

1                                   A bill to be entitled  
 2           An act relating to secondhand dealers; amending s.  
 3           538.04, F.S.; requiring that the record of a  
 4           secondhand dealer transaction include digital  
 5           photographs of goods; amending s. 538.06, F.S.;  
 6           increasing the required holding period for certain  
 7           goods acquired by a dealer; providing a definition;  
 8           amending s. 538.08, F.S.; authorizing an action in  
 9           replevin against a secondhand dealer based on a right  
 10          of possession to stolen goods; revising the form for a  
 11          complaint for return of stolen goods; providing that a  
 12          plaintiff in a replevin action is entitled to a  
 13          certain summary procedure; providing that it is a  
 14          noncriminal violation for a secondhand dealer to have  
 15          not previously returned property under certain  
 16          circumstances to an owner or lienor who prevailed in a  
 17          replevin action; providing a penalty; providing an  
 18          effective date.

19  
 20   Be It Enacted by the Legislature of the State of Florida:

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 22           Section 1. Paragraphs (c) and (d) of subsection (1) of  
 23           section 538.04, Florida Statutes, are redesignated as paragraphs  
 24           (d) and (e), respectively, and a new paragraph (c) is added to  
 25           that subsection to read:

26           538.04 Recordkeeping requirements; penalties.—

27 (1) A secondhand dealer shall complete a secondhand  
 28 dealers transaction form at the time of the actual transaction.  
 29 A secondhand dealer shall maintain a copy of a completed  
 30 transaction form on the registered premises for at least 1 year  
 31 after the date of the transaction. However, the secondhand  
 32 dealer shall maintain a copy of the transaction form for not  
 33 less than 3 years. Unless other arrangements are agreed upon by  
 34 the secondhand dealer and the appropriate law enforcement  
 35 official, the secondhand dealer shall, within 24 hours after  
 36 acquiring any secondhand goods, deliver to such official a  
 37 record of the transaction on a form approved by the Department  
 38 of Law Enforcement. Such record shall contain:

39 (c) Digital photographs of the goods, clearly showing the  
 40 items required to be included on the record as provided in  
 41 paragraph (b).

42 Section 2. Subsection (1) of section 538.06, Florida  
 43 Statutes, is amended to read:

44 538.06 Holding period.—

45 (1) (a) A secondhand dealer shall not sell, barter,  
 46 exchange, alter, adulterate, use, or in any way dispose of any  
 47 secondhand good that is:

48 1. A precious metal, a gemstone, an item of jewelry, an  
 49 antique furnishing, fixture, or decorative object, or an item of  
 50 art as defined in s. 686.501, within 30 calendar days after the  
 51 date on which the good is acquired.

52 2. Not described in subparagraph 1., ~~goods~~ within 15

53 calendar days after ~~of~~ the date on which the good is acquired ~~of~~  
 54 ~~acquisition of the goods.~~

55  
 56 Such holding periods are not applicable when the person known by  
 57 the secondhand dealer to be the person from whom the goods were  
 58 acquired desires to redeem, repurchase, or recover the goods,  
 59 provided the dealer can produce the record of the original  
 60 transaction with verification that the customer is the person  
 61 from whom the goods were originally acquired.

62 (b) For purposes of this subsection, the term "antique"  
 63 means being at least 30 years old and having special value  
 64 because of age.

65 Section 3. Section 538.08, Florida Statutes, is amended to  
 66 read:

67 538.08 Stolen goods; complaint ~~petition~~ for return.-

68 (1) If the secondhand dealer contests the identification,  
 69 ~~or~~ ownership, or right of possession of the property, the person  
 70 alleging ownership or right of possession of the property may,  
 71 provided that a timely report of the theft of the goods was made  
 72 to the proper authorities, bring an action for replevin in the  
 73 county or circuit court. The complaint may be ~~by petition~~ in  
 74 substantially the following form:

75 Plaintiff A. B. sues defendant C. D., and alleges:

- 76 1. This is an action to recover possession of personal  
 77 property in ..... County, Florida.
- 78 2. The description of the property is: ...(list

79 | property).... To the best of plaintiff's knowledge, information,  
 80 | and belief, the value of the property is \$.....

81 | 3. Plaintiff is the lawful owner of the property or is  
 82 | entitled to ~~the~~ possession of the property under a security  
 83 | agreement dated ....., ...(year)..., a copy of which is  
 84 | attached.

85 | 4. To plaintiff's best knowledge, information, and belief,  
 86 | the property is located at .....

87 | 5. The property is wrongfully detained by defendant.  
 88 | Defendant came into possession of the property by ...(describe  
 89 | method of possession).... To plaintiff's best knowledge,  
 90 | information, and belief, defendant detains the property because  
 91 | ...(give reasons)....

92 | 6. The property has not been taken under an execution or  
 93 | attachment against plaintiff's property.

94 | (2) The filing fees shall be waived by the clerk of the  
 95 | court, and the service fees shall be waived by the sheriff. The  
 96 | court shall award the prevailing party attorney ~~attorney's~~ fees  
 97 | and costs. In addition, when the filing party prevails in the  
 98 | replevin action, the court shall order payment of filing fees to  
 99 | the clerk and service fees to the sheriff.

100 | (3) Upon the filing of the complaint ~~petition~~, the court  
 101 | shall set a hearing to be held at the earliest possible time.  
 102 | The plaintiff is entitled to the summary procedure provided in  
 103 | s. 51.011. Upon ~~the~~ receipt of the complaint ~~a petition for a~~  
 104 | ~~writ by a secondhand dealer~~, the secondhand dealer shall hold

105 the property at issue until the court determines the respective  
106 interests of the parties.

107 (4) In addition to the civil complaint ~~petition~~ for return  
108 remedy, the state may file a motion as part of a pending  
109 criminal case related to the property. The criminal court has  
110 jurisdiction to determine ownership, ~~to~~ order return or other  
111 disposition of the property, and ~~to~~ order ~~any~~ appropriate  
112 restitution to any person. Such order shall be entered upon  
113 hearing after proper notice has been given to the secondhand  
114 dealer, the victim, and the defendant in the criminal case.

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

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

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

125 (c) The secondhand dealer fails to return the property and  
126 does not file an action for interpleader to determine  
127 conflicting claims to the property.

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

130 Section 4. This act shall take effect July 1, 2016.