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CS/CS/HB 739, Engrossed 1

2016 Legislature

1  
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; requiring a different method  
7 of identification when certain numbers are not  
8 available; requiring secondhand dealers to notify a  
9 law enforcement official under certain circumstances;  
10 providing that certain holding requirements do not  
11 begin until certain reports are submitted to the  
12 appropriate law enforcement official; amending s.  
13 538.06, F.S.; revising the required holding period for  
14 certain goods acquired by a dealer; defining the term  
15 "antique"; amending s. 538.08, F.S.; authorizing an  
16 action in replevin against a secondhand dealer based  
17 on a right of possession to stolen goods; revising the  
18 form for a complaint for return of stolen goods;  
19 providing that a plaintiff in a replevin action is  
20 entitled to a certain summary procedure; providing  
21 that a secondhand dealer commits a noncriminal  
22 violation under certain circumstances; providing a  
23 penalty; amending s. 538.09, F.S.; revising the period  
24 of time a secondhand dealer must hold secondhand goods  
25 at a registered location; authorizing a secondhand  
26 dealer to store secondhand goods outside the



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27 appropriate law enforcement official's jurisdiction  
28 under certain circumstances; providing an effective  
29 date.

30

31 Be It Enacted by the Legislature of the State of Florida:

32

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

38 538.03 Definitions; applicability.—

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

40 (c) "Automated kiosk" means an interactive device that is  
41 permanently installed within a secure retail space and that has  
42 the following technological functions:

43 1. Remotely monitored by a live representative during all  
44 business operating hours;

45 2. Verification of a seller's identity by government-  
46 issued photographic identification card;

47 3. Automated reading and recording of item serial numbers;

48 4. Ability to compare item serial numbers against  
49 databases of stolen items;

50 5. Secure storage of goods accepted by the kiosk; and

51 6. Capture and storage of images during the transaction.

52 (h) ~~(g)~~ "Secondhand dealer" means any person, corporation,



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53 or other business organization or entity which is not a  
54 secondary metals recycler subject to part II and which is  
55 engaged in the business of purchasing, consigning, or trading  
56 secondhand goods. The term includes any secondhand dealer  
57 engaged in the business of purchasing secondhand goods by means  
58 of an automated kiosk.

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

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

77 538.04 Recordkeeping requirements; penalties.—

78 (1) A secondhand dealer shall complete a secondhand



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

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

93 |       (8) When secondhand goods are purchased by means of an  
94 | automated kiosk, the serial number reported pursuant to this  
95 | section may be the International Mobile Station Equipment  
96 | Identity (IMEI), the mobile equipment identifier (MEID), or  
97 | another unique identifying number assigned to the device by the  
98 | manufacturer. If the IMEI, MEID, or other unique identifying  
99 | number is not available at the time of receipt or purchase, the  
100 | report filed pursuant to this section must be updated with the  
101 | IMEI, MEID, or other unique identifying number as soon as  
102 | possible, but no later than 10 business days after the date of  
103 | acquisition. If such identifying numbers are not available at  
104 | the time of the transaction, the business shall assign another



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105 unique identifier to the item which directly associates the item  
106 to the transaction that it was purchased in. Upon entering or  
107 updating any information on the transaction form, a law  
108 enforcement official, as designated by the sheriff or the chief  
109 of police of the jurisdiction in which the item was purchased,  
110 must be timely notified in writing or by electronic means, as  
111 required by the sheriff or chief of police of the jurisdiction.  
112 If, upon receiving the device and correcting the missing  
113 information, the company finds that the item was misappropriated  
114 or stolen, the appropriate law enforcement official must be  
115 notified. The holding requirements of ss. 538.06 and 538.09(3)  
116 do not begin until all required reports are complete and  
117 submitted to the appropriate law enforcement official.

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

120 538.06 Holding period.—

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

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

128 2. That is not described in subparagraph 1. ~~goods~~ within  
129 15 calendar days ~~after~~ of the date on which the good is acquired  
130 ~~of acquisition of the goods.~~



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131 3. Within 30 calendar days after the date on which the  
 132 good is acquired if the secondhand dealer uses an automated  
 133 kiosk.

