

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 944

INTRODUCER: Senator Soto

SUBJECT: Secondhand Dealers

DATE: April 8, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<b>Favorable</b>
2.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
3.	<u>Harmsen</u>	<u>Phelps</u>	<u>RC</u>	<b>Pre-meeting</b>

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**I. Summary:**

SB 944 requires law enforcement officers to place a 90-day written order (“hold order”) mandating a secondhand dealer to hold a specific item that an officer has probable cause to believe was stolen. This process allows the item to be used as evidence in a criminal case, and to be returned to its rightful owner, should a judge enter an order to that effect. Current law permits, but does not require, a law enforcement officer to place a hold order.

**II. Present Situation:**

A secondhand dealer engages in the business of buying, reselling, or consigning certain types of used personal property.<sup>1</sup> Part I of ch. 538, F.S., grants authority to regulate secondhand dealers to the Department of Revenue (department). The department requires secondhand dealers to register on an annual basis, and currently has 5,048 secondhand dealer registrants.<sup>2</sup> Pawnbrokers were formerly regulated as secondhand dealers, but are now separately regulated under ch. 539, F.S.

Upon each acquisition, a secondhand dealer is required to complete a transaction record that details the goods purchased and the seller’s identity. The secondhand dealer must retain this document for at least 1 year and forward a copy to local law enforcement within 24 hours of the acquisition of the goods. Secondhand dealers are required to hold all property for at least 15 days after they acquire the property.<sup>3</sup> Should a law enforcement officer have probable cause to believe that the goods held by a secondhand dealer are stolen, the officer may place a 90-day written

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<sup>1</sup> Section 538.03, F.S.

<sup>2</sup> Section 538.09, F.S.; Florida Department of Revenue, *Secondhand Dealers Registered with the Florida Department of Revenue*, (2015), available at [http://dor.myflorida.com/dor/taxes/documents/secondhand\\_dealers\\_recyclers\\_08\\_09\\_13.pdf](http://dor.myflorida.com/dor/taxes/documents/secondhand_dealers_recyclers_08_09_13.pdf), (last accessed March 18, 2015).

<sup>3</sup> Section 538.06, F.S.

hold order on the goods, which prevents the secondhand dealer from selling them.<sup>4</sup> This allows the goods to be preserved for use as evidence in a criminal trial, and for the possible return to their rightful owner.

A victim of a theft whose property is subject to a hold order may recover his or her goods or the value thereof through one of three methods:<sup>5</sup>

- A court may order restitution or return of the goods to the secondhand dealer or victim of the crime.<sup>6</sup> If the court orders return of the goods or restitution to the victim, the court must also order restitution to the secondhand dealer from the person who sold the goods to the secondhand dealer;<sup>7</sup>
- A victim may file an action for replevin against the secondhand dealer;<sup>8</sup> or
- A victim may purchase her items back from the secondhand dealer, and then file a civil action against the thief for reimbursement of the cost expended.

Local law enforcement enforces secondhand dealer compliance with registration, record keeping, holding periods, and inspection requirements.<sup>9</sup>

### **III. Effect of Proposed Changes:**

The bill requires law enforcement officers to place a 90-day hold order on goods in the possession of a secondhand dealer for which there is probable cause to believe have been stolen. Previously, such action by law enforcement was optional. This 90-day hold order may be overridden by a court order to return the goods to either the secondhand dealer or another rightful owner.<sup>10</sup>

Section 2 of the bill provides an effective date of July 1, 2015.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

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<sup>4</sup> Section 538.06, F.S.

<sup>5</sup> Interview with representative of the Florida Law Enforcement Property Recovery Unit, March 18, 2015.

<sup>6</sup> Section 538.07, F.S.

<sup>7</sup> Section 538.06(4), F.S.

<sup>8</sup> Section 538.08, F.S.

<sup>9</sup> Section 538.05, F.S.; [http://dor.myflorida.com/dor/taxes/secondhand\\_dealers\\_recyclers.html](http://dor.myflorida.com/dor/taxes/secondhand_dealers_recyclers.html).

<sup>10</sup> Section 538.06(4), F.S.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

This may result in increased workload and costs for law enforcement officers involved in the recovery of stolen property.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

This bill does not affect the procedures for placement of a hold order on property in the possession of a pawnbroker.

**VIII. Statutes Affected:**

This bill substantially amends section 538.06 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.