

1 A bill to be entitled
2 An act relating to secondhand dealers; amending s.
3 538.03, F.S.; revising definitions; amending s.
4 538.04, F.S.; requiring that the record of a
5 secondhand dealer transaction include digital
6 photographs of the items; authorizing certain
7 identifiers to be reported as serial numbers;
8 providing that certain holding requirements do not
9 begin until certain reports are submitted to the
10 appropriate law enforcement official; amending s.
11 538.06, F.S.; revising the required holding period for
12 certain goods acquired by a dealer; defining the term
13 "antique"; amending s. 538.08, F.S.; authorizing an
14 action in replevin against a secondhand dealer based
15 on a right of possession to stolen goods; revising the
16 form for a complaint for return of stolen goods;
17 providing that a plaintiff in a replevin action is
18 entitled to a certain summary procedure; providing
19 that a secondhand dealer commits a noncriminal
20 violation under certain circumstances; providing a
21 penalty; amending s. 538.09, F.S.; revising the period
22 of time a secondhand dealer must hold secondhand goods
23 at a registered location; authorizing a secondhand
24 dealer to store secondhand goods outside the
25 appropriate law enforcement official's jurisdiction
26 under certain circumstances; providing an effective

27 | date.

28 |

29 | Be It Enacted by the Legislature of the State of Florida:

30 |

31 | Section 1. Paragraphs (c) through (j) of subsection (1) of
 32 | section 538.03, Florida Statutes, are redesignated as paragraphs
 33 | (d) through (k), respectively, a new paragraph (c) is added to
 34 | that subsection, and present paragraphs (g) and (h) of that
 35 | subsection are amended, to read:

36 | 538.03 Definitions; applicability.—

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

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

40 | 1. Is remotely monitored by a live representative during
 41 | all business operating hours;

42 | 2. Verifies a seller's identity by official identification
 43 | issued in the United States;

44 | 3. Performs automated reading and recording of item serial
 45 | numbers;

46 | 4. Compares item serial numbers against databases of
 47 | stolen items;

48 | 5. Securely stores goods accepted by the kiosk; and

49 | 6. Captures and stores images during the transaction.

50 | (h) ~~(g)~~ "Secondhand dealer" means any person, corporation,
 51 | or other business organization or entity which is not a
 52 | secondary metals recycler subject to part II and which is

53 engaged in the business of purchasing, consigning, or trading
 54 secondhand goods. The term includes any secondhand dealer
 55 engaged in the business of purchasing secondhand goods by means
 56 of an automated kiosk.

57 (i) ~~(h)~~ "Secondhand goods" means personal property
 58 previously owned or used, which is not regulated metals property
 59 regulated under part II and which is purchased, consigned, or
 60 traded as used property. The term includes gift certificates and
 61 credit memos as defined in s. 501.95 which are purchased,
 62 consigned, or traded by a secondhand dealer. The term does ~~Such~~
 63 ~~secondhand goods do~~ not include office furniture, pianos, books,
 64 clothing, organs, coins, motor vehicles, costume jewelry, cardio
 65 and strength training or conditioning equipment designed
 66 primarily for indoor use, and secondhand sports equipment that
 67 is not permanently labeled with a serial number. For purposes of
 68 this paragraph, the term "secondhand sports equipment" does not
 69 include golf clubs.

70 Section 2. Paragraphs (c) and (d) of subsection (1) of
 71 section 538.04, Florida Statutes, are redesignated as paragraphs
 72 (d) and (e), respectively, a new paragraph (c) is added to that
 73 subsection, and subsection (8) is added to that section, to
 74 read:

75 538.04 Recordkeeping requirements; penalties.—

76 (1) A secondhand dealer shall complete a secondhand
 77 dealers transaction form at the time of the actual transaction.
 78 A secondhand dealer shall maintain a copy of a completed

79 transaction form on the registered premises for at least 1 year
80 after the date of the transaction. However, the secondhand
81 dealer shall maintain a copy of the transaction form for not
82 less than 3 years. Unless other arrangements are agreed upon by
83 the secondhand dealer and the appropriate law enforcement
84 official, the secondhand dealer shall, within 24 hours after
85 acquiring any secondhand goods, deliver to such official a
86 record of the transaction on a form approved by the Department
87 of Law Enforcement. Such record shall contain:

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

91 (8) When secondhand goods are purchased by means of an
92 automated kiosk, the serial number reported pursuant to this
93 section may be the International Mobile Station Equipment
94 Identity (IMEI), the mobile equipment identifier (MEID), or
95 other unique identifying number assigned to the device by the
96 manufacturer. If the IMEI, MEID, or other unique identifying
97 number is not available at the time of receipt or purchase, the
98 report filed pursuant to this section must be updated with the
99 IMEI, MEID, or other unique identifying number as soon as
100 possible, but no later than 10 business days after the date of
101 acquisition. The holding requirements of ss. 538.06 and
102 538.09(3) do not begin until all required reports are complete
103 and submitted to the appropriate law enforcement official.

