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LEGISLATIVE ACTION

Senate

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House

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Floor: 1/AD/2R

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04/28/2009 10:56 AM

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Senator Gelber moved the following:

Senate Amendment (with title amendment)

Delete line 41

and insert:

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

Part III

MAIL-IN SECONDHAND PRECIOUS METALS DEALERS

538.31 Definitions; applicability.—

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

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



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

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

17 1. Conducts business within this state and that contracts
18 with other persons or entities to buy precious metals or jewelry
19 through an Internet website, the United States mail, or
20 telemarketing; or

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

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

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

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

32 (2) This part does not apply to:

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

35 (b) The purchase, consignment, or trade of secondhand
36 precious metals or jewelry with another mail-in secondhand
37 precious metals dealer or secondhand dealer regulated under part
38 I.

39 538.32 Registration, transaction, and recordkeeping
40 requirements; penalties.—

41 (1) A mail-in secondhand precious metals dealer may not



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42 conduct business under this part without registering with the
43 department and complying with all registration regulations as
44 set forth in s. 538.09.

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

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

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

52 (c) A sworn statement made by the seller that the seller is
53 of lawful age and that the driver's license number or other
54 government-issued identification number and other identifying
55 information provided by the seller is true and correct and that
56 the seller is the lawful owner of the goods with absolute
57 authority to sell the goods. The statement must include the
58 following language: "I declare under penalty of perjury that the
59 foregoing is true and correct."

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

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

64 1. Precious metal type, or, if jewelry, the type of
65 jewelry.

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

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



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72 This information must be provided to the appropriate law
73 enforcement agency within 24 hours after entering into the
74 contract unless other arrangements are made between the business
75 and the law enforcement agency.

76 (4) For every transaction, pictures of the secondhand goods
77 which are the subject of the transaction must be available
78 online for electronic viewing, via a website accessible by
79 username and password only, by a law enforcement agency at no
80 charge. In addition, the electronic files must be searchable by
81 a law enforcement agency for queries concerning property
82 descriptions, secondhand dealer transaction information, and the
83 seller's personal identification including address, state of
84 residence and zip code.

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

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

96 (7) (a) If the seller fails to provide the information
97 required under s. 538.32(2) (a) and (b), the secondhand dealer
98 may verify the identity and information of the seller through a
99 national provider of personal identification verification



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100 services. Evidence from the personal identification verification
101 service must be maintained by the secondhand dealer and
102 available for review by a law enforcement agency upon request.

103 (b) Alternatively, a secondhand dealer must give written
104 notice to the seller, by United States mail or e-mail if an e-
105 mail address is provided by the seller, that information
106 otherwise required to be given by seller under s. 538.32(2) has
107 not been provided by the seller to the secondhand dealer. Notice
108 of the deficient information must be sent by the secondhand
109 dealer no later than 10 days after the transaction is received
110 by the secondhand dealer. The secondhand dealer must specify in
111 the notice that:

112 1. The seller must provide the missing information or must
113 request the return of the property from the secondhand dealer
114 within 30 days after receiving the notice from the secondhand
115 dealer; and

116 2. The failure of the seller to provide the missing
117 information or request return of the property within the
118 applicable 30-day time period shall result in abandonment of the
119 seller's property to the Bureau of Unclaimed Property of the
120 Department of Financial Services pursuant to chapter 717.

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

127 (d) Within 24 hours after the expiration of the 30-day hold
128 period for the property, the secondhand dealer must notify the



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129 appropriate law enforcement agency of the abandonment of the
130 property by electronic transmission or by sending a copy of the
131 completed form authorized by chapter 717 to the Department of
132 Financial Services, Bureau of Unclaimed Property.

133 (8) (a) If there is probable cause that goods held by a
134 secondhand dealer are stolen, the law enforcement agency with
135 jurisdiction over the secondhand dealer may place a 90-day
136 written hold order on the goods and may take possession of the
137 goods from the dealer during the 90-day hold period. The 90-day
138 hold period may be extended beyond 90 days by a court of
139 competent jurisdiction upon a finding of probable cause that the
140 property is stolen and further holding is necessary for the
141 purpose of trial or to safeguard the property.

142 (b) If the secondhand dealer maintains possession of the
143 goods during any hold period, the secondhand dealer assumes all
144 responsibility, civil and criminal, for the safekeeping of the
145 property or evidence in question, including responsibility for
146 the actions of any employee of the dealer.

147 (c) While a hold order is in effect, the secondhand dealer
148 must, if in possession of the goods, release the property
149 subject to the hold order to the custody of a law enforcement
150 agency for use in a criminal investigation. Release of the
151 property to the law enforcement agency is not considered a
152 waiver or release of the secondhand dealer's rights or interest
153 in the property unless the secondhand dealer is not owed
154 restitution for the property.

