

**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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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**BILL:** CS/CS/SB 948

**INTRODUCER:** Fiscal Policy Committee; Commerce and Tourism Committee; and Senator Richter

**SUBJECT:** Secondhand Dealers

**DATE:** February 19, 2016

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>McAloon</u>	<u>Cibula</u>	<u>JU</u>	<u>Favorable</u>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Fav/CS</u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 948 revises the laws governing transactions by secondhand dealers. The bill amends the definition of “secondhand goods” include gift cards and credit memos. The bill defines the term “automated kiosk” and amends the definition of “secondhand dealer” to include any secondhand dealer who is engaged in the business of purchasing secondhand goods by means of an automated kiosk.

The bill requires a secondhand dealer to maintain digital photos of the goods it acquires and provides requirements for recordkeeping when secondhand goods are purchased at an automated kiosk.

The bill extends the period from which a secondhand dealer must hold certain items, from 15 to 30 days from the initial acquisition. Additionally, any secondhand good acquired by use of an automated kiosk must be held for 30 days after the date the good is acquired.

The bill subjects a secondhand dealer to a noncriminal penalty punishable by a fine of up to \$2,500 when certain conditions are met.

The bill also allows a secondhand good to be kept at a location outside the jurisdiction of the appropriate law enforcement agency if there is an agreement between the law enforcement official and the secondhand dealer, and the secondhand dealer can and will deliver the good to the appropriate law enforcement official within 2 days of the request.

The bill is effective July 1, 2016.

## II. Present Situation:

The Florida Statutes regulate secondhand dealers and secondary metal recyclers in the trade of secondhand goods.<sup>1</sup> A secondhand dealer is any person, corporation, or other business organization or entity that is not a secondary metals recycler and is engaged in the business of purchasing, consigning, or trading secondhand goods.<sup>2</sup> Secondhand goods are personal property previously owned or used, which is purchased, consigned, or traded as used property. Secondhand goods do not include office furniture, pianos, books, clothing, organs, coins, motor vehicles, costume jewelry, cardio and strength training or conditioning equipment designed primarily for indoor use, and secondhand sports equipment that is not permanently labeled with a serial number.<sup>3</sup>

A secondhand dealer is not permitted to engage in the business of purchasing, consigning, or trading secondhand goods from any location without registering with the Department of Revenue.<sup>4</sup>

Upon each acquisition of secondhand goods, a secondhand dealer must complete a transaction form that details the goods purchased and the seller's identity. The secondhand dealer must retain this document for at least 3 years and forward a copy to the appropriate law enforcement agency within 24 hours after the acquisition of the secondhand goods.<sup>5</sup> In addition to the descriptive statements of the secondhand goods and the seller's identity, the transaction record must also include:

- 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 his or her right thumbprint, name and address, and a physical description.<sup>6</sup>

Secondhand dealers are required to hold all secondhand goods for at least 15 days after they acquire the property.<sup>7</sup> If a law enforcement officer has 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. This prevents the secondhand dealer from selling the goods and preserves them for use as evidence in a criminal trial.<sup>8</sup> Additionally, this allows for the possibility of the goods to be returned to their rightful owner.

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<sup>1</sup> See ch. 538, F.S.

<sup>2</sup> Section 538.03(1)(g), F.S.

<sup>3</sup> Section 538.03(1)(h), F.S.

<sup>4</sup> Section 538.09, F.S. Pawnbrokers were formerly regulated as secondhand dealers, but are now separately regulated under ch. 539, F.S.

<sup>5</sup> Section 538.04, F.S.

<sup>6</sup> Sections 538.04(1), F.S.

<sup>7</sup> Section 538.06(1), F.S.

<sup>8</sup> Section 538.06(3), F.S.

