

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	—	(Y/N)
ADOPTED AS AMENDED	—	(Y/N)
ADOPTED W/O OBJECTION	—	(Y/N)
FAILED TO ADOPT	—	(Y/N)
WITHDRAWN	—	(Y/N)
OTHER	—	

1 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Passidomo offered the following:

**Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Present paragraphs (c) through (j) of  
 7 subsection (1) of section 538.03, Florida Statutes, are  
 8 redesignated as paragraphs (d) through (k), respectively, a new  
 9 paragraph (c) is added to that subsection, and present  
 10 paragraphs (g) and (h) of that subsection are amended, to read:

11 538.03 Definitions; applicability.—

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

13 (c) "Automated kiosk" means an interactive device that is  
 14 permanently installed within a secure retail space and that:

15 1. Is remotely monitored by a live representative during  
 16 all business operating hours;

Amendment No. 1

17 2. Verifies a seller's identity by official identification  
18 issued in the United States;

19 3. Performs automated reading and recording of item serial  
20 numbers;

21 4. Compares item serial numbers against databases of  
22 stolen items;

23 5. Securely stores goods accepted by the kiosk; and

24 6. Captures and stores images during the transaction.

25 (h)(g) "Secondhand dealer" means any person, corporation,  
26 or other business organization or entity which is not a  
27 secondary metals recycler subject to part II and which is  
28 engaged in the business of purchasing, consigning, or trading  
29 secondhand goods. The term includes any secondhand dealer  
30 engaged in the business of purchasing secondhand goods by means  
31 of an automated kiosk.

32 (i)(h) "Secondhand goods" means personal property  
33 previously owned or used, which is not regulated metals property  
34 regulated under part II and which is purchased, consigned, or  
35 traded as used property. The term includes gift certificates and  
36 credit memos as defined in s. 501.95 which are purchased,  
37 consigned, or traded by a secondhand dealer. The term does ~~Such~~  
38 ~~secondhand goods do~~ not include office furniture, pianos, books,  
39 clothing, organs, coins, motor vehicles, costume jewelry, cardio  
40 and strength training or conditioning equipment designed  
41 primarily for indoor use, and secondhand sports equipment that  
42 is not permanently labeled with a serial number. As used in ~~For~~

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Amendment No. 1

43 ~~purposes of~~ this paragraph, the term "secondhand sports  
44 equipment" does not include golf clubs.

45 Section 2. Paragraphs (c) and (d) of subsection (1) of  
46 section 538.04, Florida Statutes, are redesignated as paragraphs  
47 (d) and (e), respectively, and a new paragraph (c) is added to  
48 that subsection, and subsection (8) is added to that section to  
49 read:

50 538.04 Recordkeeping requirements; penalties.—

51 (1) A secondhand dealer shall complete a secondhand  
52 dealers transaction form at the time of the actual transaction.  
53 A secondhand dealer shall maintain a copy of a completed  
54 transaction form on the registered premises for at least 1 year  
55 after the date of the transaction. However, the secondhand  
56 dealer shall maintain a copy of the transaction form for not  
57 less than 3 years. Unless other arrangements are agreed upon by  
58 the secondhand dealer and the appropriate law enforcement  
59 official, the secondhand dealer shall, within 24 hours after  
60 acquiring any secondhand goods, deliver to such official a  
61 record of the transaction on a form approved by the Department  
62 of Law Enforcement. Such record shall contain:

63 (c) Digital photos of the goods, clearly showing the items  
64 required to be included on the record as provided in paragraph

65 (b) .

66 (8) When secondhand goods are purchased by means of an  
67 automated kiosk, the serial number reported pursuant to this  
68 section may be the International Mobile Station Equipment

Amendment No. 1

69 Identity (IMEI), the mobile equipment identifier (MEID), or  
70 other unique identifying number assigned to the device by the  
71 manufacturer. If the IMEI, MEID, or other unique identifying  
72 number is not available at the time of receipt or purchase, the  
73 report filed pursuant to this section must be updated with the  
74 IMEI, MEID, or other unique identifying number as soon as  
75 possible, but no later than 10 business days after the date of  
76 acquisition. The holding requirements of s. 538.06 and s.  
77 538.09(3) do not begin until all required reports are complete  
78 and submitted to the appropriate law enforcement official.

79 Section 3. Subsection (1) of section 538.06, Florida  
80 Statutes, is amended to read:

81 538.06 Holding period.—

82 (1)(a) A secondhand dealer may ~~shall~~ not sell, barter,  
83 exchange, alter, adulterate, use, or in any way dispose of any  
84 secondhand good:

85 1. That is a precious metal, a gemstone, jewelry; an  
86 antique furnishing, fixture, or decorative object; or an item of  
87 art as defined in s. 686.501 within 30 calendar days after the  
88 date on which the good is acquired.

89 2. That is not described in subparagraph 1. ~~goods~~ within  
90 15 calendar days after of the date on which the good is acquired  
91 ~~of acquisition of the goods.~~

92 3. Within 30 calendar days after the date on which the  
93 good is acquired if the secondhand dealer uses an automated  
94 kiosk.

441425 - h0739-strike.docx

Published On: 2/17/2016 6:17:05 PM

Amendment No. 1

95  
96 Such holding periods are not applicable when the person known by  
97 the secondhand dealer to be the person from whom the goods were  
98 acquired desires to redeem, repurchase, or recover the goods,  
99 provided the dealer can produce the record of the original  
100 transaction with verification that the customer is the person  
101 from whom the goods were originally acquired.

102 (b) As used in this subsection, the term "antique" means  
103 the item is at least 30 years old and has special value because  
104 of its age.