134  
 135 Such holding periods are not applicable when the person known by  
 136 the secondhand dealer to be the person from whom the goods were  
 137 acquired desires to redeem, repurchase, or recover the goods,  
 138 provided the dealer can produce the record of the original  
 139 transaction with verification that the customer is the person  
 140 from whom the goods were originally acquired.

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

144 Section 4. Section 538.08, Florida Statutes, is amended to  
 145 read:

146 538.08 Stolen goods; complaint ~~petition~~ for return.—

147 (1) If the secondhand dealer contests the identification,  
 148 ~~or~~ ownership, or right of possession of the property, the person  
 149 alleging ownership or right of possession of the property may,  
 150 provided that a timely report of the theft of the goods was made  
 151 to the proper authorities, bring an action for replevin in the  
 152 county or circuit court. The complaint may be ~~by petition~~ in  
 153 substantially the following form:

154  
 155 Plaintiff A. B. sues defendant C. D., and alleges:

156 1. This is an action to recover possession of personal



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157 | property in ..... County, Florida.

158 |       2. The description of the property is: ...(list  
159 | property).... To the best of plaintiff's knowledge, information,  
160 | and belief, the value of the property is \$.....

161 |       3. Plaintiff is the lawful owner of the property or is  
162 | entitled to the possession of the property under a security  
163 | agreement dated ....., ...(year)...., a copy of which is  
164 | attached.

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

167 |       5. The property is wrongfully detained by defendant.  
168 | Defendant came into possession of the property by ...(describe  
169 | method of possession).... To plaintiff's best knowledge,  
170 | information, and belief, defendant detains the property because  
171 | ...(give reasons)....

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

174 |

175 |       (2) The filing fees shall be waived by the clerk of the  
176 | court, and the service fees shall be waived by the sheriff. The  
177 | court shall award the prevailing party attorney ~~attorney's~~ fees  
178 | and costs. In addition, when the filing party prevails in the  
179 | replevin action, the court shall order payment of filing fees to  
180 | the clerk and service fees to the sheriff.

181 |       (3) Upon the filing of the complaint ~~petition~~, the court  
182 | shall set a hearing to be held at the earliest possible time.



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183 The plaintiff is entitled to the summary procedure provided in  
184 s. 51.011. Upon ~~the~~ receipt of the complaint ~~a petition for a~~  
185 ~~writ by a secondhand dealer~~, the secondhand dealer shall hold  
186 the property at issue until the court determines the respective  
187 interests of the parties.

188 (4) In addition to the civil complaint ~~petition~~ for return  
189 remedy, the state may file a motion as part of a pending  
190 criminal case related to the property. The criminal court has  
191 jurisdiction to determine ownership, to order return or other  
192 disposition of the property, and to order ~~any~~ appropriate  
193 restitution to any person. Such order shall be entered upon  
194 hearing after proper notice has been given to the secondhand  
195 dealer, the victim, and the defendant in the criminal case.

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

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

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

206 (c) The secondhand dealer fails to return the property and  
207 does not file an action in interpleader to determine conflicting  
208 claims to the property.





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

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

213        538.09 Registration.—

214        (3) The secondhand dealer's registration shall be  
215 conspicuously displayed at her or his registered location. A  
216 secondhand dealer must hold secondhand goods at the registered  
217 location for the period required by s. 538.06 ~~until 15 days~~  
218 ~~after the secondhand transaction~~ or until any extension of the  
219 holding period has expired, whichever is later. Storage at a  
220 registered location outside the appropriate law enforcement  
221 official's jurisdiction is permissible only upon agreement with  
222 such law enforcement official and if the secondhand dealer  
223 provides proof that he or she is able to and agrees to deliver  
224 the stored secondhand goods to the appropriate law enforcement  
225 official within 2 business days upon request.

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