

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 Fiscal Policy

BILL: CS/SB 948

INTRODUCER: Commerce and Tourism Committee and Senator Richter

SUBJECT: Secondhand Dealers

DATE: February 16, 2016

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 948 revises the laws governing transactions by secondhand dealers. The bill requires a secondhand dealer to maintain digital photos of the goods it acquires. The bill also extends the period from which a secondhand dealer must hold certain items, from 15 to 30 days from the initial acquisition. The bill subjects a secondhand dealer to a noncriminal penalty of up to \$2,500 in cases where the dealer loses in an action for replevin, and the secondhand dealer knew or should have known that the property belonged to someone else based on the rightful owner's 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.

II. Present Situation:

The Florida Statutes regulate secondhand dealers and secondary metal recyclers in the trade of secondhand goods.¹ A secondhand dealer is as 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.² 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

¹ See ch. 538, F.S.

² Section 538.03(1)(g), F.S.

primarily for indoor use, and secondhand sports equipment that is not permanently labeled with a serial number.³

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.⁴

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.⁵ 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.⁶

Secondhand dealers are required to hold all secondhand goods for at least 15 days after they acquire the property.⁷ 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.⁸ Additionally, this allows for the possibility of the goods to be returned to their rightful owner.

Law enforcement agencies with jurisdiction enforce compliance with registration, record keeping, holding periods, and inspection requirements.⁹ 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.¹⁰

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.

³ Section 538.03(1)(h), F.S.

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

⁵ Section 538.04, F.S.

⁶ Sections 538.04(1), F.S.

⁷ Section 538.06(1), F.S.

⁸ Section 538.06(3), F.S.

⁹ Section 538.05, F.S.

¹⁰ Section 538.07(1), F.S.

- A court may order restitution or return of the goods to the secondhand dealer or victim of the crime.¹¹ 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.¹²
- A victim may file a civil action for replevin against the secondhand dealer.¹³

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.¹⁴ 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.¹⁵

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.¹⁶

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.¹⁷

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.

Summary Procedure

Summary procedure is an expedited process for consideration of civil disputes, which is provided in s. 51.011, F.S.¹⁸ 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.¹⁹

¹¹ Section 538.07(2), F.S.

¹² Section 538.06(4), F.S.

¹³ Section 538.08, F.S.

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

¹⁵ Sections 78.055 and 538.08, F.S.

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

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

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

¹⁹ Section 51.011, F.S.

III. Effect of Proposed Changes:

Section 1 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.

Section 2 amends s. 538.06, F.S., to increase the time from 15 to 30 days that a secondhand dealer must hold a precious metal;²⁰ gemstone; jewelry; an antique furnishing, fixture, or decorative object; and an item of art as defined in s. 686.501, F.S.²¹ The bill also defines the term “antique” to mean that the item is at least 30 years old and has a special value because of its age.

Section 3 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 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 claimant who files an action for replevin to the summary procedure provided for in s. 51.011, F.S.
- 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 and proof of ownership or proof of rightful possession at least 5 days prior filing a replevin action;
 - Knew, or should have known, based on proof provided by the rightful owner or lienor that the property belonged to him or her; and
 - Did not file an action for interpleader²² to determine conflicting claims to the property,

Section 4 provides the bill is effective July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²⁰ 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.

²¹ 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.

²² 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”).

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 in replevin actions, if specific requirements are otherwise met by the claimant.

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: 538.04, 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.
