

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 948

INTRODUCER: Commerce and Tourism Committee and Senator Richter

SUBJECT: Secondhand Dealers

DATE: January 20, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Fav/CS
2.			CJ	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 948 modifies the transaction processes mandated for secondhand dealers in ss. 538.03-538.17, F.S. The bill requires secondhand dealers to maintain digital photos of the goods they acquire as part of their transaction records. The bill also extends, from 15 to 30 days from the initial acquisition, the period for which a secondhand dealer must hold antique furnishings, fixtures, decorative objects, precious metals, gemstones, jewelry, and specific items of art. Lastly, the bill subjects secondhand dealers to a noncriminal penalty of up to \$2,500 in cases where the dealer loses in an action for replevin, but knew or should have known that the property belonged to someone else based on the rightful owner's provision of proof of ownership. The rightful owner must have also given the secondhand dealer notice of his or her ownership, with a demand for return of the property 5-days prior to filing the action for replevin, and then must have been the prevailing party in the action for replevin.

II. Present Situation:

Regulatory Requirements

A secondhand dealer engages in the business of buying, reselling, or consigning certain types of used personal property.¹ Part I of ch. 538, F.S., grants authority to regulate secondhand dealers to the Department of Revenue (department). The department requires secondhand dealers to

¹ Section 538.03, F.S.

register on an annual basis, and currently has 3,185 active secondhand dealer registrants.² Pawnbrokers were formerly regulated as secondhand dealers, but are now separately regulated under ch. 539, F.S.

Upon each acquisition, a secondhand dealer is required to complete a transaction record that details the goods purchased and the seller's identity.³ The secondhand dealer must retain this document for at least 3 years and forward a copy to local law enforcement within 24 hours of the acquisition of the goods. The transaction record must include, in addition to other descriptive statements:

- A statement of the date, time, and place of the transaction;
- A summary of the goods acquired, including brand name, model number, serial number, and other unique identifiers; and
- A description of the person from whom the goods were acquired, including their right thumbprint, their name and address, and a physical description.

Secondhand dealers are required to hold all property for at least 15 days after they acquire the property.⁴ Should a law enforcement officer have probable cause to believe that the goods held by a secondhand dealer are stolen, the officer may place a 90-day written hold order on the goods, which prevents the secondhand dealer from selling them.⁵ This allows the goods to be preserved for use as evidence in a criminal trial, and for the possible return to their rightful owner.

Local law enforcement enforces secondhand dealer compliance with registration, record keeping, holding periods, and inspection requirements.⁶ Additionally, any person who knowingly violates ch. 538, F.S., commits a first degree misdemeanor, punishable by up to one year in jail and a \$10,000 fine.⁷

Methods for Return of Stolen Goods Held by a Secondhand Dealer

A victim of a theft whose property is subject to a hold order may recover his or her goods or the value thereof through one of three methods:

- A victim may purchase her items back from the secondhand dealer, and then file a civil action against the thief for reimbursement of the cost expended;
- A court may order restitution or return of the goods to the secondhand dealer or victim of the crime.⁸ If the court orders return of the goods or restitution to the victim, the court must also order restitution to the secondhand dealer from the person who sold the goods to the secondhand dealer;⁹ or
- A victim may file a civil action for replevin against the secondhand dealer.¹⁰

² Section 538.09, F.S.; Conversation with staff of Florida Department of Revenue, Jan. 12, 2016.

³ Section 583.04, F.S.

⁴ Section 538.06, F.S.

⁵ Section 538.06, F.S.

⁶ Section 538.05, F.S.; http://dor.myflorida.com/dor/taxes/secondhand_dealers_recyclers.html.

⁷ Section 538.07(1), F.S.

⁸ Section 538.07, F.S.

⁹ Section 538.06(4), F.S.

¹⁰ Section 538.08, F.S.

Replevin is an action for the repossession of personal property that was wrongfully taken or detained by the defendant, where the plaintiff secures a bond for, and holds the property until the court decides who owns it.¹¹ Petitions for replevin must contain the following information:¹²

- Proof of ownership or entitlement to the property in question, and a description of the property;
- A description of how, to the best of the plaintiff’s knowledge, the property was wrongfully taken by the defendant; and
- A statement that the property was not claimed under any legal basis such as execution, tax, or fine.

A court is required to award the prevailing party in an action for replevin attorney fees and costs; when the petitioner is the prevailing party, he or she is also due payment of filing and service fees.¹³

Victims of theft and prevailing plaintiffs in an action for replevin are entitled to loss of use damages, limited to no more than the value of the property before it was taken or injured.¹⁴

Additionally, any person who traffics in property that he or she knows to be stolen is subject to felony charges of dealing in stolen property under s. 812.019, F.S.