Law enforcement agencies with jurisdiction enforce compliance with registration, record keeping, holding periods, and inspection requirements.<sup>9</sup> A person who knowingly violates the requirements governing secondhand dealers in ch. 538, F.S., commits a first degree misdemeanor, punishable by up to 1 year in jail and a \$10,000 fine.<sup>10</sup>

### **Methods for Return of Stolen Goods held by a Secondhand Dealer**

A victim of a theft may recover his or her goods, or their value, through one of three methods:

- A victim may purchase his or 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.<sup>11</sup> 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.<sup>12</sup>
- A victim may file a civil action for replevin against the secondhand dealer.<sup>13</sup>

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 the rightful owner.<sup>14</sup> Petitions for replevin must contain the following information:

- Proof of ownership or entitlement to the property in question and a description of the property;
- A description of how, to the best of plaintiff's knowledge, the property was wrongfully taken by the defendant; and
- A statement that the property was not taken under any legal basis such as execution, tax, or fine.<sup>15</sup>

In an action for replevin, a court is required to award the prevailing party attorney fees and costs. When the petitioner is the prevailing party, the court may also order payment of the filing and service fees.<sup>16</sup>

Victims of theft and prevailing plaintiffs in an action for replevin are entitled to damages for loss of use, which are limited to no more than the value of the property before it was taken or damaged.<sup>17</sup>

Additionally, any person who traffics 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.

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<sup>9</sup> Section 538.05, F.S.

<sup>10</sup> Section 538.07(1), F.S.

<sup>11</sup> Section 538.07(2), F.S.

<sup>12</sup> Section 538.06(4), F.S.

<sup>13</sup> Section 538.08, F.S.

<sup>14</sup> BLACK'S LAW DICTIONARY (10th ed. 2014) (defining the term "replevin"); *see also*, ch. 78, F.S., "Replevin."

<sup>15</sup> Sections 78.055 and 538.08, F.S.

<sup>16</sup> Section 538.08(2), F.S. Otherwise, the filing and services fees are waived.

<sup>17</sup> *Foresight Enterprises, Inc. v. Leisure Time Properties, Inc.*, 466 So.2d 283, 286 (Fla. 5th DCA 1985).

## Summary Procedure

Summary procedure is an expedited process for consideration of civil disputes, which is provided in s. 51.011, F.S.<sup>18</sup> It streamlines civil litigation by shortening the time period for responding to a complaint, permitting fewer pleadings, and restricting the reasons for which a party may postpone the case. The procedure is only available to actions specified by statute or rule and is not currently available in actions of replevin against a secondhand dealer.<sup>19</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 538.03, F.S., to define an “automated kiosk” as an interactive device that is permanently installed within a secure retail space and that has the following technological functions:

- Remotely monitored and attended by a live representative during all business operating hours;
- Verification of a seller’s identity by official identification issued in the United States;
- Automated reading and recording of an item’s serial number;
- Ability to compare item serial numbers against databases of stolen items;
- Secure storage of goods accepted by the kiosk; and
- Capture and storage of images of the item during the transaction.

The bill amends the definition of a “secondhand dealer” to include any secondhand dealer who is engaged in the business of purchasing secondhand goods by means of an automated kiosk.

The bill amends the definition of “secondhand goods” to include gift certificates and credit memos<sup>20</sup> which are purchased, consigned, or traded by a secondhand dealer.

**Section 2** amends s. 538.04, F.S., to require secondhand dealers to include digital photos of the goods acquired in the report that is submitted to law enforcement upon acquisition of goods.

The bill requires when secondhand goods are acquired by means of an automated kiosk, the serial number reported to law enforcement may be the International Mobile Station Equipment Identity (IMEI), the mobile equipment identifier (MEID), or another unique identifying number assigned to the device by the manufacturer. If the IMEI, MEID, or other unique identifying number is not available at the time of receipt or purchase, the report must be updated with the IMEI, MEID, or other unique identifying number as soon as possible but no later than 10 business days after acquisition.

The holding requirements of ss. 538.06 and 538.09(3), F.S., do not begin until all required reports are complete and submitted to the appropriate law enforcement official.

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<sup>18</sup> Daniel Morman, *Application of Summary Procedure by Agreement: A Proposal to Expedite Litigation*, 76 FLA. BAR J. 12, 12 (Feb. 2002).

<sup>19</sup> Section 51.011, F.S.

<sup>20</sup> Section 501.95, F.S., defines “credit memo” as a certificate, card, stored value card, or similar instrument issued in exchange for returned merchandise when the certificate, card, or similar instrument is redeemable for merchandise, food, or services regardless of whether any cash may be paid to the owner of the certificate, card, or instrument as part of the redemption transaction.

