178 the actions of any employee of the dealer.

179 (c) While a hold order is in effect, the secondhand dealer
180 must, if in possession of the goods, release the property
181 subject to the hold order to the custody of a law enforcement
182 agency for use in a criminal investigation. Release of the
183 property to the law enforcement agency is not considered a
184 waiver or release of the secondhand dealer's rights or interest
185 in the property unless the secondhand dealer is not owed
186 restitution for the property.

187 (d) The property must be returned to the secondhand dealer
188 upon completion of the criminal proceeding unless the court
189 orders an alternative disposition or the secondhand dealer is
190 not due restitution for the property. When another disposition
191 is ordered, the court shall additionally order the person from
192 whom the secondhand dealer acquired the property to pay
193 restitution to the secondhand dealer in the amount that the
194 secondhand dealer paid for the property together with reasonable
195 attorney's fees and costs.

196 (9) If a secondhand dealer contests the identification or
197 ownership of the property, the person alleging ownership of the
198 property may, if a timely report of the theft of the goods was
199 made to the proper authorities, bring an action for replevin in
200 the county or circuit court by petition in substantially the
201 following form:

202 (a) Plaintiff A. B., sues defendant C. D., and alleges:
203 1. This is an action to recover possession of personal

20092700e1

204 property in _____ County, Florida.

205 2. The description of the property is: (list property). To
206 the best of plaintiff's knowledge, information, and belief, the
207 value of the property is \$ _____.

208 3. Plaintiff is entitled to the possession of the property
209 under a security agreement dated _____, (year), a copy of
210 which is attached.

211 4. To plaintiff's best knowledge, information, and belief,
212 the property is located at _____.

213 5. The property is wrongfully detained by defendant.
214 Defendant came into possession of the property by (describe
215 method of possession). To plaintiff's best knowledge,
216 information, and belief, defendant detains the property because
217 (give reasons).

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

220 (b) The filing fees shall be waived by the clerk of the
221 court and the service fees shall be waived by the sheriff. The
222 court shall award the prevailing party attorney's fees and
223 costs. In addition, if the filing party prevails in the replevin
224 action, the court shall order payment of filing fees to the
225 clerk and service fees to the sheriff.

226 (c) Upon the filing of the petition, the court shall set a
227 hearing to be held at the earliest possible time. Upon receipt
228 of a petition for a writ by a secondhand dealer, the dealer
229 shall hold the property at issue until the court determines the
230 respective interests of the parties.

231 (d) In addition to the civil petition for return remedy,
232 the state may file a motion as part of a pending criminal case

20092700e1

233 related to the property. The criminal court has jurisdiction to
234 determine ownership, to order return or other disposition of the
235 property, and to order any appropriate restitution to any
236 person. The order must be entered upon hearing after proper
237 notice has been given to the secondhand dealer, the victim, and
238 the defendant in the criminal case.

239 538.33 Tendering payment.-

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

245 538.34 Inspection of records and premises.-The dealer must
246 allow a law enforcement agency to inspect its business records,
247 inventory, and premises during normal business hours to ensure
248 compliance with this part.

249 538.35 Holding period.-

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

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

257 538.36 Acts and practices prohibited; penalties.-

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

20092700e1

262 775.082, s. 775.083, or s. 775.084. If an officer or corporation
263 is convicted or found guilty of, or pleads nolo contendere to,
264 any such offense, the officer or corporation may not operate
265 thereafter for 1 year as a mail-in secondhand precious metals
266 dealer within the state.

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

273 (a) If the value of the money received is less than \$300, a
274 felony of the third degree, punishable as provided in s.
275 775.082, s. 775.083, or s. 775.084.

276 (b) If the value of the money received is \$300 or more, a
277 felony of the second degree, punishable as provided in s.
278 775.082, s. 775.083, or s. 775.084.

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

281 538.37 Powers and duties of department.—The department has
282 the authority provided under s. 538.11.

283 Section 3. This act shall take effect October 1, 2009.