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



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158 not due restitution for the property. When another disposition
159 is ordered, the court shall additionally order the person from
160 whom the secondhand dealer acquired the property to pay
161 restitution to the secondhand dealer in the amount that the
162 secondhand dealer paid for the property together with reasonable
163 attorney's fees and costs.

164 (9) If a secondhand dealer contests the identification or
165 ownership of the property, the person alleging ownership of the
166 property may, if a timely report of the theft of the goods was
167 made to the proper authorities, bring an action for replevin in
168 the county or circuit court by petition in substantially the
169 following form:

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

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

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

176 3. Plaintiff is entitled to the possession of the property
177 under a security agreement dated _____, (year), a copy of
178 which is attached.

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

181 5. The property is wrongfully detained by defendant.
182 Defendant came into possession of the property by (describe
183 method of possession). To plaintiff's best knowledge,
184 information, and belief, defendant detains the property because
185 (give reasons).

186 6. The property has not been taken under an execution or



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187 attachment against plaintiff's property.

188 (b) The filing fees shall be waived by the clerk of the
189 court and the service fees shall be waived by the sheriff. The
190 court shall award the prevailing party attorney's fees and
191 costs. In addition, if the filing party prevails in the replevin
192 action, the court shall order payment of filing fees to the
193 clerk and service fees to the sheriff.

194 (c) Upon the filing of the petition, the court shall set a
195 hearing to be held at the earliest possible time. Upon receipt
196 of a petition for a writ by a secondhand dealer, the dealer
197 shall hold the property at issue until the court determines the
198 respective interests of the parties.

199 (d) In addition to the civil petition for return remedy,
200 the state may file a motion as part of a pending criminal case
201 related to the property. The criminal court has jurisdiction to
202 determine ownership, to order return or other disposition of the
203 property, and to order any appropriate restitution to any
204 person. The order must be entered upon hearing after proper
205 notice has been given to the secondhand dealer, the victim, and
206 the defendant in the criminal case.

207 538.33 Tendering payment.—

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

213 538.34 Inspection of records and premises.—The dealer must
214 allow a law enforcement agency to inspect its business records,
215 inventory, and premises during normal business hours to ensure



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216 compliance with this part.
217 538.35 Holding period.-
218 (1) The dealer may not sell, barter, exchange, alter,
219 adulterate, use, or in any way dispose of any goods purchased
220 from a seller within 10 calendar days after the date payment is
221 issued for acquisition of the goods.
222 (2) Records of the sale, purchase, consignment, or trade of
223 precious metals or jewelry must be maintained by the business
224 for at least 2 years after the date of the transaction.
225 538.36 Acts and practices prohibited; penalties.-
226 (1) Any dealer not registered with the department as a
227 mail-in secondhand precious metals dealer, or who fails to
228 comply with this part, commits a felony of the third degree for
229 each completed transaction, punishable as provided in s.
230 775.082, s. 775.083, or s. 775.084. If an officer or corporation
231 is convicted or found guilty of, or pleads nolo contendere to,
232 any such offense, the officer or corporation may not operate
233 thereafter for 1 year as a mail-in secondhand precious metals
234 dealer within the state.
235 (2) Any person who knowingly gives false personal
236 identifying information to the dealer, who provides a driver's
237 license number or government-issued identification number that
238 does not belong to him or her, or who makes any false statement
239 with respect to being of lawful age or his or her ownership of
240 goods, and who receives payment from the dealer commits:
241 (a) If the value of the money received is less than \$300, a
242 felony of the third degree, punishable as provided in s.
243 775.082, s. 775.083, or s. 775.084.
244 (b) If the value of the money received is \$300 or more, a



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245 felony of the second degree, punishable as provided in s.
246 775.082, s. 775.083, or s. 775.084.

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

249 538.37 Powers and duties of department.—The department has
250 the authority provided under s. 538.11.

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

252

253 ===== T I T L E A M E N D M E N T =====

254 And the title is amended as follows:

255

256 Delete line 15

257 and insert:

258 holding such metals; creating part III of ch. 538,
259 F.S.; providing definitions; providing exceptions;
260 providing for registration; providing for
261 recordkeeping; providing for the tendering of
262 payments; providing for the inspection of records and
263 business premises by a law enforcement agency;
264 providing for a holding period; providing electronic
265 access to transaction files by law enforcement
266 agencies; providing for written notification to seller
267 of transaction deficiencies; providing a method of
268 relinquishment of abandoned property; providing for
269 restitution; providing for replevin; prohibiting
270 certain acts; providing penalties; providing for
271 powers and duties of the Department of Revenue;
272 providing an effective date.