**Section 3** amends s. 538.06, F.S., to increase the time from 15 to 30 days that a secondhand dealer must hold a precious metal;<sup>21</sup> gemstone; jewelry; an antique furnishing, fixture, or decorative object; and an item of art as defined in s. 686.501, F.S.<sup>22</sup> The bill defines the term “antique” to mean that the item is at least 30 years old and has a special value because of its age.

The bill also prohibits a secondhand dealer who uses an automated kiosk from selling, bartering, exchanging, altering, adulterating, using, or in any way disposing of any secondhand good within 30 days after the date it was acquired.

**Section 4** amends s. 538.08, F.S., to modify the processes by which a person may file an action for replevin to re-take possession of his or her goods currently in possession of a secondhand dealer. Specifically, the bill:

- Expands parties eligible to file a replevin action to include an individual who can display a right of possession to the property (lienor). Current law only allows a party who alleges ownership of the property to file such an action.
- Entitles a plaintiff who files an action for replevin to the summary procedure provided for in s. 51.011, F.S.
- Subjects a secondhand dealer to a noncriminal violation, punishable by a fine of up to \$2,500, if the following occur:
  - An owner or lienor makes a written demand for return of the property and provides proof of ownership or proof of the right of possession to the secondhand dealer at least 5 days before filing a replevin action;
  - The secondhand dealer knows or should have known based on the proof provided above, the property belongs to the owner or lienor;
  - The secondhand dealer fails to return the property and does not file an action for interpleader<sup>23</sup> to determine conflicting claims to the property; and
  - The owner or lienor prevails in the replevin action against the secondhand dealer.

**Section 5** amends s. 538.09, F.S., to reference s. 538.06, F.S., regarding the change of the holding period from 15 days to 30 days for certain secondhand goods.

The bill allows storage of secondhand goods outside the appropriate law enforcement official’s jurisdiction if it is agreed upon with such law enforcement official. The secondhand dealer must provide proof that he or she is able to and agrees to deliver the stored secondhand good to the appropriate law enforcement official within 2 business days of the request.

**Section 6** provides the bill is effective July 1, 2016.

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<sup>21</sup> Section 538.03(1), F.S. defines “precious metals” 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.

<sup>22</sup> Section 686.501, F.S., defines “art” as a painting, sculpture, drawing, work of graphic art, pottery, weaving, batik, macramé, 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 includes 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, a print, engraving, etching, woodcut, lithograph, or serigraph which is offered as a limited edition, or one 80 years old or older.

<sup>23</sup> Generally, interpleader is suit to determine a right to property held by a disinterested third party (called a stakeholder) who is in doubt about ownership and who therefore deposits the property with the court to permit interested parties to litigate ownership. BLACK’S LAW DICTIONARY (10th ed. 2014) (defining the term “interpleader”).

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## 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 the business of a secondhand dealer.

Secondhand dealers may incur extra costs related to the requirement to hold property for 30 days and the digital storage of photographs of the property. Additionally, secondhand dealers will now be subject to a noncriminal penalty of up to \$2,500, if specific conditions are met.

## C. Government Sector Impact:

To the extent that the bill results in additional replevin actions, judicial workloads may increase.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 538.03, 538.04, 538.06, 538.08, and 538.09, 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/CS by Fiscal Policy on February 17, 2016:**

The committee substitute:

- Defines the term “automated kiosk”;
- Amends the definition of “secondhand dealer” to include a secondhand dealer engaged in business of purchasing secondhand goods by an automatic kiosk;
- Amends the definition of “secondhand goods” to include gift cards and credit memos;
- Clarifies the conditions that must be met to subject a secondhand dealer to a noncriminal violation;
- Conforms a statute reference regarding the change of the holding period from 15 days to 30 days for certain secondhand goods;
- Provides requirements for recordkeeping when secondhand goods are purchased at an automated kiosk;
- Prohibits a secondhand dealer from selling, bartering, exchanging, altering, adulterating, using, or in any way disposing of any secondhand good within 30 days after the date when the good is acquired by use of an automated kiosk; and
- Allows a secondhand good to be kept at a location outside the jurisdiction of the appropriate law enforcement agency, if there is an agreement between the law enforcement official and the secondhand dealer, and the secondhand dealer can and will deliver the good to the appropriate law enforcement official within 2 days of the request.

**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.