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CS/CS/HB 339, Engrossed 2

2009 Legislature

1 A bill to be entitled
 2 An act relating to secondhand dealers and secondary metals
 3 recyclers; amending s. 538.03, F.S.; excluding specified
 4 equipment from the definition of "secondhand goods";
 5 amending s. 538.21, F.S.; preempting certain local
 6 government ordinances relating to hold notices for
 7 secondary metals recyclers; creating part III of ch. 538,
 8 F.S.; providing definitions; providing exceptions;
 9 providing for registration; providing for recordkeeping;
 10 providing for the tendering of payments; providing for the
 11 inspection of records and business premises by a law
 12 enforcement agency; providing for a holding period;
 13 providing electronic access to transaction files by law
 14 enforcement agencies; providing for written notification
 15 to seller of transaction deficiencies; providing a method
 16 of relinquishment of abandoned property; providing for
 17 restitution; providing for replevin; prohibiting certain
 18 acts; providing penalties; providing for powers and duties
 19 of the 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

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29 | under part II and which is purchased, consigned, or traded as
 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. Subsection (4) is added to section 538.21,
 38 | Florida Statutes, to read:

39 | 538.21 Hold notice.--

40 | (4) This section provides a uniform statewide process and
 41 | preempts municipal or county ordinances enacted after December
 42 | 31, 2008, relating specifically to secondary metals recyclers
 43 | holding such metals.

44 | Section 3. Part III of chapter 538, Florida Statutes,
 45 | consisting of sections 538.31, 538.32, 538.33, 538.34, 538.35,
 46 | 538.36, and 538.37, is created to read:

47 | PART III

48 | MAIL-IN SECONDHAND PRECIOUS METALS DEALERS

49 | 538.31 Definitions; applicability.--

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

51 | (a) "Department" means the Department of Revenue.

52 | (b) "Jewelry" means a personal ornament that contains
 53 | precious metals and may contain gemstones.

54 | (c) "Mail-in secondhand precious metals dealer" means any
 55 | person or entity that:

56 | 1. Conducts business within this state and that contracts

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57 with other persons or entities to buy precious metals or jewelry
 58 through an Internet website, the United States mail, or
 59 telemarketing; or

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

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

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

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

71 (2) This part does not apply to:

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

74 (b) The purchase, consignment, or trade of secondhand
 75 precious metals or jewelry with another mail-in secondhand
 76 precious metals dealer or secondhand dealer regulated under part
 77 I.

78 538.32 Registration, transaction, and recordkeeping
 79 requirements; penalties.--

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

84 (2) A mail-in secondhand precious metals dealer may not

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85 remit payment to a seller unless the seller has provided the
86 following information:

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

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

91 (c) A sworn statement made by the seller that the seller
92 is of lawful age and that the driver's license number or other
93 government-issued identification number and other identifying
94 information provided by the seller is true and correct and that
95 the seller is the lawful owner of the goods with absolute
96 authority to sell the goods. The statement must include the
97 following language: "I declare under penalty of perjury that the
98 foregoing is true and correct."

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

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

103 1. Precious metal type, or, if jewelry, the type of
104 jewelry.

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

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

110
111 This information must be provided to the appropriate law
112 enforcement agency within 24 hours after entering into the

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113 contract unless other arrangements are made between the business
114 and the law enforcement agency.

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

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

129 (6) The mail-in secondhand precious metals dealer must
130 provide the appropriate law enforcement agency with an
131 electronic copy of the name, address, phone number, driver's
132 license number, or government-issued identification number, and
133 issuing state of the person from whom the dealer purchased or
134 acquired the precious metals or jewelry.

135 (7) (a) If the seller fails to provide the information
136 required under s. 538.32(2) (a) and (b), the secondhand dealer
137 may verify the identity and information of the seller through a
138 national provider of personal identification verification
139 services. Evidence from the personal identification verification
140 service must be maintained by the secondhand dealer and

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141 available for review by a law enforcement agency upon request.

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

151 1. The seller must provide the missing information or must
 152 request the return of the property from the secondhand dealer
 153 within 30 days after receiving the notice from the secondhand
 154 dealer; and

155 2. The failure of the seller to provide the missing
 156 information or request return of the property within the
 157 applicable 30-day time period shall result in abandonment of the
 158 seller's property to the Bureau of Unclaimed Property of the
 159 Department of Financial Services pursuant to chapter 717.

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

166 (d) Within 24 hours after the expiration of the 30-day
 167 hold period for the property, the secondhand dealer must notify
 168 the appropriate law enforcement agency of the abandonment of the

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169 property by electronic transmission or by sending a copy of the
170 completed form authorized by chapter 717 to the Department of
171 Financial Services, Bureau of Unclaimed Property.

