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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/20/2016	.	
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	.	
	.	

The Committee on Commerce and Tourism (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete lines 40 - 94
and insert:

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

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



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11 which the good was acquired.

12 2. Not described in subparagraph 1. ~~goods~~ within 15
13 calendar days ~~after~~ ~~of~~ the date on which the good was acquired
14 ~~of acquisition of the goods.~~

15

16 Such holding periods are not applicable when the person known by
17 the secondhand dealer to be the person from whom the goods were
18 acquired desires to redeem, repurchase, or recover the goods,
19 provided the dealer can produce the record of the original
20 transaction with verification that the customer is the person
21 from whom the goods were originally acquired.

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

25 Section 3. Section 538.08, Florida Statutes, is amended to
26 read:

27 538.08 Stolen goods; complaint ~~petition~~ for return.-

28 (1) If the secondhand dealer contests the identification,
29 ~~or~~ ownership, or right of possession of the property, the person
30 alleging ownership or right of possession of the property may,
31 provided that a timely report of the theft of the goods was made
32 to the proper authorities, bring an action for replevin in the
33 county or circuit court. The complaint may be ~~by petition~~ in
34 substantially the following form:

35

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

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

39 2. The description of the property is: ...(list



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40 property).... To the best of plaintiff's knowledge, information,
41 and belief, the value of the property is \$.....

42 3. Plaintiff is the lawful owner of the property or is
43 entitled to ~~the~~ possession of the property under a security
44 agreement dated, ...(year)..., a copy of which is
45 attached.

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

48 5. The property is wrongfully detained by defendant.
49 Defendant came into possession of the property by ...(describe
50 method of possession).... To plaintiff's best knowledge,
51 information, and belief, defendant detains the property because
52 ...(give reasons)....

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

55
56 (2) The filing fees shall be waived by the clerk of the
57 court, and the service fees shall be waived by the sheriff. The
58 court shall award the prevailing party attorney ~~attorney's~~ fees
59 and costs. In addition, when the filing party prevails in the
60 replevin action, the court shall order payment of filing fees to
61 the clerk and service fees to the sheriff.

62 (3) Upon the filing of the complaint ~~petition~~, the court
63 shall set a hearing to be held at the earliest possible time.
64 The claimant is entitled to the summary procedure provided in s.
65 51.011. Upon ~~the~~ receipt of the complaint ~~a petition for a writ~~
66 ~~by a secondhand dealer~~, the secondhand dealer shall hold the
67 property at issue until the court determines the respective
68 interests of the parties.



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69 (4) In addition to the civil complaint ~~petition~~ for return
70 remedy, the state may file a motion as part of a pending
71 criminal case related to the property. The criminal court has
72 jurisdiction to determine ownership, ~~to~~ order return or other
73 disposition of the property, and ~~to~~ order ~~any~~ appropriate
74 restitution to any person. Such order shall be entered upon
75 hearing after proper notice has been given to the secondhand
76 dealer, the victim, and the defendant in the criminal case.

77 (5) A secondhand dealer commits a noncriminal violation,
78 punishable pursuant to s. 775.083 by a fine of up to \$2,500, if:

79 (a) The owner or lienor who prevailed in the replevin
80 action made a written demand for return of the property and
81 provided proof of ownership or proof of the right of possession
82 to the secondhand dealer at least 5 calendar days before filing
83 the replevin action;

84 (b) The secondhand dealer knew or should have known based
85 on the proof provided under paragraph (a) that the property
86 belonged to the owner or lienor; and

87 (c) The secondhand dealer did not file an action for
88 interpleader to determine conflicting claims to the property.

89
90 ===== T I T L E A M E N D M E N T =====

91 And the title is amended as follows:

92 Delete lines 7 - 12

93 and insert:

94 a dealer; defining the term "antique"; amending s.
95 538.08, F.S.; authorizing an action in replevin
96 against a secondhand dealer based on a right of
97 possession to stolen goods; revising the form for a



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98 complaint for return of stolen goods; providing that a
99 claimant in a replevin action is entitled to a certain
100 summary procedure; providing that a secondhand dealer
101 commits a noncriminal violation when an owner or
102 lienor prevails in a replevin action under certain
103 circumstances; providing a penalty;