



818396

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
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The Committee on Fiscal Policy (Bean) recommended the following:

1 **Senate Substitute for Amendment (776422) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

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

11 538.03 Definitions; applicability.—



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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 has
15 the following technological functions:

16 1. Remotely monitored and attended by a live representative
17 during all business operating hours;

18 2. Verification of a seller's identity by official
19 identification issued in the United States;

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

21 4. Ability to compare item serial numbers against databases
22 of stolen items;

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

24 6. Capture and storage of 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



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41 primarily for indoor use, and secondhand sports equipment that
42 is not permanently labeled with a serial number. As used in ~~For~~
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 dealers
52 transaction form at the time of the actual transaction. A
53 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
69 Identity (IMEI), the mobile equipment identifier (MEID), or



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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 was acquired.

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

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

94
95 Such holding periods are not applicable when the person known by
96 the secondhand dealer to be the person from whom the goods were
97 acquired desires to redeem, repurchase, or recover the goods,
98 provided the dealer can produce the record of the original



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99 transaction with verification that the customer is the person
100 from whom the goods were originally acquired.

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

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

106 538.08 Stolen goods; complaint ~~petition~~ for return.-

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

114
115 Plaintiff A. B. sues defendant C. D., and alleges:

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

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

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

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

127 5. The property is wrongfully detained by defendant.



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

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

134
135 (2) The filing fees shall be waived by the clerk of the
136 court, and the service fees shall be waived by the sheriff. The
137 court shall award the prevailing party attorney ~~attorney's~~ fees
138 and costs. In addition, when the filing party prevails in the
139 replevin action, the court shall order payment of filing fees to
140 the clerk and service fees to the sheriff.

141 (3) Upon the filing of the complaint ~~petition~~, the court
142 shall set a hearing to be held at the earliest possible time.
143 The plaintiff is entitled to the summary procedure provided in
144 s. 51.011. Upon ~~the~~ receipt of the complaint ~~a petition for a~~
145 ~~writ by a secondhand dealer~~, the secondhand dealer shall hold
146 the property at issue until the court determines the respective
147 interests of the parties.

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

156 (5) A secondhand dealer commits a noncriminal violation,



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

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

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

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

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

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

173 538.09 Registration.—

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



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

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188 ===== T I T L E A M E N D M E N T =====

189 And the title is amended as follows:

190 Delete everything before the enacting clause

191 and insert:

192 A bill to be entitled

193 An act relating to secondhand dealers; amending s.

194 538.03, F.S.; revising definitions; amending s.

195 538.04, F.S.; requiring that the record of a

196 secondhand dealer transaction include digital photos

197 of the items; specifying what may be used as a serial

198 number; providing that certain holding requirements do

199 not begin until certain reports are submitted to the

200 appropriate law enforcement official; amending s.

201 538.06, F.S.; revising the required holding period for

202 certain goods acquired by a dealer; defining the term

203 "antique"; amending s. 538.08, F.S.; authorizing an

204 action in replevin against a secondhand dealer based

205 on a right of possession to stolen goods; revising the

206 form for a complaint for return of stolen goods;

207 providing that a plaintiff in a replevin action is

208 entitled to a certain summary procedure; providing

209 that a secondhand dealer commits a noncriminal

210 violation under certain circumstances; providing a

211 penalty; amending s. 538.09, F.S.; revising the period

212 of time a secondhand dealer must hold secondhand goods

213 at a registered location; authorizing a secondhand

214 dealer to store secondhand goods outside the



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215 appropriate law enforcement official's jurisdiction,
216 subject to certain conditions; providing an effective
217 date.