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

181 (b) If the secondhand dealer maintains possession of the
182 goods during any hold period, the secondhand dealer assumes all
183 responsibility, civil and criminal, for the safekeeping of the
184 property or evidence in question, including responsibility for
185 the actions of any employee of the dealer.

186 (c) While a hold order is in effect, the secondhand dealer
187 must, if in possession of the goods, release the property
188 subject to the hold order to the custody of a law enforcement
189 agency for use in a criminal investigation. Release of the
190 property to the law enforcement agency is not considered a
191 waiver or release of the secondhand dealer's rights or interest
192 in the property unless the secondhand dealer is not owed
193 restitution for the property.

194 (d) The property must be returned to the secondhand dealer
195 upon completion of the criminal proceeding unless the court
196 orders an alternative disposition or the secondhand dealer is

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197 not due restitution for the property. When another disposition
 198 is ordered, the court shall additionally order the person from
 199 whom the secondhand dealer acquired the property to pay
 200 restitution to the secondhand dealer in the amount that the
 201 secondhand dealer paid for the property together with reasonable
 202 attorney's fees and costs.

203 (9) If a secondhand dealer contests the identification or
 204 ownership of the property, the person alleging ownership of the
 205 property may, if a timely report of the theft of the goods was
 206 made to the proper authorities, bring an action for replevin in
 207 the county or circuit court by petition in substantially the
 208 following form:

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

210 1. This is an action to recover possession of personal
 211 property in _____ County, Florida.

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

215 3. Plaintiff is entitled to the possession of the property
 216 under a security agreement dated _____, (year), a copy of
 217 which is attached.

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

220 5. The property is wrongfully detained by defendant.
 221 Defendant came into possession of the property by (describe
 222 method of possession). To plaintiff's best knowledge,
 223 information, and belief, defendant detains the property because
 224 (give reasons).

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

227 (b) The filing fees shall be waived by the clerk of the
 228 court and the service fees shall be waived by the sheriff. The
 229 court shall award the prevailing party attorney's fees and
 230 costs. In addition, if the filing party prevails in the replevin
 231 action, the court shall order payment of filing fees to the
 232 clerk and service fees to the sheriff.

233 (c) Upon the filing of the petition, the court shall set a
 234 hearing to be held at the earliest possible time. Upon receipt
 235 of a petition for a writ by a secondhand dealer, the dealer
 236 shall hold the property at issue until the court determines the
 237 respective interests of the parties.

238 (d) In addition to the civil petition for return remedy,
 239 the state may file a motion as part of a pending criminal case
 240 related to the property. The criminal court has jurisdiction to
 241 determine ownership, to order return or other disposition of the
 242 property, and to order any appropriate restitution to any
 243 person. The order must be entered upon hearing after proper
 244 notice has been given to the secondhand dealer, the victim, and
 245 the defendant in the criminal case.

246 538.33 Tendering payment.--Any payment by the mail-in
 247 secondhand precious metals dealer resulting from the sale,
 248 purchase, consignment, or trade of precious metals must be made
 249 to the person or entity by check to a lawful bank account or via
 250 a money services business licensed under part II of chapter 560.

251 538.34 Inspection of records and premises.--The dealer
 252 must allow a law enforcement agency to inspect its business

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253 records, inventory, and premises during normal business hours to
 254 ensure compliance with this part.

255 538.35 Holding period.--

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

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

263 538.36 Acts and practices prohibited; penalties.--

264 (1) Any dealer not registered with the department as a
 265 mail-in secondhand precious metals dealer, or who fails to
 266 comply with this part, commits a felony of the third degree for
 267 each completed transaction, punishable as provided in s.
 268 775.082, s. 775.083, or s. 775.084. If an officer or corporation
 269 is convicted or found guilty of, or pleads nolo contendere to,
 270 any such offense, the officer or corporation may not operate
 271 thereafter for 1 year as a mail-in secondhand precious metals
 272 dealer within the state.

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

279 (a) If the value of the money received is less than \$300,
 280 a felony of the third degree, punishable as provided in s.

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281 775.082, s. 775.083, or s. 775.084.

282 (b) If the value of the money received is \$300 or more, a
 283 felony of the second degree, punishable as provided in s.

284 775.082, s. 775.083, or s. 775.084.

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

287 538.37 Powers and duties of department.--The department
 288 has the authority provided under s. 538.11.

289 Section 4. This act shall take effect October 1, 2009.