105 Section 4. Section 538.08, Florida Statutes, is amended to  
106 read:

107 538.08 Stolen goods; complaint ~~petition~~ for return.-

108 (1) If the secondhand dealer contests the identification,  
109 ~~or~~ ownership, or right of possession of the property, the person  
110 alleging ownership or right of possession of the property may,  
111 provided that a timely report of the theft of the goods was made  
112 to the proper authorities, bring an action for replevin in the  
113 county or circuit court. The complaint may be ~~by petition~~ in  
114 substantially the following form:

115  
116 Plaintiff A. B. sues defendant C. D., and alleges:  
117 1. This is an action to recover possession of personal  
118 property in ..... County, Florida.

Amendment No. 1

119 2. The description of the property is: ...(list  
120 property).... To the best of plaintiff's knowledge, information,  
121 and belief, the value of the property is \$.....

122 3. Plaintiff is the lawful owner of the property or is  
123 entitled to the possession of the property under a security  
124 agreement dated ....., ...(year)...., a copy of which is  
125 attached.

126 4. To plaintiff's best knowledge, information, and belief,  
127 the property is located at .....

128 5. The property is wrongfully detained by defendant.  
129 Defendant came into possession of the property by ...(describe  
130 method of possession).... To plaintiff's best knowledge,  
131 information, and belief, defendant detains the property because  
132 ...(give reasons)....

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

135  
136 (2) The filing fees shall be waived by the clerk of the  
137 court, and the service fees shall be waived by the sheriff. The  
138 court shall award the prevailing party attorney ~~attorney's~~ fees  
139 and costs. In addition, when the filing party prevails in the  
140 replevin action, the court shall order payment of filing fees to  
141 the clerk and service fees to the sheriff.

142 (3) Upon the filing of the complaint ~~petition~~, the court  
143 shall set a hearing to be held at the earliest possible time.  
144 The plaintiff is entitled to the summary procedure provided in

Amendment No. 1

145 s. 51.011. Upon ~~the~~ receipt of the complaint ~~a petition for a~~  
146 ~~writ by a secondhand dealer,~~ the secondhand dealer shall hold  
147 the property at issue until the court determines the respective  
148 interests of the parties.

149 (4) In addition to the civil complaint ~~petition~~ for return  
150 remedy, the state may file a motion as part of a pending  
151 criminal case related to the property. The criminal court has  
152 jurisdiction to determine ownership, to order return or other  
153 disposition of the property, and to order ~~any~~ appropriate  
154 restitution to any person. Such order shall be entered upon  
155 hearing after proper notice has been given to the secondhand  
156 dealer, the victim, and the defendant in the criminal case.

157 (5) A secondhand dealer commits a noncriminal violation,  
158 punishable as provided in s. 775.083 by a fine of up to \$2,500,  
159 if all of the following occur:

160 (a) An owner or a lienor makes a written demand for return  
161 of the property and provides proof of ownership or proof of the  
162 right of possession to the secondhand dealer at least 5 calendar  
163 days before filing a replevin action.

164 (b) The secondhand dealer knows or should have known based  
165 on the proof provided under paragraph (a) that the property  
166 belongs to the owner or lienor.

167 (c) The secondhand dealer fails to return the property and  
168 does not file an action in interpleader to determine conflicting  
169 claims to the property.

Amendment No. 1

170 (d) The owner or lienor prevails in the replevin action  
171 against the secondhand dealer.

172 Section 5. Subsection (3) of section 538.09, Florida  
173 Statutes, is amended to read:

174 538.09 Registration.—

175 (3) The secondhand dealer's registration shall be  
176 conspicuously displayed at her or his registered location. A  
177 secondhand dealer must hold secondhand goods at the registered  
178 location for the period required by s. 538.06 ~~until 15 days~~  
179 ~~after the secondhand transaction~~ or until any extension of the  
180 holding period has expired, whichever is later. Storage at a  
181 registered location outside the appropriate law enforcement  
182 official's jurisdiction is permissible only upon agreement with  
183 such law enforcement official and if the secondhand dealer  
184 provides proof that he or she is able to and agrees to deliver  
185 the stored secondhand goods to the appropriate law enforcement  
186 official within 2 business days upon request.

187 Section 6. This act shall take effect July 1, 2016.

188

189

190 **T I T L E A M E N D M E N T**

191 Remove everything before the enacting clause and insert:  
192 An act relating to secondhand dealers; amending s. 538.03, F.S.;  
193 revising definitions; amending s. 538.04, F.S.; requiring that  
194 the record of a secondhand dealer transaction include digital  
195 photos of the items; specifying what may be used as a serial



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 739 (2016)

Amendment No. 1

196 number; providing that certain holding requirements do not begin  
197 until certain reports are submitted to the appropriate law  
198 enforcement official; amending s. 538.06, F.S.; revising the  
199 required holding period for certain goods acquired by a dealer;  
200 defining the term "antique"; amending s. 538.08, F.S.;  
201 authorizing an action in replevin against a secondhand dealer  
202 based on a right of possession to stolen goods; revising the  
203 form for a complaint for return of stolen goods; providing that  
204 a plaintiff in a replevin action is entitled to a certain  
205 summary procedure; providing that a secondhand dealer commits a  
206 noncriminal violation under certain circumstances; providing a  
207 penalty; amending s. 538.09, F.S.; revising the period of time a  
208 secondhand dealer must hold secondhand goods at a registered  
209 location; authorizing a secondhand dealer to store secondhand  
210 goods outside the appropriate law enforcement official's  
211 jurisdiction, subject to certain conditions; providing an  
212 effective date.

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