Summary Procedure

Summary procedure is an expedited process for consideration of civil disputes provided for in s. 51.011, F.S.¹⁵ Summary procedure streamlines civil litigation by shortening the time period for response to a complaint, permitting fewer pleadings, and restricting the reasons for which a party may postpone the case.¹⁶ Summary procedure is only available to actions specified by statute or rule, and therefore is not currently available in actions of replevin against a secondhand dealer.¹⁷

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 538.04, F.S., to require that secondhand dealers include digital photos of the goods acquired, including any unique identifiers, in the report that they are required to submit to the local law enforcement.

Section 2 of the bill amends s. 538.06, F.S., to increase the time a secondhand dealer must hold antique furnishings, fixtures or decorative objects, precious metals,¹⁸ gemstones, or jewelry, and any item of art as defined in s. 686.501, F.S., after he or she acquires it from the seller from 15 to

¹¹ Black’s Law Dictionary, *Replevin* (10th ed. 2014); *see also*, ch. 78, F.S., “Replevin.”

¹² Section 78.055, F.S.; s. 538.08, F.S.

¹³ Section 538.08(2), F.S.

¹⁴ *Badillo v. Hill*, 570 So. 2d 1067, 1068 (Fla. 5th DCA 1990).

¹⁵ Daniel Morman, *Application of Summary Procedure by Agreement*, 76-Feb. Fla. Bar J. 12, 12 (Feb. 2002).

¹⁶ Section 51.011, F.S.

¹⁷ Section 51.011(2), F.S.

¹⁸ “Precious metals” are defined in s. 538.03(1)(e), F.S., as “any item containing any gold, silver, or platinum, or any combination thereof, excluding any chemical or any automotive, photographic, electrical, medical, or dental materials, or electric parts.”

30 days.¹⁹ An “antique” is defined by the bill as any item that is at least 30 years old, and has special value because of its age. This initial holding period is calculated to prevent stolen goods from entering the marketplace, and allowing victims of theft to retrieve their stolen items. Those goods not described above will continue to be subject to a 15-day hold period only.

Section 3 of the bill amends s. 538.08, F.S., to modify the processes by which a claimant may file an action for replevin to re-take possession of his or her goods currently in the possession of a secondhand dealer. Specifically, the bill:

- Expands parties eligible to file a replevin action to include an individual who can evince a right of possession of the property (lienor). Current law allows only a party who alleges ownership of the property to do so;
- Entitles a claimant who files an action for replevin to summary procedure, provided for in s. 51.011, F.S.; and
- Subjects secondhand dealers named in an action for replevin to a noncriminal violation, punishable by a fine of up to \$2,500, if the dealer:
 - Received from the rightful owner or lienor, a written demand for return of property in the dealer’s possession, 5 days prior to the owner’s filing of an action for replevin;
 - Did not file an action for interpleader in the replevin action to determine conflicting claims to the property;
 - Knew, or should have known, based on proof provided by the rightful owner or lienor of the property in question, that the property belonged to him or her; and
 - Failed in the replevin action, and was ordered by a court to return the goods to the rightful owner or lienor.

Interpleader is an equitable remedy used to allow a stakeholder to avoid multiple suits or liability as a result of competing claims to a single fund or good held by the stakeholder.²⁰

Section 4 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁹ Section 686.501, F.S., defines “art” as “a painting, sculpture, drawing, work of graphic art, pottery, weaving, batik, macrame, quilt, print, photograph, or craft work executed in materials including, but not limited to, clay, textile, paper, fiber, wood, tile, metal, plastic, or glass. The term shall also include a rare map which is offered as a limited edition or a map 80 years old or older; or a rare document or rare print which includes, but is not limited to, a print, engraving, etching, woodcut, lithograph, or serigraph which is offered as a limited edition, or one 80 years old or older.”

²⁰ *Red Beryl, Inc. v. Sarasota Vault Depository, Inc.*, 176 So. 3d 375 (Fla. 2nd DCA 2015); Fla. R. Civ. P. 1.240.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Victims of property theft will have more efficient and less costly judicial remedies to recover their stolen goods when the goods are found at a secondhand dealer.

Secondhand dealers may incur extra costs related to the 30-day hold of property, and related to the digital storage of photographs of the property. Additionally, secondhand dealers will now be subject to a noncriminal penalty of up to \$2,500 in replevin actions, where specific requirements are otherwise met by the claimant.

C. Government Sector Impact:

Court caseloads and costs may increase as a result of this provision.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends ss. 538.04, 538.06, and 538.08, F.S.

IX. **Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on January 19, 2016:

- Revises the 30-day hold to apply only to antique furnishings, fixtures, and decorative objects, in addition to precious metals, gemstones, jewelry, and specific items of art; all other items acquired by a secondhand dealer will continue to be subject to a 15-day hold period;
- Subjects secondhand dealers to a noncriminal penalty of up to \$2,500 in cases where the dealer loses in an action for replevin, and where specific requirements are met by the claimant.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