104 Section 3. Subsection (1) of section 538.06, Florida

105 Statutes, is amended to read:

106 538.06 Holding period.—

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

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

114 2. That is not described in subparagraph 1. goods within
 115 15 calendar days after ~~of~~ the date on which the good is acquired
 116 ~~of acquisition of the goods.~~

117 3. Within 30 calendar days after the date on which the
 118 good is acquired if the secondhand dealer uses an automated
 119 kiosk.

120
 121 Such holding periods are not applicable when the person known by
 122 the secondhand dealer to be the person from whom the goods were
 123 acquired desires to redeem, repurchase, or recover the goods,
 124 provided the dealer can produce the record of the original
 125 transaction with verification that the customer is the person
 126 from whom the goods were originally acquired.

127 (b) For purposes of this subsection, the term "antique"
 128 means the item is at least 30 years old and has special value
 129 because of its age.

130 Section 4. Section 538.08, Florida Statutes, is amended to

131 read:

132 538.08 Stolen goods; complaint ~~petition~~ for return.-

133 (1) If the secondhand dealer contests the identification,
 134 ~~or~~ ownership, or right of possession of the property, the person
 135 alleging ownership or right of possession of the property may,
 136 provided that a timely report of the theft of the goods was made
 137 to the proper authorities, bring an action for replevin in the
 138 county or circuit court. The complaint may be ~~by petition~~ in
 139 substantially the following form:

140

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

142 1. This is an action to recover possession of personal
 143 property in County, Florida.

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

147 3. Plaintiff is the lawful owner of the property or is
 148 entitled to the possession of the property under a security
 149 agreement dated, ...(year)...., a copy of which is
 150 attached.

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

153 5. The property is wrongfully detained by defendant.
 154 Defendant came into possession of the property by ...(describe
 155 method of possession).... To plaintiff's best knowledge,
 156 information, and belief, defendant detains the property because

157 | ...(give reasons)....

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

161 | (2) The filing fees shall be waived by the clerk of the
162 | court, and the service fees shall be waived by the sheriff. The
163 | court shall award the prevailing party attorney ~~attorney's~~ fees
164 | and costs. In addition, when the filing party prevails in the
165 | replevin action, the court shall order payment of filing fees to
166 | the clerk and service fees to the sheriff.

167 | (3) Upon the filing of the complaint ~~petition~~, the court
168 | shall set a hearing to be held at the earliest possible time.
169 | The plaintiff is entitled to the summary procedure provided in
170 | s. 51.011. Upon ~~the~~ receipt of the complaint ~~a petition for a~~
171 | ~~writ by a secondhand dealer~~, the secondhand dealer shall hold
172 | the property at issue until the court determines the respective
173 | interests of the parties.

174 | (4) In addition to the civil complaint ~~petition~~ for return
175 | remedy, the state may file a motion as part of a pending
176 | criminal case related to the property. The criminal court has
177 | jurisdiction to determine ownership, to order return or other
178 | disposition of the property, and to order ~~any~~ appropriate
179 | restitution to any person. Such order shall be entered upon
180 | hearing after proper notice has been given to the secondhand
181 | dealer, the victim, and the defendant in the criminal case.

182 | (5) A secondhand dealer commits a noncriminal violation,

183 punishable as provided in s. 775.083 by a fine of up to \$2,500,
 184 if all of the following occur:

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

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

192 (c) The secondhand dealer fails to return the property and
 193 does not file an action in interpleader to determine conflicting
 194 claims to the property.

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

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

199 538.09 Registration.—

200 (3) The secondhand dealer's registration shall be
 201 conspicuously displayed at her or his registered location. A
 202 secondhand dealer must hold secondhand goods at the registered
 203 location for the period required by s. 538.06 ~~until 15 days~~
 204 ~~after the secondhand transaction~~ or until any extension of the
 205 holding period has expired, whichever is later. Storage at a
 206 registered location outside the appropriate law enforcement
 207 official's jurisdiction is permissible only upon agreement with
 208 such law enforcement official and if the secondhand dealer

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209 provides proof that he or she is able to and agrees to deliver
210 the stored secondhand goods to the appropriate law enforcement
211 official within 2 business days upon request.

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